



QPILCH Annual Luncheon
Customs House
Thursday 9 June 2011

The Hon Paul de Jersey AC
Chief Justice

Mr President, Your Honours, ladies and gentlemen,

I am very pleased to have the opportunity to speak this afternoon, as we join to mark not only QPILCH's continuing contribution to the enhancement of access to justice, but also, its 10th anniversary in that endeavour.

I note with gratitude the presence of a number of Judges, and they are Judges who have long supported the work of QPILCH: the President of the Court of Appeal, Justice Margaret McMurdo, Justice Margaret Wilson, Justice Debra Mullins, the Chief Judge Patsy Wolfe and the Chief Magistrate Judge Brendan Butler. I note the presence also of the CEO of Legal Aid Queensland Mr Anthony Reilly, the Ombudsman Mr Phil Clarke, the Legal Services Commissioner Mr John Briton and the President of the Queensland Law Society Mr Bruce Doyle. Justice Atkinson regrettably cannot be here because of sittings commitments.

Equality of opportunity lies at the heart of the mission of QPILCH. The Jagera and Turrbal peoples have long had kinship with these lands, but many Aboriginal and islander people still even in this 21st century lack opportunities enjoyed regularly by their fellow Queenslanders. Lawyers are part of the network which must continually strive to redress that, and it does help I think even to acknowledge the existence of that inequality in a public way.

This is the eighth annual luncheon. The first was held in the year 2003. We have been privileged over the years to hear from a distinguished array of speakers: Mr David Marr on Tampa; Mr Lex Lasry QC on Guantanamo Bay; Ms Christine Rau on her sister Cornelia

* I am indebted to my Associate, Ms Stacey McEvoy, for her assistance in the preparation of this address.



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Rau's plight with immigration detention; Sir Anthony Clarke, then Master of the Rolls on the UK Civil Justice Council; Professor Ian Lowe AO on climate change; Mr Robert Musgrove and Mr Michael Napier QC on civil justice reforms in the UK; and last year Chief Justice Keane on costs in public interest litigation. In that context, I will seek to rise to what is therefore a considerable challenge.

May I begin however by commending the past presidents of QPILCH, Andrew Buchanan, Peter Rosengren and Joanne Rennick, the present President Robert Reed, past and present committee members, the Director Tony Woodyatt and other staff members, and also the member practitioners, 96 barristers and 35 firms of solicitors who make their services available on a pro bono basis, not to overlook the associated law faculties, chartered accountants and institutional members - the Queensland Association of Independent Legal Services, Legal Aid Queensland, the Bar Association of Queensland and the Queensland Law Society.

Undertaking legal work for no fee, or for reduced fees, has long characterized legal practice. Accepting reduced legal aid fees was an early manifestation of this: in the seventies, convention was that Counsel marked a legal aid brief at three-quarters of the normal fee: exceptionally "generous"!

Lawyers have always, altruistically, assisted those needing legal help but without the financial capacity to pay for it.

My assessment is that the pro bono commitment burgeoned in the last two decades of the 20th century, with the proliferation of legal remedies but effective constriction in legal aid funding to the point where it became largely unavailable in the civil arena. In 2009-10, the number of applications for legal aid which were refused jumped by more than 30%, despite a decrease in the number of applications lodged¹. This is particularly concerning especially bearing in mind the paramount need for adequate legal aid in areas such as domestic violence, child protection and criminal injuries compensation.



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It was in the 1990s that the profession recognized the need for a more organized delivery of private pro bono legal services. The most significant early response was the establishment of QPILCH in 2001. I believe the example of QPILCH and its sister interstate counterparts in turn energized the large firms into their substantial pro bono commitment, coordinated in many cases at national level by partners devoted to just that.

In July 2010, the National Pro Bono Resource Centre surveyed large firms nationwide. It disclosed an average of 29 pro bono hours per lawyer per year: equating to 179 lawyers working full time for the entire year. In addition to that really good large firm commitment, the administrative work QPILCH performs, in filtering applications for legal assistance before forwarding the requests to member firms, has proven invaluable in enabling small and medium sized firms to be involved in valuable pro bono work. The organisation has also streamlined the process from the point of view of the applicant for assistance. The applicant may now rely on one central body, rather than going through the time consuming and potentially emotional experience of having to lobby individual firms for representation.

For a lawyer who began in 1971, this re-orientation of the profession is greatly reassuring, and also reassuring is the beginning at least of some public acknowledgement of this in the media.

In QPILCH's inaugural year 2001, a national pro bono taskforce reported to the Commonwealth Attorney-General on the principles which should guide the coordination and development of these services in this country. Governments of course have a considerable interest in these endeavours – as they do in churches, for it is churches which largely discharge the social welfare commitment of governments.

The citizenry may not appreciate that. There is a perception that “government” does everything to ensure we are well fed, well educated and generally well brought-up, extending to telling us what we should refrain from eating, seeing, doing and saying. But I

¹ Legal Aid Queensland, Annual Report 2009-10, p 46



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must not stray unduly this afternoon into the impermissible territory of “policy”. My relevant realm is the courts of law.

Governments invest huge amounts of public money into the maintenance of the courts and related justice agencies, yet no doubt to the puzzlement of many, those investments simply cannot in the end assure access to civil justice. For most non-corporate citizens, that access is available only if legal fees are waived or substantially reduced. It unfortunately remains the position that only the very wealthy can afford any substantial litigation in the higher courts.

Governments therefore readily embrace the profession’s voluntary commitment, seen as a way of filling in some of the gaps in an imperfect system, imperfect from before Bleak House, and recall the cynicism about the doors of the courts, like those of the Ritz Hotel, being open to all.

The QPILCH endeavour has been driven by the guiding principles espoused in that taskforce report, particularly, that pro bono work is not a substitute for legal aid, that the design and provision of pro bono services should be driven not by what lawyers are prepared to offer but by client needs, that pro bono clients should receive the same quality of service as all other clients, and that pro bono practice should be carried out on a voluntary basis.

At its commencement, the fledgling QPILCH substantially confined its attention to truly “public interest” cases, with the public interest referral service facilitating referrals to member solicitor firms and barristers for free legal assistance in public interest civil law cases. The service expanded substantially over ensuing years, with general civil law issue referrals to firms and Counsel under the QLS and Bar pro bono schemes, and particular services designed for the especially under-privileged and disadvantaged in our community: the Homeless Persons’ Legal Clinic, the Refugee Civil Law Clinic and the Mental Health Law Clinic. Then recent years saw the development of a project close to my heart, the Supreme and District Courts Self-representation Service, now expanded into QCAT. That



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grew out of one of my much publicized trips overseas, where I saw in London the marvellous services offered at the Royal Courts in the Strand. We shamelessly copied that service here, of course with due attribution.

Recent months in Queensland saw QPILCH's coordination of services for flood and cyclone disaster victims, and it is significant that today's luncheon occurs during Queensland Week in which, this year, we honour all who assisted in the alleviation of flood distress.

I began with some respectful commendations. QPILCH depends on many persons and entities in its provision of these sorts of services. It depends on the firms and Counsel who donate their time, skills and resources through accepting referrals, providing volunteers and secondments and contributing to fundraising; it depends on the pro bono practitioners; it depends on cooperation with other community legal centres, law schools, welfare agencies and the courts and tribunals; it depends on many volunteer law students; and in a material sense, it depends on the Queensland Government, which has provided funding through the Department of Justice and Attorney-General for the maintenance of QPILCH's referral services and the self-representation services, and also the Department of Communities in relation to the Homeless Persons Legal Clinic.

QPILCH faces challenges, not the least maintaining a fund of money sufficient to pay for the provision of these services. The attractiveness to the executive government of providing the basic funding, I suggest, is that much value is then added without any additional cost to government, resulting in more broadly available civil legal assistance.

Yet access to pro bono services inevitably remains limited and cannot and should not be presented as a substitute for a properly funded legal aid system.

It is interesting to look at some approaches beyond our shores. The UK throws up an interesting possibility. Since 2008, section 194 of its *Legal Services Act 2007* has authorized costs orders against unsuccessful opponents of parties represented on a pro



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bono basis – meaning the successful party actually incurring no costs of representation. The beneficiary of the costs sought, however, is not the successful party, but the Access to Justice Foundation. That is a charity which then distributes the funds to various advice agencies, law centres and pro bono organizations. Since introduction, this scheme has generated some £130,000, with escalating returns expected as the scheme becomes more widely known.

Unsurprisingly the approach in some US States has been more direct. The Model Rules of Professional Conduct of the American Bar Association set an aspirational goal of 50 pro bono hours per lawyer per year. The US Department of Justice requires a minimum of 50 hours per employee per year. Other States mandate a pro bono commitment, with a requirement that the lawyer complete 15 to 50 pro bono hours per year, or in lieu, contribute a prescribed fee to a pro bono organization.

I was interested in the slightly coercive approach of the Chief Justice of Montana, if correctly reported in the Victorian Law Institute Journal:

“...in Montana, the State Bar and Chief Justice wrote to each law firm stating that approximately 400 parties required pro bono assistance over the next two years. Divided between 200 firms in Montana, this was one pro bono matter each per year for two years. The Chief Justice explained that he assumed that all 200 would sign up for the newly created pro bono register. The lawyers were given two weeks to explain why they might not be able to participate, and after that they were in.”

In terms of mandatory requirements, let us not forget the introduction of the mandatory CPD scheme some years ago, which would in a much earlier era have been discarded as unthinkable. The scheme works well, and not only in guaranteeing that one is not at conferences speaking to a sparsely populated auditorium. I imagine that mandatory pro bono commitments may likewise be imposed one day, although at this stage in our history that would be completely unnecessary because of the excellent voluntary commitment of the profession. Awarding CPD points for pro bono work should be considered. This occurs in some US States.



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An inaccessible civil justice system is a contradiction. Governments implicitly acknowledge that, which explains their particular interest in low cost alternatives to traditional litigation, especially tribunals, ombudsmen and the mechanisms of ADR, and explains why governments are inclined to erect barriers to litigation – as in the personal injury arena.

Yet there is a limit on the tax payer funds available to governments, and one could not be sanguine that adequately funded and accessible civil justice legal aid will become available, frankly, in our lifetimes.

We have in our own characteristically progressive way sought to foster the pro bono cause in this nation. A large number of firms have signed up to the national pro bono aspirational target of 35 hours per lawyer per year. The New South Wales government recently provided professional indemnity insurance for in-house lawyers performing pro bono work. The New South Wales Law Reform Commission is currently looking at the costs regime in relation to litigants represented on a pro bono basis. The Commonwealth and the State of Victoria look at a firm's pro bono record in assessing tenders for government legal work. There is some lateral thinking going on.

Tony Woodyatt compares the pro bono endeavour with a national park. "It needs to be protected, conserved and used wisely", he says: "It should continue to expand but without compromising its values."

QPILCH's practical priorities for the next three years are to refer yet more cases for full representation by private practitioners; to facilitate more practical legal services for the extremely vulnerable; to expand the self-representation services to other courts and tribunals; and to work for the development of innovative and effective methods for delivery of legal services.

On a more fundamental level, QPILCH also seeks to contribute to policy reform, directed to the development of a truly just legal system in which ready access to legal services



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must be a given. Its members' interests lie in better and more targeted legal aid funding, expanding pro bono services to ensure State-wide access, ensuring the civil law system operates fairly for everyone, advocating for better treatment for the homeless and advancing environmental sustainability through improved governance arrangements.

The contributions of grass roots organizations like QPILCH to these examinations can lend some practical reality to what could otherwise be an arid and hypothetical consideration of what best serves the community.

All of these are most noble ideals. Were it not for QPILCH's runs on the board, one might be inclined to question how realistic they may be. QPILCH is in fact a great Queensland success story. Why? It is enough to say it has alleviated the plight of thousands of Queensland citizens beset with a wide variety of problems. Since 2002, the organisation has been responsible for over 581 public interest referrals, 2268 matters on behalf of homeless clients, 112 refugee clients and 149 administrative cases². The figures bespeak its contribution.

I should not however speak of the entity in an abstract way, for the success of QPILCH is the success of all the "natural persons" – as lawyers of my era describe them, who contribute to its endeavours, a success we celebrate today while renewing our commitment to those fine ideals; a success almost 600 practitioners and others celebrated on 16 May as they "walked for justice".

I found the composition of that throng quite inspirational: a spectrum of ages, though largely younger practitioners, practitioners from government agencies, from corporations, and as the Deputy Premier noted, practitioners from the so-called big end of town; all demonstrating a commitment to "justice".

We judges are usually careful to pin our commitment to the delivery of justice "according to law". But the many judges who participated on 16 May would at once accept that central



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to a “just” society is assured access to the courts in all their jurisdictions. Assuring that access is likewise central to the “public interest”.

While the term “the public interest” remains part of QPILCH’s name, its reach has extended to the enhancement of civil justice generally, not just those cases with a particular “public interest law” complexion. The name of the entity nevertheless remains appropriate, for in all its endeavours, QPILCH is truly advancing the “public interest”. Notwithstanding the inexactitude of that concept, there is no doubt the public interest is advanced by enhancing access to civil justice: that is certainly a value to which people would aspire or seek to uphold.

Serving the public interest is of the essence of our professionalism as practitioners: it is the distinguishing mark of our professionalism, the mark which distinguishes any profession from equally respectable callings.

I congratulate you, ladies and gentlemen, for the professionalism you reflect through your continuing support of this vibrant public initiative.

May we hope this decade is the first of many for QPILCH, though we must not let governments bask complacently in the expectation the profession, like the churches, can always be relied on to come to the party.

One day, in this ideal world, the allegation governments dissipate our taxes on spin will prove hollow: all moneys will be prudently deployed and attainable civil justice for all will be a reality. Maybe...

But let us, in the meantime, join in confronting reality as best we can.

² QPILCH Annual Report, 2009-2010.