

Norrish DCJ launches the SRACLS - Bar Association Pro Bono Scheme



His Honour Judge
Stephen Norrish QC

On 18 October 2002, the Sydney Regional Aboriginal Corporation Legal Service (SRACLS) - New South Wales Bar Association Pro Bono Scheme was launched by his Honour Judge Stephen Norrish QC of the District Court of New South Wales. Mr Michael Slattery QC spoke on behalf of the Bar and Mr Peter Bugnan spoke on behalf of SRACLS.

In a passionate speech marking the launch of the scheme, Norrish DCJ praised the efforts of the Bar and its members who have, as his Honour rightly observed, made a great contribution with respect to the provision of pro bono legal services in New South Wales. The full text of Judge Norrish's inspirational speech appears below.

We are here today to launch officially the commencement of the 'pro bono' scheme to be conducted on behalf of clients of the Sydney Regional Aboriginal Corporation Legal Services (which I will hereinafter refer to as the Sydney Aboriginal Legal Service, with no disrespect to other services) in conjunction with the NSW Bar Association. The scheme has been operating for approximately four months. I am informed there are 30 barristers who have made themselves available and of those, 15 have been briefed during that period of time. Those barristers who have placed themselves on the list are to be congratulated for their generosity and support, as is the Association. This scheme has been set up by staff of the Aboriginal Legal Service, with the cooperation of members and staff of the Bar Association. Particularly I should acknowledge Rachel Pepper, a member of the Association, and Peggy Dwyer of the Aboriginal Legal Service, both of whom have provided significant support consistent with their strong commitment to social justice issues.

The Sydney Aboriginal Legal Service is, as with all Aboriginal legal services throughout Australia, a federally funded organisation. It provides legal services in criminal matters to members of the indigenous population of the ATSI Sydney region, which is greater Sydney with the addition of Wollongong, and has offices in Redfern, Blacktown, Liverpool and Wollongong. It employs 35 staff, including 25 legal and field staff and approximately 70 per cent of the funding it receives goes to salary costs.

The Aboriginal Legal Service has, for a number of years, briefed public defenders to conduct indictable criminal matters on behalf of its clients. I must say with some pride that I played a small role in relation to that arrangement when I was a Commissioner of the Legal Aid Commission. Unfortunately for many years there has been only a limited amount of money available to brief the private Bar, for matters that cannot be dealt with by in-house staff or by public defenders.

I am informed that with the increase in workload in recent years and a decrease in funding in real terms, the result has been that the service has not had the funds to brief competent counsel when the need has arisen. This pro bono scheme has been developed to provide the service with access to barristers, to

ensure a high standard of representation for its clients, with solicitors of the service doing the core work.

It is important to remember that the expression 'pro bono' is derived from the Latin expression *pro bono publico* which means 'for the public good'. The *Butterworth's Australian Legal Dictionary* defines the term 'pro bono' as:

Legal work performed for the public good or in the public interest on issues of broad community concern or with significant impact on disadvantaged or marginalised group. Legal work performed free or at a reduced fee

This pro bono work by the legal profession includes both the work proposed by members of the Association in this scheme and the work of those who will brief them. Pro bono work by the profession, formally or informally arranged, is not a new concept. Before any form of legal aid was available, many members of the profession provided their services free of charge or at a reduced rate in a range of ways to individuals and organisations. Since legal aid became generally available in the 1960s pro bono service by the legal profession has been continued. The history of the development of legal aid in NSW and elsewhere is set out extensively in the report of the National Legal Aid Advisory Committee published in 1990 in *Legal Aid for the Australian Community*. I need not expand upon that history here but the development of legal aid has been characterised by the generosity and cooperation of the legal profession.

In the context of the concept of work by lawyers 'in the public good', many members of the private profession, both solicitors and barristers, have supported legally aided clients by working for fees considerably less than might otherwise be obtained for the same type of work. Those who have worked in legal aid organisations, including the Aboriginal legal services and legal aid commissions, are fully aware of the fact that salaries may be less than might be obtained by working in the private profession and have thus made their own contribution in this respect.

Particularly, the Bar Association and its members have made a great contribution in this area in the past in many ways, including the introduction of formalised pro bono schemes organised by the Association in a number of jurisdictions over the years.

That people are willing to make themselves available for this scheme at this time follows in the tradition out of which Aboriginal legal services and community legal centres were born.

There is, however, a very considerable and sad irony that the Aboriginal Legal Service should foster this scheme at this time. The first Aboriginal legal service in Australia was created in Redfern in the very early 1970s, out of frustrations and anger at the way in which Aboriginal people were treated by police. Without a detailed account of that history at this time, in general terms, the reality was that Aboriginal people in conjunction with concerned lawyers and other concerned human rights activists banded together to set up a voluntary legal service to attempt to provide Aboriginal people with the protection of the law and legal

representation. Mention should be made at this time of Hal Wooten, later to be a Supreme Court judge and a commissioner for the Royal Commission into Aboriginal Deaths in Custody, Maurice Issacs, Gordon Samuels and Paul Landa, amongst others, as persons, within the legal profession, prepared to provide their assistance, legal and organisational skills to make this scheme work. The Empress Hotel was the epicentre of their operations. Of course many indigenous people made their contribution. There are too many of them to name now, however, at the risk of offending people I do not mention, I must acknowledge the role of people such as Bob, Kay and Sol Bellear, Paul Coe, the Munro family, Gary Williams, Cec Patten and Kevin Smith, amongst many others, in those events and the development of the infant organisation. These people were also aided by many country based Kooris including Keith Smith, Steve Gordon, Tombo Winters, George Rose, William Bates and Les and Agnes Coe in developing the concept of this first 'community based' free legal service in NSW. Out of this voluntary system developed the first Aboriginal Legal Service at Redfern. That concept quickly spread throughout the Commonwealth of Australia, taking on different forms depending upon the demands of local conditions.

These organisations began to receive federal government funding in 1971-1972 when William Wentworth was minister for Aboriginal affairs, but that funding expanded significantly with the election of the Whitlam government in early December 1972.

Speaking at this point about the NSW experience, the tradition of pro bono contribution to Aboriginal legal services by barristers and solicitors was maintained even after federal government funding was secured. In the last 30 years, however, funding has never been adequate to meet the demand or the needs of the services and without the contribution of both lawyers and indigenous people willing to work for the organisation for no reward, the various legal services that have existed over this period would not have survived. Further, but for the willingness of people to work long hours, for reduced salaries and on occasions without pay, the organisations would not have continued to exist. The stories of

people who have been employed by the Aboriginal legal services require separate telling, perhaps in a book not just a speech, at a later time. From Alan Cameron, Peter Hidden, Neil McKerras, Phil Segal, Mark Smith, Martin Sides, Sean Flood, Stephen Fitzpatrick, Bruce Miles through to Robert Tickner and Eric Wilson amongst many others, significant contributions were made by people who worked for Aboriginal legal services. Now is not the time to pay tribute in detail to their contribution to human rights in this state. I was honoured to know and work with many of these people and thus I was witness to the critical period of infancy of Aboriginal legal services in NSW between 1975 to 1980. This period included the 'drying up' of funds during the 'supply crisis' of October / November 1975 and the cutting off of funds for a period in early 1976 and no particular funds at all for payment of barristers in 1977-1979.

It is in this context of my experience I particularly wish to pay tribute at this time to members of the Bar Association who provided the support which enabled the Aboriginal Legal Service,

not just based in Redfern, but also Western Aboriginal Legal Service and the South Coast Aboriginal Legal Service, to exist and provide service 'in the public good'. Those truly great people include (in no particular order) Greg James, Ken Horler, the late Mervyn Rutherford and Trevor Martin, Malcolm Ramage, Ken Shadbolt, Peter Hidden, Jane Mathews, Rod Madgwick, Bob St John, Dean Letcher, Pat O'Shane, Jeff Miles, Malcolm McGregor, Michael Green and Lloyd McDermott to name some. All of those people were, and remain, my heroes for their selflessness at that time. As an eyewitness to the work they did for nothing, or for very little, work which included trials in the Supreme Court and the District Court, appeals to the Court of Criminal Appeal and the High Court, District Court appeals and Local Court matters, I can attest to their many sacrifices. The work performed in Sydney and much further afield was done in a committed, professional way, not just upholding the highest standards of legal skill and integrity in an environment of considerable hostility from many members of the judiciary, other members of the profession and the police. These people provided respectability to the development of what is now called 'human rights law' in Australia, long before such work was fashionable, without regard to financial gain, or even compensation in many instances.

It is not surprising, in the year 2002, looking back across the years to the identities that I have mentioned, that they have become senior judges, leaders of the profession. All great contributors to our jurisprudence and our nation. These people not only sought to ensure that justice was in fact done, but help lay a foundation for concern and respect for the interests and rights of Indigenous Australians which is reflected in the national debate on reconciliation and native title.

When I reflect upon my involvement in the law, particularly my involvement with the Aboriginal Legal Service and my relationship with these people, the words of Sir Issac Newton in his letter to Robert Hooke seem appropriate; 'If I have seen further it is by standing on the shoulders of giants'.

I appreciate this is true of everyone in the law, one way or the other, but I feel especially privileged to have been inspired by people whose work 'in the public good' sustained Aboriginal legal services many years ago.

The proceedings tonight are however, as I earlier mentioned, cause for some sadness. Back in 1980, when I left the Aboriginal Legal Service, I believed and expected that in the years to come Aboriginal legal services would be properly funded to the extent that they would not have to rely upon the generosity of the profession to provide the standard of legal representation that Indigenous people deserve in all areas of the law. That we are here today, that this scheme is required, demonstrates that my expectation have not been met, as is the fact that the Sydney service can only provide legal assistance in criminal matters with its current funding.

To my mind, that the scheme that I am launching today is required is a disgrace and an embarrassment for those responsible for funding the service and that claim that they have the interests of indigenous people at heart. I am not in a position to ascribe blame for this state of affairs. Finger pointing in this respect is really beside the point.

It is not a disgrace that people such as Peggy Dwyer, Rachel Pepper and members of this association are trying to make the scheme work. But it is an indictment of the level of funding for legal services for Indigenous people that they and others have to

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create and sustain such a scheme to ensure that basic human rights of Indigenous Australians can continue to be protected. In the 1970s few people knew any better, publicly funded legal assistance was a new concept (even in the wider community) and the community had given little thought at that time to protect the rights of Aboriginal Australians. But there are no excuses now, particularly after the recommendations of the Royal Commission in Aboriginal Deaths in Custody published in 1991.

Of course, the funding scandal which gives cause for tonight's events is not necessarily confined to the funding of Aboriginal legal services. Legal aid commissions and community legal services around Australia have been affected by real reductions in funding over a number of years. The most high profile human rights issue that is being discussed at the moment, at least publicly in the media, the circumstances of refugees, is itself marked by a diminution of government financial support for those, including lawyers, seeking to protect the legal rights of refugees. This corresponds, it would seem, with a diminution of redress or relief in the courts.

In a perfect world, of course, everybody who lives in Australia ought have equal protection and equal opportunity to protect their rights, under Australian law. Ironically, many Australians have the same difficulties in gaining legal advice and representation as detainees in Department of Immigration facilities. Be this as it may, the protection of the rights of Indigenous people in Australia ought be paramount in our national concern. There is no group of people within Australia who have been so systematically abused and discriminated against than Indigenous Australians since 1788. In my view the obligations cast upon Australia to ensure that does not continue, and will never occur again, is a very heavy one indeed. If we cannot deliver justice, which must include unfettered 'access to justice', to Indigenous Australians, we have no right to call this country a fair and just society and we should as a result hold our heads in shame. Our future international reputation is at stake, on this issue, more so than our treatment of refugees or asylum seekers.

It is said that 'virtue is its own reward'. I hope that the 'virtuous 30' or so members of this Association (and the others who will join in due course), as well as the 'virtuous' people who continue to work to advance the interest of indigenous people throughout Australia, will be rewarded, not only by the satisfaction of their contribution, but in due course in the way that people such as Peter Hidden, Hal Wootten, Rod Madgwick, Greg James and others have ultimately been 'rewarded' for their contribution in years past. In decades to come those who participate in this scheme may be the giants upon whose shoulders others will stand to see further.

About the SRACLS – Bar Association scheme

The Sydney Regional Aboriginal Corporation Legal Service (SRACLS) – New South Wales Bar Association Pro Bono Scheme, which was conceived pursuant to an article published in the December 2001 issue of *Bar Brief*, has been in operation since May of this year. It was born out of a pragmatic realisation that the present level of available resources is simply insufficient to meet the needs of SRACLS's clients, many of whom belong to the most marginalised and disenfranchised communities in Australian society.

After the collapse of the original Aboriginal Legal Service in 1996, the Aboriginal and Torres Strait Islander Commission (ATSIC) established SRACLS. Funded by ATSIC, SRACLS provides legal services to the indigenous population of the greater Sydney region, including Wollongong. The service maintains offices in Redfern, Blacktown, Liverpool and Wollongong and currently employs around 20-25 legal officers. That the organisation is operating at full capacity or beyond is at best an understatement. The Redfern office alone services seven local and three children's courts, in addition to representing clients in the District and Supreme Court and in the Court of Criminal Appeal.

The scheme consists of approximately 30 barristers who provide services on a pro bono basis in a range of criminal matters. These include, for example, appeals to the Court of Criminal Appeal, Parole Board hearings, Coroner's Court and Children's Court matters. Those who volunteer are placed on a register and contacted by SRACLS when the need arises, usually no more than once or twice a year.

The benefits of the scheme to SRACLS and to its Indigenous clients are obvious. The benefits to those barristers who participate in the scheme, though less tangible, are no less rewarding. Any person who is interested in volunteering for the scheme should contact:

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There is no group
of people within
Australia who
have been so
systematically
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