

ARTICLE

The State of Public Interest Law in Aotearoa New Zealand

EQUAL JUSTICE PROJECT (PRO BONO TEAM)*

Public interest law comprises both pro bono legal work and public interest litigation and usually pertains to issues of access to justice or matters of wider societal interest. This article explores the current state of public interest law in Aotearoa New Zealand and assesses whether the legal profession is playing its part in providing public interest legal services for all New Zealanders. We conclude that while there are numerous public interest law initiatives currently being conducted by government and community organisations, law firms and practitioners, and university law students and groups, public interest law in Aotearoa is still in the early stages of development. A lack of centralised approaches, sophisticated referral mechanisms, and compulsory practice requirements has contributed to the lack and underutilisation of pro bono services compared with other countries. Although sophisticated pro bono policy and structures remain relatively rare, many legal professionals, organisations and law firms are taking advantage of informal opportunities to volunteer their expertise. There is an increasing appetite to formalise policies and procedures around public interest legal work. However, it is striking the extent to which practitioners agree that the true challenge is cultural change in the legal profession's attitude towards public interest law.

* The Equal Justice Project [EJP] at the University of Auckland Law School is “a non-partisan pro bono charity that applies law students’ legal training and knowledge to promote social equality, inclusivity, and access to justice in our local and wider community”: Equal Justice Project “Our Mission” <www.equaljusticeproject.co.nz>. This article was written by the EJP (Pro Bono Team): Rosa Gavey and Iutita Evans (Pro Bono Managers), Fiona Wu, Sophie Reedy-Young and Raskha Tiwari (Project Managers and Interviewers), and Afshan Afzaly, Harris Ashton, Hutham Barakat, Henry Frear, Craig Hallett, Amber Kim, Isabella Yu and Aria Zhang (Researchers). EJP would like to thank Jayden Houghton for his encouragement, guidance and support for this research project. Jayden Houghton was the principal investigator for the interview study, which received ethics approval from the University of Auckland Human Participants Ethics Committee. EJP would also like to thank the editors, Ana Kathrin (Kyra) Maquiso and Althea Domenica Tarrosa, for their significant editorial contributions to this article.

I Introduction

In 2014, Chief High Court Judge Helen Winkelmann (now Chief Justice) advocated that “the [legal] profession must play its part, a critical part, in meeting the challenge to provide access to justice for all in our society”.¹ In this article, we explore the current state of public interest law in Aotearoa New Zealand and assess whether the legal profession is in fact playing its part in providing public interest legal services for all New Zealanders.

Public interest law comprises both pro bono legal work and public interest litigation. This legal work usually pertains to issues of access to justice or matters of wider societal interest, which may include political matters. There are numerous public interest law initiatives throughout New Zealand but these efforts are currently not structured or coordinated.² While there is growing demand for public interest legal services, there is a lack of public knowledge about existing services—often, the legal profession itself is not aware of such initiatives.³

This article provides an up-to-date snapshot of public interest legal work in New Zealand. Part II will define “public interest law” in the New Zealand context. Part III to Part V will examine the public interest legal work currently being conducted by the government and various community organisations, law firms and practitioners, and university law students and groups. We examine the organisational structures in each of these public interest law providers and assess the challenges they face when providing public interest law services.⁴ Finally, Part VI will reflect on the potential future direction of public interest law in New Zealand.

II Definition of Public Interest Law

Public interest law is not a fixed concept and can carry many definitions. Its exact scope is contested; as such, the definition and parameters employed for the purposes of this article is only one approach to defining the scope of public interest law. This Part provides a working definition of public interest law that will be used throughout this article.

A suitable starting point to define “public interest” can be found in s 7(1) of the Local Government Official Information and Meetings Act 1987 and s 9(1) of the Official Information Act 1982. Under these provisions, the release of information is subject to a “public interest” test. The High Court in *TV3 Network Services Ltd v Broadcasting Standards Authority* provided guidance on the meaning of public interest.⁵ Public interest is not information that is merely interesting to the public; instead, it is about matters of “legitimate concern”.⁶ Therefore, issues of public interest can be defined as issues in law that affect a broader set of concerns and interests beyond the parties of a case.

1 Helen Winkelmann “Access to Justice – Who Needs Lawyers” (2014) 13 Otago LR 229 at 242.

2 Craig Stephen “How well does pro bono work in New Zealand?” (2019) 928 LawTalk 61 at 66; Latham & Watkins LLP *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions* (Pro Bono Institute, December 2019) at 126; and Max Harris “Pro Bono Law in New Zealand: A Work in Progress” (12 November 2012) Oxford Human Rights Hub <<https://ohrh.law.ox.ac.uk>>.

3 Stephen, above n 2, at 66.

4 Some information used in this article were obtained through a series of interviews with law firms and community law centres. Ethics approval for these interviews was obtained from the University of Auckland Human Participants Ethics Committee (reference number UAHPEC3263).

5 *TV3 Network Services Ltd v Broadcasting Standards Authority* [1995] 2 NZLR 720 (HC).

6 At 733.

We define public interest law as legal services provided (either directly to clients or indirectly by interveners) on areas relevant to:

- access to justice;
- matters of general public or societal interest, which may include political matters; or
- policy issues relating to the overall just functioning of the justice system.

Public interest law covers services offered at no cost, as well as services that may be funded by third parties or offered at rates determined by a share of the damages award. This definition offers several analytical advantages. First, it is malleable and flexible to incorporate the great plurality of public interest law. Second, it captures the essence of the values that characterise both the law and motivations of actors in this space.

We suggest that public interest law can be split into two forms: pro bono work and public interest litigation. Broadly, pro bono work involves lawyers offering their services for free or on a reduced rate, whereas public interest litigation often involves legal representation for interest groups (or lawyers directly intervening on the legal issues at issue in trial).⁷ Both areas of law share the common character of being completed in the public interest, and the support or intervention of external parties in the litigants' cases. However, these two forms can be distinguished on their purposes: whereas the purpose of pro bono work is to support access to justice for under-resourced litigants, the purpose of public interest litigation is to raise issues of fundamental public importance before the court.

The next section outlines the scope of pro bono work before considering public interest litigation.

A *Pro bono work*

The term “pro bono” is derived from the Latin phrase “pro bono publico”, which can be translated as “for the public good”.⁸ In a legal context, pro bono is often understood as free legal work performed by lawyers to help people with legal problems and limited funds, or free legal assistance to organisations involved in social causes.⁹

There is no cross-jurisdictional consensus on a common definition for pro bono work. In the United Kingdom, the Law Society of England and Wales, the Bar Council of England and Wales, and the Chartered Institute of Legal Executives have endorsed the Pro Bono Protocol, which defines pro bono legal work broadly as “legal advice or representation provided by lawyers in the public interest”.¹⁰ In the United States of America, the American Bar Association Model Rules of Professional Conduct defines pro bono work as the provision of “legal services without fee or expectation of fee” or a “substantially reduced fee to persons of limited means”.¹¹ It further states that lawyers should “aspire to render at least (50) hours of pro bono publico legal services per year”.¹²

7 Interveners are defined in the New Zealand Law Dictionary as “[a] person who intervenes in proceedings to protect interests that are different from those of the existing parties”: Peter Spiller *New Zealand Law Dictionary* (9th ed, LexisNexis, Wellington, 2019) I at IN.

8 *Gale Encyclopedia of American Law* (3rd ed, 2010, online ed) vol 8 Pro Bono at 130.

9 See, for example, *Gale Encyclopedia of American Law*, above n 8, at 130, where “pro bono” is defined as “free legal work done by an attorney” for individuals or organisations in need.

10 LawWorks “The pro bono protocol” <www.lawworks.org.uk>.

11 American Bar Association “Rule 6.1: Voluntary Pro Bono Publico Service” (17 April 2019) <www.americanbar.org>.

12 American Bar Association, above n 11.

In New Zealand, the New Zealand Law Society (NZLS) provides a rather broad definition of pro bono work, describing it as:¹³

legal professional services which are provided free of charge if an individual who requires legal advice or services, either cannot afford legal services or does not qualify for legal aid. It can also capture services provided at a reduced rate – “low bono” work.

The Australian Pro Bono Council’s definition focuses on three key elements: the nature of the work must be legal, the work must be done for free or at a very low cost, and the work must be provided to people in need.¹⁴ This focus on access to justice aligns with the NZLS definition.¹⁵ However, the Australian definition draws clearer boundaries and classifies the following as outside the definition of pro bono work:¹⁶

1. giving legal assistance to any person for free or at a reduced fee without reference to whether that person can afford to pay for that legal assistance or whether that person’s case raises an issue of public interest;
2. free first consultations with clients who are otherwise billed at a firm’s normal rates;
3. legal assistance provided under a grant of legal assistance from Legal Aid;
4. contingency fee arrangements or other speculative work which is undertaken with a commercial expectation of a fee;
5. the sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; or
6. time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

For the purposes of this article, we will be adopting the broad New Zealand definition constrained by the limitations proposed by the Australian Pro Bono Council as to what is not considered pro bono work.

Pro bono services are distinct from legal aid services provided by the government under the Legal Services Act 2011, which governs the eligibility for both civil and criminal legal aid. Legal aid broadly operates as a loan scheme in most instances, requiring beneficiaries to eventually repay their legal costs incurred.¹⁷ Services provided under the legal aid scheme are still charged out by lawyers at standard rates, with the government merely acting as a loan agent for the person.¹⁸ The legal aid scheme is, therefore, distinct from pro bono services, as in most circumstances services provided under the scheme will be eventually paid by beneficiaries, while recipients of pro bono services are not subject to that expectation. The financial cut-off to be eligible for civil or family legal aid is very low and there are “many people [that are] ineligible ... [who] are still unable to afford legal

13 New Zealand Law Society “Guidance for lawyers undertaking pro bono work” (29 July 2020) <www.lawsociety.org.nz>.

14 See Australian Pro Bono Centre “Definition of Pro Bono” <www.probonocentre.org.au>.

15 Kayla Stewart, Bridgette Toy-Cronin and Louisa Choe *New Zealand lawyers, pro bono, and access to justice* (University of Otago Legal Issues Centre, Dunedin, 2020) at 6.

16 Australian Pro Bono Centre, above n 14 (emphasis omitted).

17 Ministry of Justice “Do you need to pay back your legal aid?” (14 January 2021) <www.justice.govt.nz>.

18 Ministry of Justice, above n 17.

services and are therefore dependent on free or low-cost legal services offered to the community”.¹⁹

We also distinguish similar state services from the definition of pro bono, including the Police Detention Legal Assistance (which provides free legal advice or assistance to persons in police custody)²⁰ and the duty lawyer service (to assist persons charged with an offence on the first day of their appearance in court).²¹ This is because these services do not distinguish between those who can afford legal counsel and those who cannot,²² and these services are funded directly by the Ministry of Justice on behalf of the Crown.²³ Additionally, people facing more serious charges or complex cases will typically have to seek further legal counsel in addition to these services.²⁴

B *Public interest litigation*

Public interest litigation is a modern, evolving and somewhat controversial field.²⁵ Public interest litigation is where litigants seek to use the courts to advance or vindicate contestable political issues which they believe are not getting the interest they deserve in the political arena.²⁶ The types of issues pursued vary broadly but often incorporate relevant public policy concerns.²⁷

Public interest litigation is thus a flexible area of the law that eludes strict definition but is also united by a common desire to use the law to highlight issues parties deem important to the public interest. There are three main avenues in which public interest litigation is pursued: test cases, judicial review and third-party interventions.²⁸ In recent years, community interest groups, such as Child Poverty Action Group and Greenpeace,

19 Maria Dew, Simon Foote and Gretta Schumacher *Access to Justice Ahei ki te Ture: Report of the New Zealand Bar Association Working Group into Access to Justice* (New Zealand Bar Association, Auckland, 2018) at [2.2].

20 Ministry of Justice *Police Detention Legal Assistance Service: Operational policy* (April 2018) at 4.

21 Ministry of Justice *Lawyers & Service Providers: Duty Lawyers* <www.justice.govt.nz>; and Public Defence Service “About the Public Defence Service” <www.pds.govt.nz>.

22 The Police Detention Legal Assistance Scheme “enables anyone arrested or held by the police to obtain free and confidential legal advice from a lawyer”, which means that the question of affordability does not arise: Latham & Watkins LLP *A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions* (Pro Bono Institute, September 2010) at 146. The duty lawyer service “ensure[s] that a sufficient number of lawyers are available at each District Court” to assist, advise and represent unrepresented defendants charged with a criminal offence. This also means that the question of affordability does not arise in duty lawyer services: Ministry of Justice *Duty lawyer service: Operational policy* (February 2021) at 4.

23 Ministry of Justice *Police Detention Legal Assistance Service: Operational policy*, above n 20, at 4; and Ministry of Justice *Duty lawyer service: Operational policy*, above n 22, at 4.

24 Ministry of Justice “First day in court” (28 January 2020) <www.justice.govt.nz>.

25 See Rick Bigwood “Public Interest Litigation: Introduction and Overview” in Rick Bigwood (ed) *Public Interest Litigation: New Zealand Experience in International Perspective* (LexisNexis, Wellington, 2006) 1.

26 At 1.

27 Ivor Richardson “The Harkness Henry Lecture: Public Interest Litigation” (1995) 3 *Waikato L Rev* 1 at 1–2.

28 Harriet Samuels “Public interest litigation and the civil society factor” (2018) 38 *Legal Studies* 515 at 518.

have brought major public interest law cases in the High Court, Court of Appeal and Supreme Court.²⁹

Māori customary rights is an important area of public interest litigation in New Zealand, as seen in test cases such as *Attorney-General v Ngati Apa* and *New Zealand Maori Council v Attorney-General*.³⁰ In *Ngati Apa*, the initial proceedings were brought by a group of eight iwi who sought orders declaring that the foreshore and seabed of the Marlborough Sounds was Māori customary land.³¹ *Ngati Apa* is a landmark case in which the Court of Appeal unanimously held that transfer of sovereignty does not extinguish Māori customary rights.³² In *New Zealand Maori Council*, the Court of Appeal defined early understandings of the principles of the Treaty of Waitangi,³³ which have since been incorporated in a number of statutes³⁴ and institutions,³⁵ arguably solidifying the Treaty's position as New Zealand's founding document. These cases illustrate how tangata whenua have used public interest litigation in order to develop and protect their customary rights, which is of significant public interest. The principles developed from these cases have continued to shape New Zealand court decisions.³⁶

Third-party interventions involve a third party becoming involved in cases of significant public interest, despite not being a party to the case or have a "direct stake" in the outcome of the proceedings.³⁷ The legislative authority for public interest interventions in the High Court and Court of Appeal comes from the Court of Appeal (Civil) Rules 2005,³⁸ the High Court Rules 2016³⁹ and that Court's inherent jurisdiction.⁴⁰ The New Zealand Court of Appeal delivered the modern position on public interest interveners in *Drew v Attorney-*

29 Harris, above n 2. See *Child Poverty Action Group v Attorney-General* [2013] NZCA 402, [2013] 3 NZLR 729; and *Greenpeace of New Zealand Inc v Minister of Energy and Resources* [2012] NZHC 1422.

30 *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 (CA); and *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA).

31 *Ngati Apa*, above n 30, at [126]. The initial proceeding was at the Maori Land Court where Judge Hingston "gave an interim decision ... favouring the iwi". An appeal to the Maori Appellate Court was then made by the Attorney-General and others, who stated questions of law for the High Court (that is, whether the Maori Land Court had jurisdiction to determine that foreshore and seabed were Maori customary land): *Ngati Apa*, above n 30, at [127]. In *Attorney-General v Ngati Apa* [2002] 2 NZLR 661 (HC), Ellis J held in favour of the Attorney-General. This resulted to the iwi's appeal to the Court of Appeal: *Ngati Apa*, above n 30, at [127].

32 *Ngati Apa*, above n 30, at [13].

33 *New Zealand Maori Council*, above n 30.

34 Examples include Oranga Tamariki Act 1989, ss 4 and 7AA; Employment Relations Act 2000, s7; and Climate Change Response Act 2002, s 3A.

35 For example, the University of Auckland Equity policy states that the University "acknowledges the distinct status of Māori as tangata whenua and is committed to partnerships that acknowledge the principles of the Treaty of Waitangi": University of Auckland "Equity Policy" (11 December 2020) <www.auckland.ac.nz>. See generally Abby Suszko "The Contemporary Social Ramifications of the Lands Case and Their Impact on the Foreshore and Seabed Debate" (2007) 1 NZLSJ 235.

36 For example, the Court in *New Zealand Maori Council v Attorney-General* [1992] 2 NZLR 576 (CA) followed the principles established in *New Zealand Maori Council*, above n 30 in ascertaining whether the Crown's restructuring of New Zealand broadcasting infringed its Treaty obligation to protect and preserve te reo Māori.

37 Law Commission *Review of the Judicature Act 1908: Towards a Consolidated Courts Act* (NZLC IP29, 2012) at [15.41].

38 Court of Appeal (Civil) Rules 2005, r 48(1)(a)(ii).

39 High Court Rules 2016, r 7.43A(d) and (e).

40 Elizabeth A Sheehy and Julia Tolmie "Feminist interventions: Learning from Canada" (2019) 3 NZWLJ 201 at 206.

General, a case concerning an application by the New Zealand Council for Civil Liberties to intervene.⁴¹ The New Zealand position allows public interveners in cases, which involves legal questions on matters concerning the public interest, where the court ought to have awareness of broader implications of their ruling.⁴² It is necessary to be precise about what is meant by an issue of public importance, for the Court is cautious to permit interventions especially at appellate stages of litigation, and public interest is an important factor when considering whether to permit intervention.⁴³ A court will be more willing to allow an intervening party if the issue in dispute can be said to be of the public's interest, a matter of general principle or public policy, or the implications of the ruling would transcend the particular facts of the case.⁴⁴ These interveners can come in any form but typically involve parties such as the Human Rights Commission, Commissioner for Children, Council for Civil Liberties, Employers Federation or the Council of Trade Unions.⁴⁵

Actions relating to rights under the New Zealand Bill of Rights Act 1990 (NZBORA) can serve as an indication that the issue is one of public importance. For example, the Court in *Wellington City Council v Woolworths New Zealand Ltd* allowed the New Zealand Local Government Association to intervene in a judicial review proceeding regarding the legality of rating schemes passed by Wellington City.⁴⁶ This is because “[t]he association represents the interests of local authorities throughout New Zealand” and the issue of expenditure and rating schemes concern “matters of general principle and public policy”, which are important to local authorities in the field of rating.⁴⁷ This decision recognised that the courts may regard to wider implications outside the parties if the matters concern public interest, such as in cases raising new issues under the NZBORA.⁴⁸

III Public Interest Law in Government and Community Organisations

Broadly speaking, there are three different providers of public interest law: community organisations, law firms and practitioners, and university law students and groups. We will assess each of these in turn, focusing on their organisational structure and the challenges they face when providing public interest legal services. This section considers the contributions of government and community organisations.

Community organisations play a fundamental role in providing access to justice for all New Zealanders. A 2019 report by the Te Uepū Hāpai i te Ora – Safe and Effective Justice Advisory Group highlighted that although access to justice is a fundamental right, it is unfortunately not one that is easily enjoyed by all New Zealanders.⁴⁹ Many people in New Zealand feel that access to justice is limited to those who could comprehend the complexities of the court system and those who could afford legal representation.⁵⁰ Pro

41 *Drew v Attorney-General* [2001] 2 NZLR 428 (CA) at [11].

42 Gregory D Simms “Public Interest Interveners in Appellate Litigation” (LLB(Hons) Dissertation, University of Auckland, 2005) at 3.

43 *Drew*, above n 41, at [11] and [17].

44 Simms, above n 42, at 8.

45 At 1–2.

46 *Wellington City Council v Woolworths New Zealand Ltd* [1996] 2 NZLR 436 (CA) at 436.

47 At 436.

48 *Drew*, above n 41, at [17].

49 Te Uepū Hāpai i te Ora – Safe and Effective Justice Advisory Group *He Waka Roimata: Transforming Our Criminal Justice System* (9 June 2019) at 36.

50 At 36.

bono work can therefore be transformative and life changing for many New Zealanders.⁵¹ Organisations such as community law centres, the Human Rights Commission and the Criminal Cases Review Commission provide public interest services in an attempt to address these issues.

A Community law centres

Community law centres (CLCs) are independent charities that provide a range of community legal services, including legal advice and representation, information, education and law reform activities.⁵² While CLCs receive funding from the government, they remain distinct from the public service.⁵³

There are 24 CLCs throughout New Zealand.⁵⁴ These centres are members of a national body known as Community Law Centres o Aotearoa (CLCA), which represents the interests of the CLCs and supports coordination between the centres.⁵⁵ They also have 120 outreach locations attended by lawyers and caseworkers to ensure that all New Zealanders have equal access to services.⁵⁶ CLCs may differ vastly in systems and structures, which often reflect their particular founders.⁵⁷

While most CLCs have a wide client base, some are more specialised. YouthLaw provides free legal services to anyone under the age of 25.⁵⁸ It also actively campaigns for better access to justice for young New Zealanders through their frequent submissions to Parliament.⁵⁹

CLCs provide their services for free and are equipped to help with all kinds of legal problems, barring issues concerned with increasing personal wealth such as wills, trusts, property, business, employer or landlord disputes.⁶⁰ Their online resources and community workshops are available to all New Zealanders.⁶¹ Their legal services are reserved for vulnerable individuals within the community, including: beneficiaries; people who are unemployed or on low incomes; homeless people; students; people from a refugee background; and people experiencing violence.⁶²

If the legal problem cannot be resolved via one-on-one consultations, free legal representation may be available.⁶³ This depends on whether the case is eligible and whether there are adequate resources.⁶⁴ Eligibility depends on whether a person's

51 Email from Ellie Herbert (Manager of the Rotorua District Community Law Centre) to the Equal Justice Project (Pro Bono Team) regarding the state of public interest law in Aotearoa New Zealand (16 July 2021).

52 Community Law "Am I eligible?" <<https://communitylaw.org.nz>>.

53 Community Law "Am I eligible?", above n 52.

54 Community Law "Our Law Centres" <<https://communitylaw.org.nz>>.

55 Community Law "About Us" <<https://communitylaw.org.nz>>.

56 Community Law "Our Law Centres", above n 54.

57 Interview with Michael Sceats, Managing Solicitor at the Porirua and Kapiti Community Law Centre (Rosa Gavey, Equal Justice Project, 18 February 2021).

58 YouthLaw "About YouthLaw" <www.youthlaw.co.nz>.

59 YouthLaw "Resources" <www.youthlaw.co.nz>.

60 Community Law "Am I eligible?", above n 52.

61 See Community Law "Law Manual" <<https://communitylaw.org.nz>>.

62 Community Law "Am I eligible?", above n 52.

63 Community Law "Am I eligible?", above n 52.

64 Community Law "Am I eligible?", above n 52.

circumstances are deemed sufficiently serious, such as the “loss of income, loss of housing, harm in the home or community or a serious social justice issue”.⁶⁵

Two CLCs have established further outreach initiatives. In 2017, the Community Legal Services South Trust—the CLC for South Auckland and Franklin—introduced a community mediation services pilot to help individuals resolve civil disputes.⁶⁶ In 2018, the Auckland CLC introduced the “Litigant in Person” service, which matches lay litigants with senior practitioners who could provide guidance and advice on their case.⁶⁷

Volunteering at CLCs is one way that lawyers in New Zealand could contribute to public interest law. CLCA currently has more than 1,200 volunteer lawyers.⁶⁸ Some CLCs have strong and established ties to law firms, who formally assist CLCs by supplying junior solicitors as volunteers on a regular weekly or fortnightly basis.⁶⁹ Other CLCs consider themselves as fully functioning law firms and do not usually work with law firms.⁷⁰ These differing practices may depend on the size and location of the CLC. The former General Manager of the Auckland CLC, Darryn Aitchison, stated that formal structures work better when lawyers volunteer at CLC—ad hoc relationships often come at a cost to the CLC as training is required.⁷¹

A lack of funding and resources is a significant limitation to CLCs’ ability to provide legal assistance for those who need support.⁷² A lack of financial resources has meant that CLCs are often not able to offer competitive salaries, thereby struggling to attract quality staff.⁷³ As a result, many lawyers only stay at CLCs for a few years, creating problems with consistency and accumulated knowledge.⁷⁴ In 2011, the National Government announced a funding freeze for CLCs.⁷⁵ Due to funding cuts, CLCs struggled to keep up with demand.⁷⁶ This freeze ended in May 2018 with a \$2.2 million boost in funding.⁷⁷ Budget 2020 provided an additional \$7.7 million (to be distributed over four years) to improve the services offered by CLCs, establish a new case management system for all 24 CLCs and a pro bono clearinghouse, and provide better wages for staff.⁷⁸

While the funding freeze significantly impaired the CLCA’s ability to acquire more resources and improve their services, it continues to face resource limitations. A 2019 report revealed that while approximately 170,000 people within the lowest income group

65 Community Law “Am I eligible?”, above n 52.

66 Dew, Foote and Schumacher, above n 19, at [2.8]–[2.9].

67 See Darryn Aitchison “Pro Bono – Unlocking Potential in New Zealand” *At The Bar* (online ed, Auckland, April 2019) at 9; and Dew, Foote and Schumacher, above n 19, at [2.8] and [2.10].

68 Community Law “Our Lawyers” <<https://communitylaw.org.nz>>.

69 Interview with Darryn Aitchison, former General Manager of the Auckland Community Law Centre and current Director of Te Ara Ture: New Zealand’s Pro Bono Clearinghouse (Fiona Wu, Equal Justice Project, 16 December 2020).

70 Interview with Michael Sceats, above n 57.

71 Interview with Darryn Aitchison, above n 69.

72 Interview with Ellie Herbert, Manager of the Rotorua District Community Law Centre (Iutita Evans, Equal Justice Project, 5 March 2021).

73 Interview with Michael Sceats, above n 57.

74 Interview with Michael Sceats, above n 57.

75 Andrew Little “Delivering certainty for Community Law Centres” (press release, 27 June 2019).

76 New Zealand Law Society “More people to gain legal help as Community Law Centres get funding boost” (17 May 2018) <www.lawsociety.org.nz>.

77 New Zealand Law Society “Near \$9 million boost for community law centres” (27 June 2019) <www.lawsociety.org.nz>.

78 New Zealand Law Society “Funding for pro bono clearing house will establish a first for New Zealand” (19 May 2020) <www.lawsociety.org.nz>.

needed legal support, only 50,000 were attended to by CLCs due to resource constraints.⁷⁹ There is hope that the recent funding boosts and the new pro bono clearinghouse—a tool to match lawyers offering pro bono services with clients in need of representation⁸⁰—will allow the CLCA to reach more people in need. The New Zealand Bar Association notes that it is vital these initiatives are implemented swiftly as the demand for legal services will likely grow as a result of COVID-19.⁸¹ On August 2020, CLCs received an additional \$3.5 million funding for the next three financial years to meet the increased need for legal services because of COVID-19.⁸²

B *Citizens Advice Bureau*

The Citizens Advice Bureau (CAB) is an independent community organisation. It aims to promote awareness of the legal rights, responsibilities and services available to individuals.⁸³ Members of the public can receive free legal advice with no appointment needed.⁸⁴

CAB relies heavily on volunteers to deliver its services, with over 2,500 volunteers supporting over 80 sites across the country.⁸⁵ CAB volunteers come from all walks of life and there is no requirement as to their age, qualifications or expertise.⁸⁶ They are supported by paid managers and coordinators of local CABs, as well as other paid staff.⁸⁷

CABs focus on helping individuals understand their rights and obligations which are likely to arise from ordinary, everyday situations—for instance with respect to consumer rights, tenancy disputes and immigration issues,⁸⁸ as opposed to advising on specialist, labyrinthine areas of law, such as litigation or company law. Between March and May 2021, CAB's top three areas of inquiry are residential tenancies, the Consumer Guarantees Act 1993 and employment issues.⁸⁹ It also assists the public by publishing over 2,750 answers to frequently asked questions about rights and obligations.⁹⁰ Unlike CLCs, the focal point of CABs is not only to provide legal assistance, but also to connect people with community services they need and provide advice on non-legal matters such as welfare assistance, budgeting and job seeking.⁹¹ CABs also refer more complex legal inquiries to CLCs.⁹²

79 Community Law “Community Law Backs Damning Report on Justice System” (16 June 2019) <<https://communitylaw.org.nz>>.

80 New Zealand Law Society “Funding for pro bono clearing house will establish a first for New Zealand”, above n 78.

81 Craig Stephen “Pro bono clearing house: It may make a difference, but is it the answer?” (2020) 941 *LawTalk* 20 at 20–21.

82 Andrew Little “Funding boost for Community Law Centres” (press release, 5 August 2020).

83 Citizens Advice Bureau “What we do - Ā mātau mahi” (1 April 2019) <www.cab.org.nz>.

84 Citizens Advice Bureau “What we do”, above n 83.

85 Citizens Advice Bureau “Volunteer for CAB - Tūao mai mō Te Pou Whakawhirinaki o Aotearoa” (2 September 2020) <www.cab.org.nz>.

86 Citizens Advice Bureau “Volunteer for CAB”, above n 85.

87 Citizens Advice Bureau *2020 Annual Report* (September 2020) at 21.

88 At 7.

89 Citizens Advice Bureau “Pānui” (June 2021), which is an online newsletter: Citizens Advice Bureau “About us – Mō tātou” (23 February 2021) <www.cab.org.nz>.

90 Citizens Advice Bureau <www.cab.org.nz>.

91 Citizens Advice Bureau “Where can I get legal advice if I can’t afford a lawyer?” (1 January 2017) <www.cab.org.nz>; and Citizens Advice Bureau *2020 Annual Report*, above n 87, at 10.

92 Citizens Advice Bureau “Where can I get legal advice if I can’t afford a lawyer?”, above n 91.

As locally-run services, CABs are mostly funded by grants from their local Councils, with some additional funding from the Ministry of Social Development, operating revenue, and donations.⁹³ However, the level of funding varies across different years and a lack of reliable, long-term funding is a significant challenge.⁹⁴ Each year, CAB needs to source around \$350,000 to maintain its operations.⁹⁵ CAB stated in its *2020 Annual Report* that central government agencies have not made a commitment to provide sustainable funding, which means CABs are left uncertain with regard to its financial position in the future.⁹⁶

C Human Rights Commission

The Human Rights Commission (HRC) was established in 1977 and operates under the Human Rights Act 1993.⁹⁷ It provides a public interest service by offering legal representation for some litigants challenging human rights breaches.⁹⁸ The service is free and offers support to enquiries and complaints to those who believe that their human rights have not been upheld.⁹⁹ Unlawful discrimination complaints can be made on a number of grounds such as sex, marital status, ethnicity, religious belief, age and family status.¹⁰⁰ The two main functions of the HRC are:¹⁰¹

- (a) to provide information to members of the public who have questions about discrimination; and
- (b) to facilitate the resolution of disputes about compliance with Part 1A or Part 2, by the parties concerned, in the most efficient, informal, and cost-effective manner possible.

The HRC can resolve disputes where alleged unlawful discrimination has occurred.¹⁰² An individual who believes that she or he has been unlawfully discriminated against may submit a complaint to the HRC. If the HRC is satisfied that a human rights breach has been established, it may assist the complainant in a dispute resolution process or may take further legal action where necessary.¹⁰³ If the complaint cannot be handled by the HRC, it can be taken to the Human Rights Review Tribunal.¹⁰⁴

In addition to assisting complainants directly, the HRC also takes on the separate role of intervening in cases of public interest that are being heard by the court.¹⁰⁵ The HRC does this to advocate for human rights.¹⁰⁶ In 2018 and 2019, the HRC intervened on six cases, including *Attorney-General v Taylor*,¹⁰⁷ where the Supreme Court confirmed that “higher

93 Dileepa Fonseka “Major losses for city if Wellington City Council had cut CAB funding, PWC report finds” (8 April 2019) Stuff <www.stuff.co.nz>; and Citizens Advice Bureau *2020 Annual Report*, above n 87, at 25.

94 At 24.

95 At 24.

96 At 24.

97 Human Rights Act 1993, s 4(1).

98 Human Rights Commission “What the Commission does” <www.hrc.co.nz>.

99 Human Rights Commission, above n 98.

100 Human Rights Act, s 21.

101 Section 76(1).

102 Section 77.

103 Section 76(2).

104 Section 80(4)(c).

105 Section 5(2)(j).

106 Human Rights Commission, above n 98.

107 *Attorney-General v Taylor* [2018] NZSC 104, [2019] 1 NZLR 213 at [70] and [121].

courts have the jurisdiction to issue a declaration of inconsistency in respect of statutes that breach the New Zealand Bill of Rights”.¹⁰⁸

D *Criminal Cases Review Commission*

The Criminal Cases Review Commission (CCRC) is an independent Crown entity established on 1 July 2020 through the Criminal Cases Review Commission Act 2019.¹⁰⁹ Anyone who believes they have suffered a miscarriage of justice over their conviction or sentence can apply to the CCRC for an independent review of their case.¹¹⁰ After assessing an application, the CCRC has authority to refer the case back to the appeal court.¹¹¹ While any person in New Zealand can appeal their sentence or conviction, the CCRC has the power to refer cases where the rights to appeal have previously been extinguished.¹¹² When determining whether to refer a conviction or sentence, the CCRC must consider whether the rights of appeal have been exercised, whether fresh evidence is present, and the prospects of a successful appeal.¹¹³

Before the establishment of the CCRC, the power to review cases on the basis of alleged miscarriage of justice rested only with the Governor-General.¹¹⁴ The CCRC was established to ensure that individuals from all socio-economic backgrounds and ethnicities are encouraged to advocate for their own miscarriages of justice in an entity independent from the government.¹¹⁵ Previously, community pro bono organisations such as the Innocence Project New Zealand (IPNZ) and the New Zealand Public Interest Project (NZPIP) attempted to address these issues.¹¹⁶

IPNZ was established in 2007 at the Victoria University of Wellington, which was later moved to the University of Otago.¹¹⁷ An applicant who wishes to have her or his case reviewed must have appealed her or his conviction and maintained factual innocence.¹¹⁸ The investigations were mainly conducted by student volunteers, however academics would provide their expertise pro bono.¹¹⁹ If evidence was uncovered that pointed to the person’s innocence, a submission would be made to petition the Governor-General to exercise her or his royal prerogative of mercy.¹²⁰ In successful cases, this would result in either a pardon being granted, a reduced sentence or a referral back to the courts for reconsideration.¹²¹ IPNZ appears to have been dormant for some time.¹²²

108 Human Rights Commission *Annual Report – Pūrongo ā Tau 2018/19* (November 2019) at 48.

109 Criminal Cases Review Commission Act 2019, s 7.

110 Ministry of Justice “Criminal Cases Review Commission” <www.justice.govt.nz>; and Criminal Cases Review Commission “About us” <www.ccrcc.nz>.

111 Criminal Cases Review Commission Act, s 11.

112 Criminal Cases Review Commission, above n 110.

113 Criminal Cases Review Commission Act, s 17.

114 Criminal Cases Review Commission, above n 110.

115 Criminal Cases Review Commission, above n 110.

116 Criminal Cases Review Commission, above n 110.

117 Jarrod Gilbert “Justice and Injustice” in Jarrod Gilbert and Greg Newbold (eds) *Criminal Justice: A New Zealand Introduction* (Auckland University Press, Auckland, 2017) 279 at 293.

118 Bruce Munro “Proving innocence” *Otago Daily Times* (online ed, Dunedin, 9 June 2015).

119 Munro, above n 118.

120 Gilbert, above n 117, at 292.

121 Munro, above n 118.

122 Gilbert, above n 117, at 293.

NZPIP was set up in 2015 by legal practitioners and academics.¹²³ However, it is unclear whether these initiatives remain active. Like IPNZ, NZPIP conducted investigations into criminal convictions and sentences to assess whether a miscarriage of justice had taken place.¹²⁴ In circumstances where a miscarriage of justice seemed to have occurred, the panel would make an application on the individual's behalf to the appeal courts.¹²⁵

The introduction of a formal CCRC with statutory powers removes the need for community organisations such as the New Zealand Innocence Project and the NZPIP. Any decisions by the CCRC about whether or not to refer a case to an appeal court has to be made publicly available.¹²⁶ As of yet, no information has been made publicly available as to whether the CCRC has reviewed or referred any convictions or sentences.¹²⁷

IV Public Interest Law in New Zealand Law Firms

This Part provides an overview of the public interest legal work conducted by New Zealand law firms, seeking to identify the structure of pro bono programmes across New Zealand firms and reflect on the associated challenges to providing pro bono services. Research displayed in this Part is largely restricted to work carried out by law firms, but also acknowledges the significant contributions from practitioners in their individual capacity.

This Part draws heavily upon information gathered through our interviews with 10 law firms. We invited most large to mid-size New Zealand law firms to participate; however, we were only able to speak with firms that responded to our interview request. Our findings are, therefore, by no means a conclusive survey of all public interest work undertaken by law firms (or practitioners) in New Zealand.

A Current approach of New Zealand law firms

A significant proportion of New Zealand law firms have some form of pro bono practice, however the degree of involvement and the way these projects are sought out varies across firms. There is no structured approach to public interest legal work that is consistent across the board with New Zealand firms.¹²⁸ As such, the challenges faced by law firms in engaging in pro bono work differ across firms in New Zealand.

(1) Pro bono committees

Some firms have a dedicated pro bono committee that assesses potential cases against specified criteria. Dentons Kensington Swan is one example of this.¹²⁹ Its pro bono clients largely come through one of two venues: off-street inquiries and referrals by staff. All such

123 At 293; and Mike Munro “Bringing justice to injustice” (11 May 2020) Newsroom <www.newsroom.co.nz>.

124 Georgina Stylianou “Miscarriage of justice investigation panel launched” (13 June 2015) RNZ <www.rnz.co.nz>.

125 Amicus Curiae “Pipping the Government to the Post – NZPIP and Miscarriages of Justice” (23 June 2015) Equal Justice Project <www.equaljusticeproject.co.nz>.

126 Criminal Cases Review Commission Act, s 26(2).

127 Criminal Cases Review Commission “Completed reviews” <www.ccrcc.nz>.

128 See, for example, Donovan Jackson “Lawyers for good: How pro bono work contributes to society” (2018) 914 LawTalk 71.

129 Craig Stephen “Wide range of projects for Kensington Swan pro bono team” (2017) 903 LawTalk 63 at 63.

requests and referrals progress to Dentons Kensington Swan's Pro Bono Committee, which comprises one partner and one solicitor from each of its Auckland and Wellington offices.¹³⁰ The Committee then reviews the request, taking into consideration the type and extent of financial support required, the type of organisation, whether there is a genuine need and whether it fits into the firm's framework for pro bono work.¹³¹

MinterEllisonRuddWatts also has a partnership committee (with staff representatives) that oversees the firm's overall pro bono commitment.¹³² The commitment has several limbs, including pro bono legal work, community contribution, and philanthropic spend.¹³³

The practice of using a designated committee to manage pro bono work across the firm is also used by Russell McVeagh and Bell Gully.¹³⁴ The latter has had a formalised programme since 2009 and releases a Pro Bono and Community Report each year that specifies the annual pro bono contributions made by the firm. Bell Gully's Pro Bono and Community Committee is made up of four partners and three senior associates, and the Programme is managed by a Pro Bono and Community Programme Manager.¹³⁵ All pro bono work Bell Gully accepts fall into three distinct categories:¹³⁶

- Free, for clients who would otherwise be denied access to justice because they have no means to pay for it.
- Free or heavily discounted, for non-government and charitable organisations with funding and other support from third parties.
- Free or heavily discounted, for limited art, culture, heritage, sports and recreation groups who merit pro bono support.

A similarly structured approach is taken at DLA Piper. They only take pro bono work that aligns with the firm's global vision and falls under the three umbrella categories: access to justice, climate justice, and gender-based violence.¹³⁷ The firm also has a specific and broad definition of pro bono work, which includes services that support or enhance access to justice for disadvantaged persons and assistance to cases that raise issues of wider public interest.¹³⁸

A rationale behind this definition is so that free legal work for friends would not be classified as part of the wider firms' pro bono work.¹³⁹ Emphasis is instead placed on supporting organisations or individuals who have a true need.¹⁴⁰ This approach of having

130 Interview with Richard Monigatti, Associate at Dentons Kensington Swan (Fiona Wu, Equal Justice Project, 21 December 2020).

131 Interview with Richard Monigatti, above n 130.

132 Email from Stacey Shortall (Partner at MinterEllisonRuddWatts) to the Equal Justice Project (Pro Bono Team) regarding the firm's pro bono contributions (14 July 2021).

133 Email from Stacey Shortall, above n 132.

134 Russell McVeagh Sustainability Committee *Corporate Social Responsibility Report 2016* (Russell McVeagh, 2016); and Bell Gully "Community support" <www.bellgully.com>.

135 Email from Rachel Gowing (Senior Associate at Bell Gully) to the Equal Justice Project (Pro Bono Team) regarding the firm's pro bono contributions (14 July 2021).

136 Bell Gully, above n 134, under the "Pro Bono" tab.

137 Interview with Sara Battersby, Senior Associate at DLA Piper (Sophie Reedy-Young, Equal Justice Project, 26 February 2021).

138 Interview with Sara Battersby, above n 137.

139 Interview with Iain Thain, Partner at DLA Piper (Sophie Reedy-Young, Equal Justice Project, 26 February 2021).

140 Interview with Iain Thain, above n 139.

a specific definition for pro bono to guide which entities the firm supports through pro bono has also been taken by other New Zealand firms.¹⁴¹

(2) Pro bono partners

As opposed to a formal pro bono committee, Simpson Grierson has established a dedicated pro bono partner position.¹⁴² The pro bono partner role is designed to perform all the functions of a pro bono committee. DLA Piper also have roles such as Pro Bono Partner, Pro Bono Director and Pro Bono Manager who oversee or manage the pro bono practice such as approving applications to undertake pro bono work.¹⁴³ Most lawyers at DLA Piper are involved with their pro bono practice in some capacity.¹⁴⁴

(3) Connections to community law centres

It seems to be standard practice among law firms to accept pro bono referrals from CLCs. Simpson Grierson takes no direct referrals; instead, it accepts referrals from CLCs.¹⁴⁵ This is part of its approach to establish clear parameters around the number of pro bono cases it is capable of accepting.¹⁴⁶ Bell Gully, Chapman Tripp, DLA Piper, MinterEllisonRuddWatts and Russell McVeagh also accept pro bono referrals from Community Law.¹⁴⁷

Additionally, many law firms supply their lawyers to CLCs on a volunteer basis, including Buddle Findlay, DLA Piper, John Miller Law, MinterEllisonRuddWatts, Russell McVeagh and Thomas Dewar Sziranyi Letts.¹⁴⁸ As an example, Bell Gully seconds one lawyer to two Auckland-based CLCs each week and supports a CLC in Wellington with a secondment programme.¹⁴⁹ Some CLCs take on an administrative role in connecting law firms and potential clients in need. By doing so, the CLCs effectively complete the initial assessment stage by assessing the client's needs and suitability.¹⁵⁰ CLCs can be viewed as great places for young lawyers to build experience and expertise in public interest law.¹⁵¹ Volunteering at CLCs is one form of public interest legal work where the positive impact for clients is seen relatively quickly, which is both gratifying and motivating for volunteer lawyers.¹⁵²

(4) Case-by-case approaches

While many firms take a structured approach to assessing potential pro bono projects or clients, it is not unusual for other firms to have a less formalised approach and make

141 Interview with Rachel Gowing, Bell Gully (Sophie Reedy-Young, Equal Justice Project, 2 March 2021).

142 Simpson Grierson "Community" <www.simpsongrierson.com>.

143 Interview with Iain Thain, above n 139.

144 Interview with Iain Thain, above n 139.

145 Interview with Shan Wilson, Pro Bono Partner at Simpson Grierson (Fiona Wu and Raksha Tiwari, Equal Justice Project, 16 December 2020).

146 Interview with Shan Wilson, above n 145.

147 Community Law Wellington and Hutt Valley "Pro Bono Support" <www.wclc.org.nz>.

148 Community Law Wellington and Hutt Valley, above n 147.

149 Email from Rachel Gowing, above n 141.

150 Interview with Darryn Aitchison, above n 69.

151 Interview with Stacey Shortall, Partner at MinterEllisonRuddWatts (Fiona Wu and Iutita Evans, Equal Justice Project, 25 February 2021).

152 Interview with Stacey Shortall, above n 151.

determinations on case-by-case basis. In these cases, the public interest legal work that the firms take on may come through a personal connection to the firm or via lawyers in the community.¹⁵³

Duncan Cotterill's approach is based largely on personal contacts and referrals, with major projects running through a partner.¹⁵⁴ Pro bono resources are frequently directed to local need, including challenging the demolition of Christchurch Cathedral, the aftermath of the mosque attacks and litigation around a predator-free sanctuary in Nelson.¹⁵⁵ It also provides services to a number of smaller charitable organisations for specific projects.¹⁵⁶

Intellectual property firm AJ Park has provided pro bono advice to charities—namely, Little Sprouts and Wāhine Connect—but do not have an established firm-wide programme or policy for this line of work.¹⁵⁷ Instead, AJ Park's pro bono projects generally arise from existing contacts and referrals that come through its partners or principals and they have no formal criteria when determining whether they take a pro bono case.¹⁵⁸

A similar approach is adopted by Lane Neave and Kahui Legal. Both firms have strong ties with their communities and consider, on a case-by-case basis, whether their expertise places them in the best position to deliver impact on a pro bono project. For instance, Kahui Legal's specialisation in Māori legal issues, Treaty settlements, resource management and criminal cases is well-known and consequently most of its referrals for pro bono assistance come from the local Māori community (through firm partners) or sometimes these are past clients or connections to past clients.¹⁵⁹

Similarly, Lane Neave has a strong immigration focus and presence in Christchurch. This led them to dedicate pro bono resources in the aftermath of the Christchurch mosque shootings, particularly in expediting the travel of affected families to New Zealand. Lane Neave also assisted individuals affected by the Christchurch earthquakes and maintains pro bono connections with local not-for-profits including the Emergency Care Foundation, a research entity affiliated with Christchurch Hospital.¹⁶⁰

At Meredith Connell, all enquiries about potential pro bono clients are directed to Managing Partner Steve Haszard. Most enquiries come from individual partners who consider it might be appropriate to undertake a case on a pro bono basis or on a discounted fee. While the firm has no formal criteria, Haszard says he considers the nature of the case, the means of the client, and, if the client is an organisation (as opposed to an individual), whether its values align with those of Meredith Connell. As the firm holds the Auckland Crown warrant, it is particularly keen to dedicate pro bono resources to salient

153 Interview with Ayleath Foote, Partner at Duncan Cotterill (Rosa Gavey, Equal Justice Project, 19 February 2021).

154 Email from Ayleath Foote (Partner at Duncan Cotterill) to the Equal Justice Project (Pro Bono Team) regarding the firm's pro bono contributions (16 July 2021).

155 Email from Ayleath Foote, above n 154.

156 Email from Ayleath Foote, above n 154.

157 AJ Park "Celebrating achievements on International Women's Day" (6 March 2020) <www.ajpark.com>.

158 Interview with Grace Thomas-Edmond, Senior Associate at AJ Park (Fiona Wu and Sophie Reedy-Young, Equal Justice Project, 22 December 2020).

159 Interview with Kiri Tahana, Managing Partner at Kahui Legal (Fiona Wu, Equal Justice Project, 23 February 2021).

160 Interview with Andrew Shaw, Partner at Lane Neave (Fiona Wu, Equal Justice Project, 24 February 2021).

political and public interest cases, for instance it assisted The Spinoff during the 2020 election season around legalities of conveying electoral information to its readers.¹⁶¹

These examples reflect the diverse approaches taken to pro bono work by New Zealand firms. There exists no apparent unanimous approach or structure to public interest legal work undertaken by New Zealand law firms. It remains unclear whether public interest work at most law firms is driven by a firm wide policy or individual lawyers within the firm. This raises a potential challenge: if existing staff leave a firm, the momentum of its pro bono work could be affected.

B Interest-based legal projects

Aside from the work of (commercial) law firms, panels of lawyers have been established in order to aid advocacy in particular interest areas. We will consider three examples: the SPCA Pro Bono Panel, the Lawyers for Climate Action NZ Inc and the Mothers Project.

(1) SPCA pro bono panel

Anita Killeen is a lawyer from Quay Chambers who established the SPCA Auckland Pro Bono Panel of Prosecutors.¹⁶² This project was generated by virtue of Killeen's involvement as the Director of the Board of the SPCA Auckland.¹⁶³ The Pro Bono Panel is a collection of 40 lawyers with the purpose of ensuring animal cruelty offenders are brought to justice, as well as providing greater deterrence to future offenders.¹⁶⁴ The Panel has been in operation for more than 10 years, with involvement in prosecuting individuals for neglect, cruelty, torture and malnourishment of animals.¹⁶⁵

A further objective of the Panel has been striving for harsher penalties for animal cruelty charges. Killeen was involved in the reform of the Animal Welfare Act 1999, which "increase[ed] the maximum sentence for wilful ill-treatment of an animal from three to five years' imprisonment" and doubled an individual's maximum fine to \$100,000 and \$500,000 for a company.¹⁶⁶ The panel also receives support from Auckland firm Kayes Fletcher Walker, which provides legal opinions and, on occasion, lawyers to assist panel members on cases.¹⁶⁷

(2) Lawyers for Climate Action NZ Inc

Lawyers for Climate Action NZ Inc (LCANZI) is a not-for-profit incorporated society and is made up of a collection of lawyers from a range of practice areas.¹⁶⁸ The uniting goal of the organisation is the belief that New Zealand "can and should do more in the global fight against climate change".¹⁶⁹ More specifically, LCANZI advocates for:¹⁷⁰

161 Interview with Steve Haszard, Managing Partner at Meredith Connell (Fiona Wu and Sophie Reedy-Young, Equal Justice Project, 10 December 2020).

162 Anita Killeen "Anita Killeen: SPCA Auckland Pro Bono Panel of Prosecutors" (2017) 904 LawTalk 62 at 62–65.

163 At 62.

164 At 63.

165 At 62.

166 At 64.

167 At 65.

168 Lawyers for Climate Action NZ Inc "About us" <www.lawyersforclimateaction.nz>.

169 Lawyers for Climate Action NZ Inc "About us", above n 168.

170 Lawyers for Climate Action NZ Inc "About us", above n 168.

New Zealand [to meet] its obligations under the Paris Agreement ... in a way that is evidence-based, effective, and consistent with the rule of law, Te Tiriti o Waitangi, international law, and with the New Zealand Bill of Rights Act.

LCANZI has a panel of lawyers available (on a pro bono or reduced fee basis) to assist individuals or community groups to take legal climate action and address the threat of climate change.¹⁷¹ For example, on 2 July 2021 LCANZI “filed High Court proceedings seeking judicial review of the Climate Change Commission’s advice to [sic] the Minister for Climate Change”.¹⁷² LCANZI alleged “that the Commission’s advice [did] not comply with the Climate Change Response Act 2002 or with Aotearoa New Zealand’s obligations under the Paris Agreement”.¹⁷³

(3) Mothers Project

The Mothers Project is a charitable trust that was established in 2015.¹⁷⁴ The aim of the Project is to connect volunteer female lawyers with imprisoned mothers.¹⁷⁵ These lawyers assist incarcerated mothers “to try and maintain critical family ties and attachment while the mothers are separated from their children”.¹⁷⁶ The Mothers Project emphasises that “[j]ust because a mother has committed a crime, doesn’t mean she’s not a good mother.”¹⁷⁷ Lawyers involved in the Project regularly visit women’s prisons to help imprisoned mothers understand their children’s whereabouts and care arrangements, keep in touch with their children, and preserve their legal rights in respect of their children.¹⁷⁸

Over 100 lawyers have been involved with the Project since it started six years ago.¹⁷⁹ These lawyers come from a range of in-house positions and law firms including Duncan Cotterill¹⁸⁰ and MinterEllisonRuddWatts.¹⁸¹ Stacey Shortall, a partner at MinterEllisonRuddWatts and founding trustee of the Mothers Project, states that the Project is a rare example of collaboration across the profession to improve access to justice for some of Aotearoa New Zealand’s most vulnerable women in prison.¹⁸²

C Challenges for law firms

A number of firms raised similar challenges in undertaking pro bono work, including the potential of a floodgates effect (where the firm is inundated with more pro bono clients than it can manage), the need to proactively ensure its staff are not disadvantaged by undertaking pro bono instead of billable work, and the management of conflicts of

171 Lawyers for Climate Action NZ Inc “About us”, above n 168.

172 Lawyers for Climate Action NZ Inc “LCANZI sues Climate Change Commission over errors in its Advice to Minister” (2 July 2021) <www.lawyersforclimateaction.nz>.

173 Lawyers for Climate Action NZ Inc “LCANZI sues Climate Change Commission over errors in its Advice to Minister”, above n 172. See Paris Agreement (signed 22 April 2016, entered into force 4 November 2016).

174 Mothers Project “About Us” <www.mothersproject.org>.

175 Mothers Project “Get Involved” <www.mothersproject.org>.

176 Mothers Project “About Us”, above n 174.

177 Mothers Project “Home” <www.mothersproject.org>.

178 Mothers Project “Get Involved”, above n 175.

179 Mothers Project “About Us”, above n 174.

180 Email from Ayleath Foote, above n 154.

181 Email from Stacey Shortall, above n 132.

182 Email from Stacey Shortall, above n 132.

interest.¹⁸³ However, most firms remain optimistic that these challenges have relatively simple solutions. For instance, robust recording of hours employees spend on pro bono work, limiting pro bono referrals from trusted sources, establishing clear parameters, and maintaining quality control and conflict of interest checks mitigate or resolve these challenges.¹⁸⁴

Some firms, which are more specialised, raised the concern that their expertise does not always align with the needs of clients who require pro bono assistance the most.¹⁸⁵ Multiple firms recognised the lack of indemnity insurance as a serious obstacle for lawyers acting outside their employment to undertake pro bono work.¹⁸⁶

A challenging issue, which may have no easy solution, is the difficulty for law firms to provide pro bono work for cases undergoing litigation. This is because the length and costs of litigation proceedings are often unpredictable, which means a significant portion of a firm's pro bono budget can be consumed quickly.¹⁸⁷ At the same time, it is also unethical to cease acting for a client during a litigation.¹⁸⁸

Some law firms find that reduced or partial payment arrangements work better when providing public interest legal services because they find that without a certain level of economic incentive, pro bono clients can utilise much more time than a fee paying client.¹⁸⁹ A partial fee arrangement (such as five percent of the actual cost of the services provided) can address this.¹⁹⁰ As previously mentioned, pro bono work does not necessarily mean free legal services, as low bono work may also be captured under this definition if it meets the other requirements of public interest law.

D Analysis of law firms' contributions to public interest law

Our research suggests that when law firms undertake pro bono legal work, they mainly do so for charitable organisations and trusts as opposed to individuals.¹⁹¹ Some of these organisations include the Breast Cancer Foundation New Zealand,¹⁹² Transport for Disabled Trust,¹⁹³ and the New Zealand Symphony Orchestra.¹⁹⁴ When law firms take on individual public interest cases, these are usually referred to them from CLCs or involve high-profile public interest legal issues. For example, Russell McVeagh provided pro bono

183 Interview with Ayleath Foote, above n 153.

184 Interview with Richard Monigatti, above n 130; Interview with Shan Wilson, above n 145; and Interview with Steve Haszard, above n 161.

185 Interview with Steve Haszard, above n 161.

186 Interview with Richard Monigatti, above n 130; Interview with Shan Wilson, above n 145; and Interview with Steve Haszard, above n 161.

187 Interview with Richard Monigatti, above n 130.

188 Interview with Richard Monigatti, above n 130.

189 Interview with Ayleath Foote, above n 153.

190 Interview with Ayleath Foote, above n 153.

191 See, for example, AJ Park, above n 157; Anderson Lloyd "In the Community" <www.al.nz>; Anthony Harper "Pro bono projects: Everybody Eats" (16 September 2019) <www.anthonysharper.co.nz>; Bell Gully, above n 134; Brookfields Lawyers "Corporate Responsibility" <www.brookfields.co.nz>; Buddle Findlay "In the community" (2021) <www.buddlefindlay.com>; Dentons Kensington Swan "About Dentons Kensington Swan" <www.dentons.co.nz>; Henry Hughes "About Henry Hughes" <www.henryhughes.com>; MinterEllisonRuddWatts "Community" <www.minterellison.co.nz>; and Russell McVeagh "In the Community" <www.russellmcveagh.com>.

192 Anderson Lloyd, above n 191; and Bell Gully, above n 134.

193 Anderson Lloyd, above n 191.

194 MinterEllisonRuddWatts, above n 191.

assistance to Lecretia Seales in litigation under the NZBORA on assisted dying.¹⁹⁵ However, Dr Bridgette Toy-Cronin notes that “pro bono is often done in New Zealand based on relationships” and law firms receive pro bono referrals through personal connections.¹⁹⁶

Ellie Herbert, the Manager of Rotorua District CLC, suggests that some law firms are interested in “sexy” public interest law cases.¹⁹⁷ In her experience the more meritorious the matter looks, the more interested law firms become in being involved.¹⁹⁸ These types of cases provide “good marketing” for the law firms.¹⁹⁹ The Criminal Bar Association President Len Andersen suggests that it suits law firms to do “pro bono work because it is something they can trumpet about what good corporate citizens they are”.²⁰⁰ These suggestions help explain the “collateral purpose” of law firms involvement with public interest legal work.²⁰¹

While this section has primarily looked at the public interest law contributions of law firms, we recognise that many other lawyers (including barristers and those employed at smaller firms) also make significant contributions to the provision of public interest law. Tiana Epati, the President of the NZLS, states that in her experience pro bono work “is largely worn by lawyers who already are stretched by the restrictions of legal aid”.²⁰²

V Public Interest Law in Universities

There are various ways in which students can contribute to public interest legal work in New Zealand. This Part will consider two specific groupings, namely student-led public interest initiatives and university law courses that have public interest components.

A *Student-led public interest initiatives*

The following student-led public interest law initiatives will be examined and compared: the Equal Justice Project (EJP) from the University of Auckland; the Wellington Community Justice Project (WCJP) from the Victoria University of Wellington; and the Law for Change branches from the University of Canterbury (Law for Change UC) and the University of Otago (Law for Change Otago).

(1) Equal Justice Project

Established in 2005, EJP is a non-partisan pro bono charity led by students at the University of Auckland’s Law School with the aim of promoting social equality, inclusivity, and access to justice.²⁰³ EJP has approximately 100 student volunteers across five teams: Access; Advocacy; Communications; Community; and Pro Bono.²⁰⁴ The organisation is led by an Executive comprising two directors and two managers per team. The EJP Executive is

195 See Russell McVeagh, above n 191.

196 Stephen, above n 2, at 67.

197 Interview with Ellie Herbert, above n 72.

198 Interview with Ellie Herbert, above n 72.

199 Stephen, above n 2, at 65 per Len Andersen.

200 At 65–66.

201 At 67 per Bridgette Toy-Cronin.

202 At 66.

203 Equal Justice Project “Home” <www.equaljusticeproject.co.nz>.

204 Equal Justice Project “Home”, above n 203.

guided by the EJP Advisory Board, which is made up of legal practitioners and legal academics whose work contributes to the promotion of equal justice.

EJP's Access Team organises presentations in high schools and symposia or panel discussions in universities with the aim of raising awareness and facilitating the discussion in communities about pressing social and legal issues.²⁰⁵ Their past workshops and panel discussions have covered topics such as restorative justice, the Zero Carbon Bill and modern slavery.²⁰⁶

EJP's Advocacy Team collaborates with various practitioners, interest groups and community groups to advocate for change in two key areas: refugee rights and climate change.²⁰⁷ The Advocacy Team works with the Waitematā Low Carbon Network to advocate for climate action at Auckland Council meetings and at meetings of various Council controlled organisations.²⁰⁸ The Advocacy Team also produced a guide for peaceful protesting and police rights in 2020 at the height of the Black Lives Matter movement.²⁰⁹

EJP's Community Team provides support to CLCs "by interviewing clients, writing case files, drafting letters and providing the public with information".²¹⁰ The CLCs they work with include Auckland Community Law Centre, Waitematā Community Law Centre, Māngere Community Law Centre and Shakti Legal Centre.²¹¹

EJP's Communications Team aims "to broaden EJP's audience and raise awareness of justice issues within the legal and wider community" by publishing articles on legal and political issues on their website, social media platforms, and external publications on campus and in the legal community.²¹² Their articles have been re-published by other like-minded organisations and referenced in other articles and research.²¹³ The Communications Team also makes bill submissions—including oral submissions—to Parliament's Select Committee.²¹⁴ Recent examples of submissions include the COVID-19 Public Health Response Act 2020, the Electoral (Registration of Sentenced Prisoners) Amendment Bill, and the Abortion Legislation Bill.²¹⁵

EJP's Pro Bono Team promotes human rights and access to justice by providing research assistance to legal practitioners, academics and community groups that share the same goals of promoting equality, inclusivity and respect for human dignity.²¹⁶ This usually involves writing articles, preparing submissions, and conducting research into legal

205 Equal Justice Project "Access" <www.equaljusticeproject.co.nz>.

206 Equal Justice Project "Access", above n 205.

207 Equal Justice Project "Advocacy" <www.equaljusticeproject.co.nz>.

208 Equal Justice Project "Advocacy Publications" <www.equaljusticeproject.co.nz>.

209 Ella Rose Steven "EJP's Little Guide to: Peaceful Protesting and Knowing Your Rights" (June 2020) Equal Justice Project <www.equaljusticeproject.co.nz>.

210 Equal Justice Project "Community" <www.equaljusticeproject.co.nz>.

211 Equal Justice Project "Community", above n 210.

212 Equal Justice Project "Communications" <www.equaljusticeproject.co.nz>.

213 Equal Justice Project "Communications", above n 212.

214 Equal Justice Project "Communications", above n 212; Equal Justice Project "Parliamentary Bill Submissions" <www.equaljusticeproject.co.nz>.

215 Equal Justice Project "Submission to the Finance and Expenditure Committee on the COVID-19 Public Health Response Act 2020"; Equal Justice Project "Submission to the Justice Select Committee on the Electoral (Registration of Sentenced Prisoners) Amendment Bill"; and Equal Justice Project "Submission to the Abortion Legislation Committee on the Abortion Legislation Bill".

216 Equal Justice Project "Pro Bono" <www.equaljusticeproject.co.nz>.

issues that are affecting the community.²¹⁷ For example, the Pro Bono Team “provided research assistance to VOYCE-Whakarongo Mai on the support and services available to young people with care experiences”.²¹⁸ This contributed to VOYCE’s “advocacy with the UN Special Rapporteur for Adequate Housing ... [on the] precarious housing options for young people transitioning out of care”.²¹⁹ Another notable recent project is the legal research done for the “Save Our Unique Landscape” campaign at Ihumātao.²²⁰ Their legal research and analytical assistance contributed towards the protection of the rights of mana whenua from the acquisition and intended development of Ihumātao by Fletcher Building Ltd.²²¹

The Pro Bono team acquires research projects through two main means. The Pro Bono managers reached out to aligned community groups and legal academics with the offer of legal research assistance or the managers are contacted directly by groups (either because they have been referred by someone else in the community or because they have found their contact details on the EJP website).

(2) Wellington Community Justice Project

The WCJP is a student-led charity at Victoria University of Wellington’s Law School that aims to improve access to justice and to develop the legal skills of their volunteers.²²² In 2011, they became a registered incorporated society and was granted charity status in 2012.²²³ Unlike EJP, WCJP is sponsored by a particular firm—Buddle Findlay—which helps with implementing their projects and hosting events.²²⁴ Led by sixteen students of their Executive Team, WCJP consists of four teams: Advocacy; Education; Human Rights; and Law Reform.²²⁵

WCJP’s Advocacy Team aims “to support, advise and advocate for vulnerable people in the community”.²²⁶ The WCJP Advocacy Team’s projects closely align with that of the EJP Community Team as they provide support to vulnerable individuals of specific institutions. For instance, its Welfare Advocacy project involves supporting people in the Wellington District Court to access community services and resources, and they provide support to the Howard League Prisoner Support by reading and responding to prisoners’ requests for assistance.²²⁷

WCJP’s Education Team, like EJP’s Access Team, aims to teach young people and members of the community about the law and their legal rights.²²⁸ It works with outside organisations. For example, its Rights Education Project involves working with Community Law Wellington to deliver modules on law and legal rights, and their Know Your Rights

217 See, for example, Equal Justice Project “Pro Bono Publications” <www.equaljusticeproject.co.nz>.

218 Equal Justice Project “Pro Bono”, above n 216.

219 Equal Justice Project “Pro Bono”, above n 216.

220 Equal Justice Project “Pro Bono”, above n 216.

221 Craig Stephen “Equal Justice Project helps practical skills development” (2017) 910 LawTalk 77 at 77.

222 Wellington Community Justice Project “About Us” <www.wellingtoncjp.com>.

223 Wellington Community Justice Project “About Us”, above n 222.

224 Wellington Community Justice Project “Home” <www.wellingtoncjp.com>.

225 Wellington Community Justice Project “Home”, above n 224.

226 Wellington Community Justice Project “Advocacy” <www.wellingtoncjp.com>.

227 Wellington Community Justice Project “Advocacy”, above n 226.

228 Wellington Community Justice Project “Education” <www.wellingtoncjp.com>.

project is an initiative in collaboration with the Victoria University of Wellington Students' Association to inform students of their rights.²²⁹

WCJP's Human Rights Team shares EJP's Advocacy and Pro Bono teams' aim of upholding human rights at a local and international level.²³⁰ WCJP's Human Rights Team, similar to EJP's Advocacy team, advocates for the rights of asylum seekers and refugees through their Rights Information Sessions, Asylum Seeker Equality Project and UN Letter Writing Project.²³¹

WCJP's Law Reform Team aims to ensure legislative changes and policy developments in New Zealand reflect the view of the wider community.²³² However, WCJP's Law Reform Team differs from EJP's Communications Team because, in addition to research and submissions to Select Committees or Law Commission, they collaborate with outside organisations on pressing for legislation reform in relation to specific rights. For example, they have worked with Adoption Action Inc for adoption-related legislation reform, and they collaborated with the New Zealand Animal Law Association and SAFE for changes in animal rights legislation.²³³ The Law Reform Team also focuses on informing the wider community on salient issues of law through publications in *The Hive* magazine.²³⁴

(3) Law for Change

Law for Change is a not-for-profit organisation "dedicated to providing law students across the country with a space for them to pursue public interest law".²³⁵ There are two branches of Law for Change: one at the University of Canterbury and the other at the University of Otago.²³⁶

Law for Change UC is run by a team of 12 students and volunteering with the club is available for all students—not just those studying law.²³⁷ It has three interconnected aims of providing benefits for the student volunteer, the community and the legal profession. It is sponsored by Community Law Canterbury, Chapman Tripp, Anthony Harper and UC Business and Law.²³⁸ Law for Change UC has three notable projects. First, the Prison Education Project provides volunteers with the opportunity to present informative seminars on topics such as "employment, tenancy, family law, wellbeing, money, protection orders and harassment" to the youth unit in a Christchurch prison.²³⁹ Second, Law for Change UC promotes differing volunteering opportunities at the CLC and acts as the middleperson for their application process.²⁴⁰ Third, Law for Change UC hosts events from large panel discussion to workshops, for example a Sexual Violence (Legislation) Bill Panel Discussion.²⁴¹

Law for Change Otago is run by a team of 11 students and its aim is to "amplify the voices of those less likely to be heard and challenge the injustices that underpin, and are

229 Wellington Community Justice Project "Education", above n 228.

230 Wellington Community Justice Project "Human Rights" <www.wellingtoncjp.com>.

231 Wellington Community Justice Project "Human Rights", above n 230.

232 Wellington Community Justice Project "Law Reform" <www.wellingtoncjp.com>.

233 Wellington Community Justice Project "Law Reform", above n 232.

234 Wellington Community Justice Project "Law Reform", above n 232.

235 Law for Change "About" <www.lawforchange.co.nz>.

236 Law for Change "Home" <www.lawforchange.co.nz>.

237 Law for Change "Canterbury" <www.lawforchange.co.nz>.

238 Law for Change "Canterbury", above n 237.

239 Law for Change "Canterbury", above n 237.

240 Law for Change "Canterbury", above n 237.

241 Law for Change "Canterbury", above n 237.

perpetuated by, our current system”.²⁴² It “engages in public interest law by running events, facilitating and participating in kōrero and hosting volunteer programmes”.²⁴³ One of their projects involves 25 law students volunteering at the Otago Corrections Facility and providing rehabilitative programmes such as creative writing and art classes.²⁴⁴ Law for Change Otago also runs events throughout the year and past events include “Justice is Served” in collaboration with JustSpeak and a workshop called “A New Justice: Students Against Armed Police”.²⁴⁵

B University law courses with public interest law components

Out of the six New Zealand law schools, it appears that only three currently offer courses with significant pro bono components. These three institutions are the University of Auckland,²⁴⁶ the Auckland University of Technology,²⁴⁷ and the University of Canterbury.²⁴⁸ Pro bono components in this context refers to the direct (unpaid) contribution of students in the community towards public interest efforts. It does not refer to purely theoretical teachings of pro bono principles in the classroom. Ellie Herbert encourages students to be bold when imagining solutions to public interest law issues and strongly supports incorporating such work into university courses.²⁴⁹

(1) University of Auckland

The University of Auckland has four relevant courses: LAWGENRL 405 Community Law Internship, LAWGENRL 447 Community Law Project, LAWPUBL 461 Indigenous Rights Legal Clinic and LAWPUBL 470: Special Topic: Social Welfare Law, Policy and Action.

LAWGENRL 405 and LAWGENRL 447 are ran similarly, with each requiring a certain number of hours (150 and 75 hours respectively) of supervised unpaid work in an approved non-profit or government entity.²⁵⁰ At the end of this work, students write a report (5,000 and 10,000 words respectively) that serves as a reflection of their experiences with their chosen organisation. LAWGENRL 405 and LAWGENRL 447 are overseen by the Student Engagement and Development Manager who is Auckland Law School’s primary liaison with external organisations.

On the other hand, LAWPUBL 461 is “a ‘design thinking’-style clinical legal education course with a focus on Māori in the family law system.”²⁵¹ Students work directly with family law practitioners to gain insight into the current family law system in New Zealand

242 Law for Change “Otago” <www.lawforchange.co.nz>.

243 Law for Change “Otago”, above n 242 (macron added).

244 Law for Change “Otago”, above n 242.

245 Law for Change “Otago”, above n 242.

246 University of Auckland “LAWGENRL 405: Community Law Internship (20 Points)” (2021 Semester One) <<https://courseoutline.auckland.ac.nz>>; and University of Auckland “LAWGENRL 447: Community Law Project (10 Points)” (2021 Summer School) <<https://courseoutline.auckland.ac.nz>>.

247 Auckland University of Technology “LAWS776 Clinical Legal Education” <<https://arion.aut.ac.nz>>.

248 University of Canterbury “Clinical Legal Studies” <www.canterbury.ac.nz>.

249 Interview with Ellie Herbert, above n 72.

250 University of Auckland “LAWGENRL 405”, above n 246; and University of Auckland “LAWGENRL 447”, above n 246.

251 University of Auckland “LAWPUBL 461: Indigenous Rights Legal Clinic (15 Points)” (2021 Semester One) <<https://courseoutline.auckland.ac.nz>> at 1.

co-design potential solutions.²⁵² In a previous iteration of this course (Human Rights Theory and its Application), students worked with the Expert Mechanism on the Rights of Indigenous Peoples and conducted research for the urgent inquiry by the Waitangi Tribunal into the voting rights of Māori prisoners.²⁵³ LAWPUBL 461 is coordinated by a member of the Indigenous Rights Impact Programme (alternatively, the Indigenous Impact Programme) which is offered by the Aotearoa New Zealand Centre for Indigenous People and the Law based in the Faculty of Law at the University of Auckland.²⁵⁴

LAWPUBL 470 is an all-year course split into three sections: Law, Policy and Action.²⁵⁵ Under the Action component, students participate in clinical work by “writing submissions and acting as advocates for social security claimants who are seeking to challenge Ministry of Social Development decisions”.²⁵⁶ This work is supervised by a lecturer (Associate Professor Hanna Wilberg) or one of the Auckland CLCs.²⁵⁷ As part of this course, students gain practical experience of “legal ethics, client communications (especially with clients whose life experience may be very different from [the students]), interviewing and advocacy”.²⁵⁸

(2) Auckland University of Technology

Auckland University of Technology offers one relevant course, LAWS 776 Clinical Legal Education. Students enrolled in this course volunteer at a community or government organisation and write a report based on their experiences.²⁵⁹

(3) University of Canterbury

The University of Canterbury provides one course with a pro bono focus, LAWS 386 Clinical Legal Studies.²⁶⁰ Assessment for this course is diverse, with five components of roughly equal weighting.²⁶¹ These include writing a letter of demand, a take-home statutes test, client interviewing, and a legal opinion.²⁶² There is a strong combination of theoretical and experiential learning in this course.²⁶³ Throughout the course students are partnered with pro bono lawyers and CLCs, working through the entire pro bono process from interviewing clients and conducting legal research to eventually providing the client with legal advice.²⁶⁴

The University of Canterbury has a dedicated director of Clinical Legal Studies, Robin Palmer, who oversees the LAWS 386 course, and holds a background and interest in legal education reform and improving access to justice.²⁶⁵ In 2015, the then Canterbury

252 At 1–2.

253 University of Auckland “Charm Skinner” <www.auckland.ac.nz>.

254 University of Auckland “The Centre’s legal education clinic” <www.auckland.ac.nz>.

255 University of Auckland “LAWPUBL 470: Special Topic: Social Welfare Law, Policy and Action (15 Points)” (2021 Semester One) <<https://courseoutline.auckland.ac.nz>> at 1–2.

256 At 2.

257 At 2.

258 At 2.

259 Auckland University of Technology, above n 247.

260 University of Canterbury, above n 248.

261 University of Canterbury, above n 248.

262 University of Canterbury, above n 248.

263 University of Canterbury, above n 248.

264 University of Canterbury, above n 248.

265 University of Canterbury “Robin Palmer” <www.canterbury.ac.nz>.

University Law School Dean Dr Chris Gallavin introduced a requirement for law students to undertake a minimum of 100 pro bono hours over the course of their degree.²⁶⁶ However, it does not seem that this initiative continues to operate at the University.

C Challenges for student-led initiatives and university courses

Student-led public interest law initiatives and university courses with public interest components face various challenges. The longevity of these programmes is difficult to maintain as they are often reliant on a few dedicated students or lecturers to maintain momentum. Students come and go, making it difficult to ensure consistency with approaches and overarching intentions, as well as maintain necessary connections in the legal profession. However, EJP has been operating in various forms for over 15 years and exemplifies that these student-led initiatives can survive—and even thrive—under the right circumstances. This includes where there is a consistent level of student interest in volunteering, continuity and good handover processes at the leadership level and proactive nurturing of professional relationships with legal practitioners, for instance through symposia, annual dinners and other social events.

More practically, these initiatives are both reliant on student work. An obvious drawback from this is that students are unable to provide legal advice to clients directly as they are not admitted barristers and solicitors of the High Court. This limits the legal services students can provide and necessitates a legal academic or practitioner to supervise all work conducted.

Further, some CLCs have found it hard to attract student volunteers because of their location and distance from main city centres and law schools.²⁶⁷ This means that there are areas of the country in which these types of student programmes do not help in addressing issues of access to justice. For example, Mr Sceats finds that most law students from the Victoria University of Wellington volunteer at the Wellington CLC as opposed to their local CLCs.²⁶⁸ Therefore, these types of initiatives can only be one piece of the puzzle in tackling wider public interest legal problems.

Lastly, the time and dedication students put into these initiatives come at a cost and most volunteers are in a privileged position to be able to volunteer a significant amount of their time for free. Therefore, these pro bono initiatives and courses at universities may exclude a proportion of the law student population who may not be able to afford to commit so much time without (immediate) financial returns.

VI Future of Public Interest Law

For our legal system to operate effectively, access to justice must be ensured and issues of public interest must be furthered. The legal profession needs to do more to ensure adequate legal advice and representation is provided to all New Zealanders in need. Currently, public interest legal services are provided on an ad hoc basis in different parts of the country. Although these initiatives are integral to the successful operation of our legal system, they are currently failing to meet the need for pro bono legal services.²⁶⁹ We

266 Mackenzie McCarty “Mandatory pro bono work for students: ‘It’s not all bleeding-heart liberal stuff’” (30 May 2014) NZ Lawyer <www.thelawyeromag.com/nz>.

267 Interview with Michael Sceats, above n 57.

268 Interview with Michael Sceats, above n 57.

269 Stephen, above n 2.

suggest that a formal centralised approach to public interest legal work is required in New Zealand.

We advocate for a series of changes that may collectively transform the landscape of public interest law in New Zealand. Although structural and legislative change will go a long way towards furthering public interest law and its objectives, action could be taken at the law society and university levels for more immediate effects.

Potential future avenues for change in the arena of public interest law will be discussed in the following sections.

A Greater recognition of public interest law

The first avenue to better incentivise the practice of pro bono and public interest law is to better recognise excellence among the lawyers contributing to good practice of the profession in this way. Kayla Stewart and others propose that this could be accomplished through the introduction of Law Society awards for contribution to these areas as well as media recognition.²⁷⁰ Not only would this motivate those lawyers seeking awards to perform this work, but it would also assist in cementing the standard among members of the profession that pro bono and public interest law are an expected part of legal practice in New Zealand.

B Legislative change

There is currently no legal obligation for New Zealand lawyers to provide pro bono services.²⁷¹ However, s 9 of the Lawyers and Conveyancers Act 2006 holds that an employed lawyer is guilty of misconduct if they are carrying out legal work external to his or her employment (unless the services are provided through a CLC or CAB).²⁷² This means that employed lawyers would be acting in breach of their professional obligations if they were to provide public interest legal service on their own account.

The Lawyers and Conveyancers (Employed Lawyers Providing Free Legal Services) Amendment Bill is currently before Parliament and would remedy this situation by allowing an employed lawyer (with the permission of their employer) to do free legal work outside her or his employment.²⁷³ If passed, this Bill would enable lawyers to improve access to justice for clients in need by providing financially accessible legal help. This, however, would not resolve the issue that lawyers undertaking work in this capacity would have no form of professional indemnity insurance behind them, which is arguably a powerful deterrent against conducting pro bono work.²⁷⁴

Another legislative change that may be considered is the introduction of national targets for public interest legal work by the NZLS. In Australia, where pro bono practice is an established part of law firm culture, there are clear expectations that lawyers would spend a certain amount of time (often five per cent) on pro bono work.²⁷⁵ Australia also

270 Stewart, Toy-Cronin and Choe, above n 15, at 26.

271 Stephen, above n 2, at 61.

272 Dew, Foote and Schumacher, above n 19, at [2.15].

273 Lawyers and Conveyancers (Employed Lawyers Providing Free Legal Services) Amendment Bill 2020 (311-1), cl 6.

274 Interview with Steve Haszard, above n 161; and see also, Community Law Centres o Aotearoa “Submission to the Justice Committee on the Lawyers and Conveyancers (Employed Lawyers Providing Free Legal Services) Amendment Bill”.

275 Interview with Kiri Tahana, above n 159.

has a National Pro Bono Aspirational Target which law firms can sign up to: signatories agree to use best efforts to provide at least 35 hours of pro bono legal services per lawyer per year, which equates to around 45 minutes per week.²⁷⁶ A similar approach is taken in New York, where a certain number of completed pro bono hours is required for admission.²⁷⁷ This is also true for practitioners wishing to renew their practicing certificates.²⁷⁸

New Zealand's lack of such targets makes it more difficult for the NZLS to track public interest contribution from lawyers and to send a strong message that pro bono is an expected part of practice for all lawyers. A public interest law target may clarify the standard that lawyers in New Zealand should aspire to meet. There has been much debate in New Zealand around whether such a standard should be mandatory as part of the requirements for maintaining a practising certificate or applying for Queen's Counsel.²⁷⁹ The application for Queen's Counsel now include questions on the applicant's commitment to improving access to justice and requires applicants to have:²⁸⁰

a history of making a personal contribution to advancing better access to justice for those who need it, for example by undertaking criminal/civil legal aid work, supporting community-based law centres, or through honorary positions or pro bono work.

Some lawyers believe that it would be inflexible to have a rule prescribing a specific amount of pro bono work,²⁸¹ and others have expressed concerns that not all lawyers will be able to afford to do pro bono work (especially those not employed by large law firms).²⁸² To counter these concerns, public interest law targets could be implemented as an aspirational standard, rather than a mandatory prescribed amount.

C Te Ara Ture: pro bono clearinghouse tool

In the May 2020 budget, the government allocated funding to establish Te Ara Ture—a pro bono clearinghouse, which would operate as a matchmaker between those seeking low-cost legal assistance and lawyers willing and able to provide such services.²⁸³ Launched a

276 Australian Pro Bono Centre “Target FAQs” <www.probonocentre.org.au>.

277 Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law (New York), r 520.16.

278 Interview with Stacey Shortall, above n 151.

279 Stewart, Toy-Cronin and Choe, above n 15, at 19–21. See also Dew, Foote and Schumacher, above n 19, at [2.29]–[2.41].

280 New Zealand Bar Association “Queen's Counsel Appointment Process” <www.nzbar.org.nz>.

281 Stewart, Toy-Cronin and Choe, above n 15, at 19–21; and Interview with Ayleath Foote, above n 153.

282 Stephen, above n 2, at 65 per Len Andersen; and Stewart, Toy-Cronin and Choe, above n 15, at 19–21.

283 New Zealand Bar Association “The 2020 Budget Delivers Pro Bono Clearing House Funding” (19 May 2020) <www.nzbar.org.nz>. However, “Te Ara Ture cannot help with second opinions or with matters that have no realistic chance of a positive outcome”, nor can it guarantee that all prospective clients will be provided a lawyer: Te Ara Ture: New Zealand's Pro Bono Clearinghouse “Client FAQs” <www.tearature.co.nz>. Further, only sole practitioners, firms and lawyers employed by firms or organisations who are registered for referrals are currently able to accept work through Te Ara Ture: Te Ara Ture: New Zealand's Pro Bono Clearinghouse “Lawyer FAQs” <www.tearature.co.nz>.

year later,²⁸⁴ Te Ara Ture promotes access to justice by acting as an intermediary between pro bono lawyers with prospective clients by conducting the necessary screening and administrative support required for engagement.²⁸⁵ As its name suggests, Te Ara Ture (the bridge to the law) aims to remove logistical barriers for lawyers interested in providing pro bono services and enhance client access to affordable legal services.²⁸⁶ This initiative would also minimise the overwhelming burden placed on existing community organisations.

The *Report of the New Zealand Bar Association Working Group into Access to Justice* proposed that a pro bono clearinghouse in New Zealand could work similarly to how it operates in other Commonwealth jurisdictions, where CABs and CLCs refer clients to the pro bono clearinghouse.²⁸⁷ Under this approach the client must meet certain requirements before being placed in contact with a barrister who has appropriate experience.²⁸⁸ Requirements might include the inability to receive another form of assistance such as legal aid, and the rationality and public interest behind their legal issue or claim.²⁸⁹

The former General Manager of the Auckland Community Law Centre (and current Director of Te Ara Ture), Darryn Aitchison, expressed great enthusiasm for the pro bono clearinghouse, which would streamline much of the ad hoc work that law firms currently do with CLCs. He anticipates that referrals to the pro bono clearinghouse would initially be from CLCs, but the goal is to expand this within six months to other agencies, including CABs, student unions and the like.²⁹⁰ Further, Cheryl Green (former director of Clinical Legal Education at the University of Waikato) states that a pro bono clearing house will enable meaningful integration with New Zealand law schools, making it easier for law students to “participate in the clearinghouse’s work”.²⁹¹ A pro bono clearinghouse could also establish legal clinics within law schools and assist students in being connected to community law projects.²⁹²

This enthusiasm is shared by several law firms, which see the pro bono clearinghouse as substantially reducing the logistical and administrative work involved in providing pro bono work, making it much more appealing.²⁹³ By facilitating referrals and matching lawyers with clients, a pro bono clearinghouse removes much of this administrative burden by facilitating referrals and matching lawyers with clients. Promoting transparency and accessibility of pro bono services will also address the potential inequities associated with the current practice of law firms taking on clients with whom they have an existing connection, or who are acquainted with the partners of the firm.

284 New Zealand Law Society “Launch of new pro bono tool” (13 May 2021) <www.lawsociety.org.nz>.

285 Te Ara Ture: New Zealand’s Pro Bono Clearinghouse “Home” <www.tearature.co.nz>.

286 New Zealand Bar Association “Te Ara Ture - Pro Bono Clearinghouse tool launched” (20 May 2021) <www.nzbar.org.nz>.

287 Dew, Foote and Schumacher, above n 19, at [2.19]–[2.20].

288 At [2.20].

289 At [2.20].

290 Interview with Darryn Aitchison, above n 69.

291 Cheryl Green “Clinics: How to Teach the Art of ‘Lawyering’ – Does It Have a Place in Academia?” (2013) 21 *Waikato L Rev* 76 at 88.

292 At 86.

293 Interview with Richard Monigatti, above n 130; and Interview with Steve Haszard, above n 161.

D *Cultural change*

The final proposal for addressing these concerns around access to justice is placing earlier and greater emphasis on the importance of the practice of public interest litigation and pro bono work at law school. Although at present there are a number of initiatives and available classes at law schools around New Zealand that fulfil this requirement—with greater emphasis on the importance of public interest law—Erwin Chemerinsky argues that we can get closer to bridging the gap between those who are in need of representation that is in the public interest, and those who are available and willing to provide this service.²⁹⁴

One of the most recurring concerns we heard from the legal professionals we interviewed is New Zealand's lack of a strong pro bono history compared with jurisdictions like the United States and Australia; and while legislative change is commendable, it is no substitute for a deep-rooted cultural shift which start at law schools.²⁹⁵ Suggestions for how to kickstart this cultural shift include incorporating a compulsory paper on pro bono work in law school, greater provision of professional development and training on this area by the NZLS and mandating a certain amount of pro bono work as a requisite for admission.²⁹⁶

VII Conclusion

Public interest law is still in the early stage of development in New Zealand. A lack of centralised approaches, practice requirements and targets, and sophisticated referral mechanisms have contributed to the lack and underutilisation of public interest legal services compared with other countries.²⁹⁷ Max Harris states that:²⁹⁸

reliance on lawyer-heroes, as opposed to groups of public-spirited lawyers or a properly-established climate of pro bono law, may not prove to be a sustainable way to achieve a pro bono legal culture in New Zealand.

The legal profession must adopt a coordinated approach to the provision of public interest legal services. Community organisations, law firms and law students are taking advantage of ad hoc opportunities to volunteer their expertise in matters of significant public interest. Many law firms and CLCs see the initiation of the pro bono clearinghouse as a positive step. However, it is striking the extent to which practitioners agree that the true challenge is cultural—not legal—change in the legal profession's attitude towards public interest law.

294 See Erwin Chemerinsky "Creating a Law School That Emphasizes Public Interest Law" (2013) 7 DePaul J for Soc Just 1.

295 Interview with Shan Wilson, above n 145; Interview with Kiri Tahana, above n 159; and Interview with Andrew Shaw, above n 160.

296 Interview with Kiri Tahana, above n 159; and Interview with Stacey Shortall, above n 151.

297 Interview with Darryn Aitchison, above n 69.

298 Harris, above n 2.