

Open letter for media release
11 April 2023

It's time to take action

2023 is shaping up to be a tough year for many. As inflation sticks, recession looms and extreme weather events roll in with more frequency and scale than ever before, not only are basic costs to live increasing but so too are the numbers of people in need of legal representation without the means to pay for it. In May 2022, it was widely reported that 20,000 Kiwis had been turned away from legal aid representation in the previous 12 months. I confidently predict that these numbers will be escalating by the day.

There have been recent increases to the income eligibility thresholds of legal aid and these moves are welcome, but they will have a limited impact on a system that relies on lawyers to show up and offer legal aid in the first place. The fact that many practitioners are no longer prepared to continue operating in the system points to more foundational problems at play. Some might argue that anything less than a structural overhaul of the legal aid system will act as little more than a band aid. Be that as it may, economic shifts mean we're likely to see more people unrepresented in court, the vulnerable continuing to be the hardest hit and access to justice becoming a case of have/have nots. Pro bono is essential in helping bridge this gap to justice and assisting the increasing proportion of the population ineligible to legal aid. It can't operate in isolation nor as a replacement to a well-funded legal aid system.

We must do better than this. The case for a centralised pro bono system in New Zealand has become undeniable. I believe that if we unite and work collaboratively, we can put in place a structure that reflects the equivalent pro bono model established successfully in Australia. Streamlining and unifying our pro bono efforts, establishing referral mechanisms, setting national targets and providing firms with resources and infrastructure to ignite pro bono programs that will operate at scale would be a massive win for our society. Not only would this result in greater amounts of legal work being undertaken pro bono, it would also bridge the gap to justice.

With your help, let's get this centralised pro bono system on the agenda across the legal industry.

Let's all work together for the good of all.

Let's make 2023 the year that access to justice turns a corner and becomes accessible once more.

The situation in New Zealand

The lack of cohesion of pro bono efforts in New Zealand was reinforced to me upon the return of our Pro Bono Directors from DLA Piper Australia where they had worked with our Australian colleagues. While there, they had attended an event marking 20 years since the establishment of the Australian Pro Bono Centre (APBLC). They reported on the stark comparison between the Australian model, outlined below, and the ad hoc, piecemeal system (of sorts) present in New Zealand, and drove home that we could be doing things in a more coordinated manner in New Zealand.

The recent release of the [2022 Trust Law Index of Pro Bono](#) confirmed my thinking. It highlighted that even having one element of pro bono infrastructure, such as a policy, a pro bono committee or a pro bono employee, increased average pro bono hours to an average of 32 hours per lawyer, compared to 13.5 hours performed by lawyers without infrastructure.¹ The report also notes that lawyers working at firms with a pro bono policy performed more than 2.5 times more pro bono work than their counterparts without a policy.

Another important tool that influences pro bono hours is setting pro bono targets. Firms which set pro bono targets carry out almost double the amount of pro bono work than those who don't.² Targets have been handled differently between jurisdictions. In South Africa, South Korea, Indonesia, and the

1 p. 21 Foundation, T. R. (n.d.). Index of pro bono. pbi.trust.org. Retrieved February 10, 2023, from <https://pbi.trust.org/>

2 P.7 Foundation, T. R. (n.d.). Index of pro bono. pbi.trust.org. Retrieved February 10, 2023, from https://pbi.trust.org

Philippines pro bono work is mandatory, whilst in New York applicants must have completed 50 hours pro bono to be eligible to be admitted to the bar. The United Kingdom, Australia and the United States, all of which have developed pro bono sectors, have set aspirational pro bono targets. The United States which is renowned for being one of the most proactive countries for pro bono work sets an aspirational target of 50 hours per lawyer per year, and nine states have implemented mandatory pro bono reporting.³

In contrast to countries with mandatory or aspirational pro bono targets, New Zealand does not have guidelines in place for lawyers to work to. However, a number of firms, DLA Piper included, have recognised the need for pro bono and the desire from lawyers to serve their communities, and have set their own pro bono targets to work towards. For pro bono to thrive, we must embed it within the culture of all firms.

Despite the lack of national targets, pro bono work is encouraged in New Zealand and some great work is being done. Exactly how much work taking place is unclear as we have no measures in place to report on. We're seeing larger firms starting to volunteer this information, such as in the Trust Law Index of Pro Bono report, however it's the smaller firms and sole practitioners who undertake the bulk of pro bono work that we're less likely to hear from due to limited resources and time constraints.

As noted in a study by the University of Otago,⁴ there is even confusion amongst the profession as to what amounts to pro bono work, with lines often blurred with legal aid work. The New Zealand Law Society provides a broad definition of pro bono work, arguably building on this and adding more detail should help provide clarity to lawyers.

Legal aid is provided through Community Law Centres and offers free legal help to low-income earners and vulnerable individuals. Yet, as we're well aware, there are stringent eligibility requirements to legal aid and the numbers receiving legal aid have plummeted. Radio New Zealand⁵ reported in 2022 that less than one in 10 people in New Zealand qualify for legal aid. A solo parent with one child working full-time would not meet the requirements nor would a single person working 23 hours on the minimum wage. Consequently, we're seeing more low and middle income earners unable to afford legal representation.

A positive development in recent years was the establishment of Te Ara Ture, a pro bono clearing house, in 2021. Te Ara Ture functions through referrals from Community Law Centres and matches those who meet financial criteria for pro bono assistance with volunteer lawyers.

The Australian model

Australia has a well-developed pro bono sector and has a structured approach to pro bono. It has the APBLC, a national centre of leadership for pro bono legal services. The Centre aims to grow participation and excellence in pro bono, close the justice gap and to create a more equitable and sustainable society.

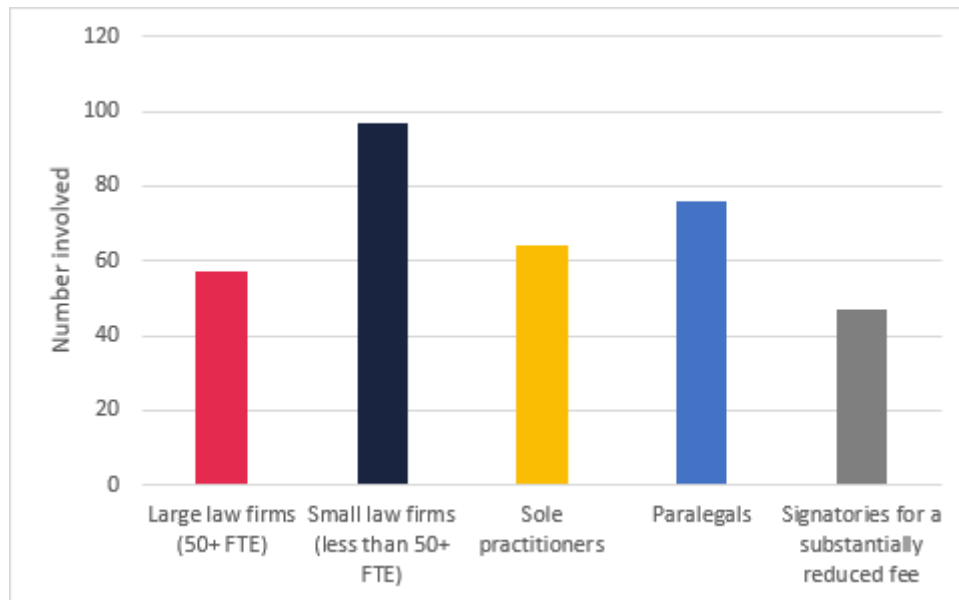
The Centre provides a detailed definition of pro bono work, with guidelines for what can be counted as pro bono. It has set voluntary national targets of 35 pro bono hours per lawyer per year. Lawyers have the option to sign up to the aspirational target and, in doing so, signatories are required to report on their performance against the target each financial year. The APBLC then publishes an annual performance report. In the 2021 financial year, 341 firms of varying sizes and individual practitioners signed up to national targets.

³Finding a match: How well does pro bono work in New Zealand?: New Zealand Law Society: Te kähui ture O aotearoa (2021) New Zealand Law Society | Te Kähui Ture o Aotearoa. Available at: <https://www.lawsociety.org.nz/news/publications/lawtalk/issue-928/how-well-does-pro-bono-work-in-new-zealand/> (Accessed: January 31, 2023).

⁴ Kayla Stewart, Bridgette Toy-Cronin, Louisa Choe New Zealand lawyers, pro bono, and access to justice (University of Otago Legal Issues Centre, March 2020).

⁵ Donovan, E. (2022, March 23). The limits on Lawyers' Pro Bono Work. RNZ. Retrieved January 24, 2023, from <https://www.rnz.co.nz/programmes/the-detail/story/2018834147/the-limits-on-lawyers-pro-bono-work>

Type of Legal Practitioners involved in Pro Bono in Australia 2022
 (Source: *Australian Pro Bono Centre Performance Report 2022*)



A number of firms and lawyers in Australia provide advice on a low bono (rather than a pro bono basis), that is offering a services with heavily discounted fees. Wallumata Legal, set up in partnership with my DLA Piper colleagues in Australia, is an example of a firm that exclusively provides low bono advice to assist the 'missing middle' - those who do not qualify for government funded services or pro bono. Wallumata Legal is modelled on the DC Affordable Law Firm, set up in 2015 in Washington DC as a partnership between DLA Piper, Arent Fox and Georgetown University Law Centre.

A core function of the APBLC is developing policy and law reform, and being an advocate with government, regulators and the private sector in order to encourage participation and excellence in pro bono. It is a central hub for pro bono lawyers, providing resources including: the Australian Pro Bono Manual; guides for lawyers undertaking pro bono work; template pro bono questions for businesses engaging law firms; and measuring the impact of pro bono work.

As well as providing structure, APBLC links pro bono lawyers and community lawyers with professionals who are willing to provide expert witness services for free or at low cost in legal cases. Importantly, it also encourages collaboration within the legal community and sets up networking events to discuss how solicitors and firms can work together on projects. The Centre offers a buddy programme to assist new signatories by partnering them with experienced pro bono coordinators from law firms and organisations that have more mature pro bono practices.

Next steps

So what can we do? I propose bringing together leaders and firm representatives to discuss how we can formalise our approach and put robust infrastructure in place to develop our pro bono sector. I'd suggest hearing from the APBLC and then working together to:

- Establish a New Zealand Pro Bono Centre;
- Set national pro bono targets for firms/practitioners to voluntarily agree to;

- Develop a pro bono manual or best practice handbook; and
- Put in place mechanisms for inter-firm collaboration to bring together specialists to service large projects.

Given the complexity of access to justice, centralising the system won't solve the problem but it's one step in the right direction. If you're in agreement and want to make change happen please do get in touch: laura.scampion@nz.dlapiper.com

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