Should pro bono be a compulsory component of private law practice?

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Introduction

Equal access to the legal system is a fundamental principle underpinning the Australian legal system. Yet, there is disturbing evidence that many people who genuinely require legal representation are powerless to obtain it: unable to either qualify for legal aid or afford the fees of private practitioners, many low to middle income earners are forced by circumstance to appear without counsel. Similarly, many significant issues of public interest, which should ideally be resolved through litigation, are being neglected due to prohibitive legal costs.

With a chronic shortage of legal aid funding, the burden for ensuring widespread access to legal representation, is increasingly falling upon the shoulders of the private legal profession. This burden may be regarded as legitimate because lawyers have a professional responsibility to ensure that access to justice is being promoted; a responsibility that is primarily fulfilled through the performance of pro bono work. It is argued however, that current efforts are unsatisfactory. In an attempt to improve access to legal representation, there are serious calls from both within the legal profession and social justice groups, for the introduction of mandatory pro bono service. Such propositions would see all lawyers required to perform a standard amount of pro bono work in order to retain their practicing certificates.

There is, however a distinction between acknowledging that lawyers have an ethical responsibility to perform pro bono work, and asserting that the fulfillment of that responsibility should be mandatory. This article will examine what basis, if any, exists for imposing a positive duty on legal practitioners. The practical obstacles to such a scheme have been widely

discussed, with concerns relating to monitoring, quality and sanctions all being raised.[1] Before such problems become an issue, the feasibility of compelling legal practitioners to perform pro bono must be examined. Would the imposition of a positive obligation upon private practitioners be legitimate?

Definition of Pro Bono

Pro bono publico translated literally has the meaning 'for the public good'. As can be appreciated, such a general definition is inappropriate for practical purposes. Numerous attempts have been made to qualify and standardise the meaning of pro bono, but currently there is a need for the meaning to be clarified. The Law Council of Australia's definition is beginning to be widely accepted. It states that pro bono is where:

1. A lawyer, without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where:
   (i) a client has no other access to the courts and the legal system; and or
   (ii) the client's case raises a wider issue of public interest; or
2. The lawyer is involved in free community legal education and/or law reform; or
3. The lawyer is involved in the giving of free legal advice and/or representation to charitable and community organisations.[2]

This definition must be read and applied as a whole as each element is necessary. Ignoring one element will often negate the possibility of classifying work as pro bono.

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[1] See for example: M Liverani 'Future Directions for pro bono legal services in NSW' *Law Society Journal* 36 (1998) 72; Centre for Legal Process *Future Directions for Pro Bono Legal Services in New South Wales* Law Foundation of New South Wales, Sydney 1998; M Martin Barry, 'Assessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law Clinics Conduct Them?' *Fordham Law Review* 67 (1999) 1879.

[2] Quoted in Voluntas Pro Bono Secretariat 'Going publico' *Law Institute Journal* 72 (1998) 37 at 37.

One of the most common misperceptions within both the general population and the legal profession, is the belief that any work performed for free or at a reduced rate by a lawyer can be characterised as pro bono. Using this criterion alone would mean that favours for friends or discounts for neighbours would qualify as pro bono. This is clearly inadequate because it ignores the 'public interest' aspect of pro bono. Pro bono should be undertaken for the purpose of attaining social justice with respect to access to the legal system for economically or systemically disadvantaged members of the population. By contrast, pro bono should not be "motivated by considerations private practice development, kinship or friendship."[3]

Similarly, simple charity work cannot be considered to be pro bono. Pro bono is particular to the legal profession because it entails using one's skills as a legal practitioner.[4] Were this otherwise, any member of the community could potentially satisfy the obligation.

Inherent in the term is a certain degree of vagueness necessary to maintain worthwhile meaning of pro bono. If an overly rigid definition was adopted it would result in injustices occurring. Pro bono matters arise and are accepted often on an *ad hoc* basis requiring a judgement value of the practitioner. If the above criterion are satisfied, it is more that likely that the work is pro bono in nature.

The Need for Legal Representation

Recognition of the need for the availability of redress at law and due process are basic requirements of any civil society.[5] Founded on the supremacy of the rule of law, the Australian

[3] R Evans 'Will the Real Pro Bono Please Stand Up' *Law Institute Journal* (December 1994) 1128.
[4] W McGrath 'Pro Bono Myths and Realities' *Illinois Bar* Journal 83(1) (1995) 30 at 31.
[5] D Webb 'Why Should Poor People Get Free Lawyers?' *Victorian University of Wellington Law Review* 28 (1998) 65 at 72.

legal system needs to be accessible for the effective operation of the legal system. As stated in *McInnis v R*: [6]

> Where the kind of trial a person receives depends on the amount of money he or she has, there is no equal justice. [7]

There must be opportunity for representation and avenues of redress open to all members of society otherwise there is no justification for people to submit to the law. Without "a community of equals" there is no obligation to obey the law.[8] To this end lawyers must be available to economically and systemically disadvantaged members of our community. Disturbing studies from the USA are showing that "an ever growing section of that country's poor are living outside the legal system and resorting to traditional law based on honour and vendetta - with the associated violent outcomes."[9] This report suggests that if socially disadvantaged members of society were satisfied with the avenues of legal redress, there would be no need for them to resort to violence.

Whilst such reports may be overstated, there is growing concern over the number of Australians who cannot afford legal representation. There is an increasing rift between the 'rich and the poor' and the cost of legal services remains high. The legal profession has endeavored to establish the 'rights' of all people, but such rights are hollow without the means to enforce them.[10] On a philosophical level, without widespread access to legal representation, the maintenance of the rule of law is compromised.[11] Thus, the need for legal representation underpins not only our entire legal system, but also our society as a whole.

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[6] (1979) 143 CLR 575.
[7] Per Murphy J at 583. Note: the High Court has not adopted the other recommendations of Murphy J in this case, namely that every accused has the right to counsel in serious matters: *Dietrich v R* (1992) 67 ALJR 1.
[8] D Luban *Lawyers and Justice: An Ethical Study* (Princeton University Press: Princeton, 1988) at 282.
[9] Liverani, above n 1 at 72.
[10] Webb above n 5 at 70.
[11] Webb above n 5 at 74.

Mandatory Pro Bono

One possible solution to problems relating to access to justice is the introduction of mandatory pro bono services for all private practitioners. Such a scheme would require all practicing lawyers to perform and record a set amount of pro bono work each year as a requirement for the renewal of a lawyer's practicing certificate. The issue has recently received attention within Australia, with the Australian Law Reform Commission proposing in its *Review of the Federal Civil Justice System* that "all lawyers be required to undertake a prescribed measure of pro bono services each year." [12] The basis for such calls rely on the inability of government to fund inexhaustive levels of legal aid; existence of a professional responsibility of lawyers' to serve the interests of the community; and the low levels of pro bono currently performed.

Inadequacy of Government Funding

Australia has a comparatively high level of government funding for legal representation, primarily in the form of Legal Aid. Yet, an increasingly diverse number of demands are placed upon government resources leading to a chronic shortage in Legal Aid funding. In December 1997 it was estimated that only 18% of Australia's population qualified for legal aid funding for representation. This is an astounding drop, when compared to the rate of 75% in 1943.[13] Simultaneously, the costs of legal representation have become more prohibitive, rendering access to affordable legal council beyond a large section of the population.

Whilst there have been calls for an increase in Legal Aid funding, it is clear that such calls are unlikely to be heeded. Legal Aid bodies must compete for funds with other vital social services

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[12] Proposal 6.3, Australian Law Reform Commission Discussion Paper 62: *Review of the Federal Civil Justice System* August 1999 http://www.austlii.edu.au/cgi-bin/disp.pl/au/other/alrc/publications /dp / 62 (29/06/2000)

[13] Note: 1943 figure is for NSW only: Australian Law Reform Commission Report No 89 *Managing Justice: a review of the federal civil justice system* January 2000 <http:www.ausltlii.edu.au/cgi-bin/disp.pl/au/other/alrc/publications/reports> 29/06/2000

even as the funds decline. This phenomenon is not unique to Australia, but can be recognised as a world wide trend.

> There is no point simply asserting that more people must be given access to legal aid. Legal aid is a valuable public benefit, but the public purse is not limitless...We have to be realistic. We have to find new and better ways of helping the ordinary taxpayer uphold his rights and defend his interests while, at the same time protecting the interests of the poorest and most vulnerable in society. [14]

As the lack of funds is becoming an increasingly permanent fixture of our system, it is becoming necessary to contemplate new schemes for the delivery of legal representation. Pro bono work is increasingly being seen as the primary response to this situation.

Professional responsibility

It is generally acknowledged that lawyers are morally bound by a code of conduct, which includes an obligation to prevent injustice.[15] As members of the legal system, lawyers are required to uphold and perpetuate the integrity of that system. As has been established, a key element of our justice system requires equal and unhindered access to the law. Thus, on a theoretical level lawyers are required to assist poorer members of society gain access to the law. Teece states that the "overriding principle is that primarily a lawyer must serve not his own private interest but the public interest."[16] Brundage sources this responsibility in the Christian duty of helping those less fortunate.[17]

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[14] British Lord Chancellor, Speech Justice and Legal Aid Group Conference, 3 July 1998, 4 quoted in *Managing Justice* above n 13.

[15] R C Teece, *The Law and Conduct of the Legal Profession in New South Wales'* (2 ed, Sydney: LBC, 1974) at 22-26.

[16] Teece above n 15 at 24, 47.

[17] J A Brundage 'Legal Aid for the Poor and the Professionalisation of the Law in the Middle Ages' (1988) 9 *Journal of Legal History* 169; cited in *Future Directions for Pro Bono* above n 1 at 69.

The modern day obligation to provide public service is seen as a result of the professionalisation of legal practice.[18] The term 'profession' comes from the Latin *professionem*, which translates to taking a public declaration upon entering a learned occupation.[19] Today, professions are identified by a number of characteristics which differentiate them from commercial dealings. Fagelson identifies three key attributes of a professional entity:

- Serve basic social interests
- Monopoly control
- Self regulation [20]

Other aspects commonly associated with professions include social status and wealth.[21] As such characteristics indicate, professionals occupy a privileged position within our society, enjoying a high level of autonomy from state control. It is reasoned that because membership of a profession requires such a specialised level of training and knowledge, decisions pertaining to the operation of that profession should be primarily controlled by the profession itself.[22]

Professionalism, relies upon the notion that governments allow lawyers to occupy this privileged position within society, due to their role as protectors of justice and legal principles. However, because there is potential for such power to "have deeply adverse effects on society and the quality of human life,"[23] occupation of this position is contingent upon the profession accepting certain limitations upon acceptable behaviour and the performance of community service. Thus lawyers are bound by role based morality which is correlated with role-based privileges.[24]

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[18] *Future Directions for Pro Bono* above n 1 at 69.
[19] S Ross *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (2 ed, Butterworths: Sydney, 1998) at 48.
[20] D Fagelson 'Rights and Duties: The Ethical Obligation to Serve the Poor' *Law and Inequality* 17 (1999) 171 at 180-181.
[21] S Ross & P MacFarlane *Lawyers' Responsibility and Accountability: Cases, Problems and Commentary* (Butterworths: Sydney 1997) at 19.
[22] Fagelson above n 20 at 181.
[23] Fagelson above n 20 at 181.

One of the responsibilities imposed by a lawyer's role morality is the need to assist indigent members of society: pro bono work.

> Providing the benefits of expert skill and knowledge for those to whom a profit economy would deny them was from the beginning an integral characteristic of professional status. [25]

Whilst there is not explicit requirement of pro bono work as a professional obligation in Australia, the notion of pro bono aligns itself easily with the generally adopted codes of conduct. For example, the Law Society of New South Wales Statement of Ethics includes a provision that advises lawyers to "pursue an ideal of service that transcends self interest". [26] Pro bono is encouraged by legal regulatory and societal bodies. For example, The Law Society of New South Wales considers that it is "inherent in the professional responsibility of a legal practitioner" to perform pro bono. [27]

Advocates of mandatory pro bono argue this professional responsibility could be invoked as the basis for creating a positive duty to perform pro bono work.

Current Pro Bono Level is Inadequate

It is very difficult to obtain accurate figures about the level of pro bono work currently being undertaken. This is primarily due to the informal nature of pro bono work, lack of a standardised reporting system and confusion over the correct definition. An estimated, five percent of Australian practitioners participate in organised referral schemes. [28] This figure, however, is far from indicative of the actual amount of pro bono being performed. Many practitioners do not

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[24] Fagelson above n 20 at 174-5; Luban above n 8 at 104.
[25] D Roberston 'Pro bono - New strategy for public interest litigation?' *Alternate Law Journal* 19 (1) (1994) 15 at 17.
[26] Reproduced in S Ross & P MacFarlane above n 21 at 31.
[27] *Pro Bono: Information for Practitioners* [Pamphlet]
[28] Ross above n 19 at 97.

subscribe to any of the formal pro bono schemes, accepting pro bono matters on an *ad hoc* basis, performed without reference to any organised scheme. Highlighting the informal nature of pro bono, 94% of Victorian Barristers surveyed by Voluntas work without a formal pro bono policy and without keeping records of the hours spent of pro bono work.[29] Yet within the same group 90% had undertaken some form of pro bono work within the last two years.[30]

Whilst the number of practitioners engaging in pro bono work is encouraging, there is clear evidence of an overwhelming need for increased access to legal representation. There have been reports of an increase in the number of parties appearing without counsel since the cuts to legal aid. The Australian Law Reform Commission's Report Managing Justice, found that in 18% of Federal Court cases, 41% of Family Court Cases and 33% of Administrative Appeals Tribunal cases at least one party was either unrepresented or under-represented. [31]

The figures suggest there are inconsistent levels of involvement through out the legal community. Although an ever increasing number of practitioners are realising the importance of pro bono work, there is still a large sector of the profession who do not perform adequate levels of pro bono work. It is argued that the introduction of compulsory pro bono service for all members of the profession would ensure an equal burden was shared by all, thus reducing the strain currently assumed by a sub-set of the profession. [32]

A Positive Duty to Act?

[29] Voluntas, Victorian Law Foundation *Pro Bono Survey Report* June 1999 http:www.viclf.asn.au/Vol_Barrister_Survey2.htm (29/06/2000)
[30] Voluntas, above at n 29.
[31] ALRC Report No 89 *Managing Justice* above n 13.
[32] *Future Directions for Pro Bono* above n 1 at 79.

Few people would question the moral worth of pro bono service. The question remains however, should the state be able to force practitioners to forfeit their time in order to perform pubic service? There is a tacit acceptance in our society that as individuals we are free to act according to the dictates of our individual conscience, so long as we abstain from inflicting harm on others. Requirements of public service reverse this assumption, and are tantamount to legislating morality. The justification for changing an ethical obligation into a positive duty, needs to be closely examined. Given that there is basis within the tradition and definition of the legal profession to accommodate the poor, the question remains whether this is an active duty or merely a general recommendation. To what degree does "proper professional conduct extend beyond the prohibitions on misconduct"?[33]

Whilst there is a definite need for pro bono, the Australian legal community remains unconvinced about the credence of compulsory pro bono service. Two recent reports, *Future Directions* [34] and *Managing Justice* [35] concluded that the introduction of mandatory pro bono was inappropriate for the current Australian profession. Some of the objections raised by such reports will be discussed in turn.

Professional responsibility has been negated by the erosion of the professional status of lawyers

It is argued by many prominent figures that "[t]he practice of law today is a business where once it was a profession."[36] The 'privileged position' of lawyers is gradually being eroded, with de-regulation of the legal market and an increasing capability for other persons to perform traditional legal tasks, for example, conveyancing. As a result, it is argued there is a corresponding reduction in the lawyers' obligation to serve society:

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[33] Webb above n 5 at 69.
[34] *Future Directions for Pro Bono* above n 1 at p 80.
[35] ALRC Report No 89 *Managing Justice* above n 13.
[36] Kirby J cited in Webb above n 5 at 69.

> Governments must accept that by forcing professions to open up their work practice to competition from other professions and trades, the concomitant ideal of service back to the community and protection to the powerless will diminish, if not disappear.[37]

Following this reasoning, the state has no authority to coerce the profession into performance of pro bono work because the professional obligation has been stunted by government.

With respect it is suggested that this argument overlooks the true nature of the relationship: There is a mutually reliant obligation between state and profession. The state is obliged to guarantee a monopoly of services only so long as the profession actively ensures equality of access to the law, and thus the provision of justice. Correspondingly, the professional is theoretically obliged to serve the community only whilst the state preserves its distinguished position within society. Thus the state only tolerates the power of a profession so long as it serves its interests to do so.[38]

> Without equal justice under law...the system has no legitimacy, and the legal profession's lucrative monopoly on retailing law should be broken.[39]

Thus arguments that lawyers are absolved of their obligation to perform pro bono work due to the increasing deregulation of the industry are perfectly legitimate. However, the only way to reinstate the balance is for legal professionals to shoulder the responsibilities of lawyering.

Unfair burden placed upon lawyers

A common response from within the legal profession to suggestions of creating a positive duty to perform pro bono is the complaint that such a scheme would place an unfair burden upon

[37] National Legal Aid *Submission 4*, cited in *Future Directions* above n 1 at 45.
[38] Fagelson above n 20 at 181-2; Robertson above n 25 at 17-18.
[39] Luban above n 8 at p286.

lawyers as distinguished from other members of the community. [40] Such arguments overlook the basis for the imposition of the professional responsibility upon lawyers. As Fagelson argues, role morality alters the ethical standard for people in that role by imposing specific responsibilities that correlate with the privileges enjoyed by those in with that role. [41] These responsibilities are not applied to other industries regulated by the state because these industries do not enjoy the same privileges. It is imperative to the survival of lawyers that the basic rights such as liberty and access to justice as preserved. Thus lawyers must assume specific responsibility for the protection of the legal system.

Violates the personal autonomy of the lawyer

It is suggested that forcing practitioners to work without fee is tantamount to unjust taking of property, or even involuntary servitude.[42] Such arguments, that coercing the performance of pro bono compromises the professional autonomy of the practitioner, are essentially utilitarian arguments derived from the works of Mill.

> [T]he only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others...He cannot rightfully be compelled to do or forebear because it will be better for him to do so, because it will make him happier, because in the opinion of others, to do so would be wise, or even right...Over himself, over his own body and mind, the individual is sovereign.[43]

Individuals are fully autonomous beings who owe no moral duty to do anything other then benefit themselves, because if everyone pursues their own self interest, then on average society will be happy.[44] Individuals who have opted to go into private practice surely have the freedom to operate that practice as they see fit. Serving their own interest must primarily concern the

[40] J E McDermott, 'Do plumbers work pro plumbo?' *Law Society Journal* (December 1994) 10. [letter]
[41] Fagelson above n 20 at 179.
[42] Martin Barry above n 1 at 1885.

need to keep their practice economically viable. Creating a positive duty would therefore hinder them in their daily lives.

Utilitarian theory, however, advocates behaviour that will maximise social happiness.[45] It is justifiable to subvert the interests of a few where the interests of many will be improved. The cohesion and well-being of society as an entity must be preserved, and endeavors to preserve that happiness can override the liberty of individuals.

> There are also many positive acts for the benefit of others, which he may rightfully be compelled to perform; such as...*interposing to protect the defenceless against ill-usage*, things which whenever it is obviously a man's duty to do, he may rightfully be made responsible to society for not doing. [46]

Lawyers are in unique position to protect the defenceless, and as has been established above, lawyers have a duty to the law. Given the wider benefits to the community that would result from improving access to the legal system, it can be argued that the burden placed on lawyers is easily justified.

There are two factors that would theoretically negate this obligation; if the duty were to prove "oppressive or impracticable" then the duty would be erroneous.[47] The applicability of these two elements in the current situation depends almost entirely upon the way in which a duty to perform pro bono is implemented. It is very easy to consider situations in which the duty would prove oppressive to a lawyer. Given the market realities of practice, and the numerous demands

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[43] J S Mill, *On Liberty* (Penguin, 1980) at 110-111.
[44] Webb above n 5 at 76.
[45] S Kift 'Criminal Liability and the Bad Samaritan Part II' *Macarthur Law Review* 1 (1997) 258 at 267.
[46] Mill above n 43 at 112. (Author's emphasis)
[47] Honore cited in Kift above n 45 at 267.

placed upon all private citizens, the requirement for a limited class of society to devote a percentage of their time to public service could be interpreted as harsh.

There are concerns that a compulsory pro bono scheme would require lawyers to perform work in areas where they are not experienced or qualified in.[48] In a system where pro bono service is mandatory, the risk of inexperienced litigator being required to accept, or even simply feeling pressured to take on cases which they cannot cope with, would inevitably be increased. If this were to occur the value of legal representation would become meaningless: pro bono is not an acronym for substandard work.[49]

Technical proficiency in the law, however, is not the most worrying aspect of pro bono competency. Pro bono often requires a high level of understanding and patience. Both overly hesitant and zealous advocates have caused worrying outcomes in pro bono cases. A reluctant advocate, who feels forced into an unacceptable situation will perform, at best without real commitment and energy, and at worst incompetently. Although many supporters of mandatory pro bono service argue there is no evidence to suggest a reduction in standards, it may be easily inferred from the vast amount of anecdotal evidence of resistance from within the legal community that practitioners are likely to perform without enthusiasm.[50]

> Genuine interest, commitment and enthusiasm must underpin pro bono activities for the rewards to flow to both the firm and the charity concerned. [51]

Using these arguments as a premise, it can be seen that a mandatory pro bono scheme could prove to be both oppressive and impractical. However, any oppression or impracticability can

[48] *Future Directions* above n 1 at 81.
[49] G Thiele 'Forum Confronts pro bono issues in lively debate' *Law Society Journal* (December 1992) 60 at 60.
[50] See for example McDermott above n 40 at 10.
[51] Voluntas Pro Bono Secretariat 'Benefits of pro bono' *Law Institute Journal* 73 (May 1999) 27 at 27.

easily be tempered by the mechanics of the scheme used to oversee the service. Effective management of pro bono referral scheme would minimise any inconvenience to practitioners, who would be required to perform only a minimal number of hours. Exemptions would also need to be given to those in exceptional circumstances. Careful planning would alleviate potential adversity to individuals.[52] Given the social benefits that are likely to result from such a scheme, a minimal amount of inconvenience is justified.

[52] Substantial consideration has been given to this area in recent literature. See for example: Voluntas Pro Bono Secretariat 'Building a pro bono culture' *Law Institute Journal* Vol 73 (June 1999) 49; Voluntas Pro Bono Secretariat 'Pro Bono Mentor Program' *Law Institute Journal* Vol 73 (September 1999) 27; *Future Directions* above n 1.

Assumption of Government Responsibility

Through out the literature on pro bono, continual reference is made to the belief that pro bono is not, and should not, be considered an alternative to the proper provision of legal aid by the state.[53] There are concerns that the introduction of mandatory pro bono service would reduce the pressure on the government to provide adequate levels of legal aid. With a corresponding fear that compulsory pro bono is merely a tactic of the government to shift the responsibility for providing legal aid from itself to the private sector.

There is fierce and almost universal opposition from within the legal profession to any moves in this direction.

> [The Public Law Clearing House] is essentially a mechanism for advancing the professional obligations of practitioners, rather than a cue for the abrogation of the duty of the state to protect the most basic human right. [54]

In accord with the recognition that lawyers' have a professional responsibility, there is acceptance that pro bono is necessary to supplement legal aid schemes. There is not, however, acceptance of any proposition that the private sector should be solely or primarily responsible for the delivery of legal services to the underprivileged. In addition to the theoretical objections to such a situation, there is the inescapable fact that the private legal profession simply does not have the capacity to deal with such volumes of work.[55]

The fear is not completely unfounded, as demonstrated by the situation in America where there is no tradition of state funded legal aid.[56] As a consequence of this, the onus falls heavily upon

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[53] See for example: A Durbach 'Aid in the Public Interest' *Reform* 73 (1998) 16 at 19; F Reagan 'Assessing pro bono legal aid schemes' *Law Institute Journal* 73 (1999) 30 at 30; Roberston above n 25 at 17; P Murphy 'New organisation to coordinate pro bono work' *Law Institute Journal* 72 (1998) 16 at 16.
[54] Durbach above n 52 at 19.
[55] Reagan above 52 at 30.
[56] Voluntas Pro Bono Secretariat 'Overseas experience' *Law Institute Journal* 72 (Dec 1998) 26 at 26.

the private legal practitioners to ensure access to the legal system and pro bono is an explicit ethical requirement.[57]

The introduction of compulsory pro bono for private practitioners would reduce the expectation for the state to provide adequate levels of legal aid. It would create a structure which would enable, and a culture which would allow the gradual reduction of government funding to legal aid. In the event of it's introduction, the legal profession would need to be continually alert to this danger.

Conclusion

The provision of pro bono service is an essential element of a lawyer's professional responsibility. Pro bono should not be viewed as simply a means to support legal aid. Rather it should be viewed as both a means to self-fulfillment in the law, and a way to ensure the continued relevancy of legal practice as a profession.

Whilst it is theoretically plausible to creative a positive duty, considerable caution must be employed if this course is to be followed. Introducing mandatory pro bono would be likely to jeopardize the goodwill of the legal community and render the provision of pro bono services meaningless. Thus thorough consideration must be given to the practical implications of mandatory pro bono.

[57] American Bar Association *Model Rule of Professional Conduct* Rule 6.1

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