

Measuring and valuing pro bono

John Corker

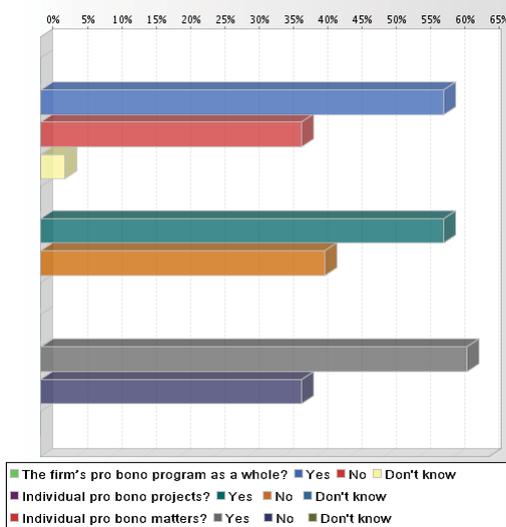
- “Lawyers are Dumb! We need public policy, sociology people. We don't know how to do this.” ... [However] pro bono counsel “brainstorming” with other experts could “come up with something good”.

From “Managing Pro Bono: Doing Well by Doing Better”, Scott Cummings and Deborah Rhode, Fordham Law Review Vol 78 p. 2408, Interview with a pro bono counsel - 19 August 2009.

Quality v Quantity

- The limitations of quantitative measures
- Effect of Aspirational Target – 2010 Target Report
 - Led to an increase in pro bono (35%)
 - Led to a decrease in pro bono (0%)
 - Increased firm's focus on needs of disadvantaged people (19%)
 - No Effect (40%)
 - Sets a useful benchmark for the firm to measure commitment vis a vis our peers (2%)
 - Encouraged staff to do pro bono work (2%)
 - Increased the firm's commitment of internal resources to pro bono (2%)
- Australia doesn't have league tables or rankings
- Quantitative and Qualitative evaluation gives the best picture.

Q16.1 - Does your firm have a system of evaluating:





Survey Results

- Variety of approaches
 - Setting clear measurable outcomes
 - Logic frame model (goal, objectives, outputs, inputs)
 - Total number of matters/hours/hrs per lawyer
 - Periodic review by senior management or pro bono committee (3 or 12 monthly)
 - Some seek client feedback
 - Some seek referral agency feedback
 - Some seek staff feedback



Survey Results – other approaches

- Budget and Target only
- Criteria including media engagement
- Positive outcomes in particular matters
 - Extent to which law reform effective
 - Successful rulings
 - Completion of transactions
 - No. of attendees at CLEs

Issues

- Some matters are more easily measured than others due to their complexity.
- Surveys can be time-consuming and response rates low.
- Gathering views of external stakeholders difficult
- If outcome is not what the client had hoped for, their evaluation may not be wholly accurate; sometimes clients have too high an expectation.

The Mission or Goal

To improve access to justice for socially disadvantaged and/or marginalised persons in Australia through the delivery of professional pro bono legal services.



Objectives from a firm's perspective

- The program is well managed - resource efficiency/cost-effectiveness
- "Bottom line" cost of running the program is reasonable and meets budget
- To deliver a program that is valued by staff and has a positive effect on the professional growth/legal skills of its lawyers
- The right mix of transactional/individual/not for profit orgs/litigation/law reform/legal education matters is achieved.
- The program identifies matters of compelling unmet social/legal need.
- Internal mechanisms and processes are adequate to track cases, projects, lawyer performance.
- The amount of time and resources taken to evaluate the program are reasonable



Firm Objectives 2

- There is a clearly defined and firm-accepted strategy for the program
- Program has good visibility—externally and internally
- Program makes an adequate social Impact



Firm Objectives 3

- Program supports firm's recruitment strategy
- Clients are satisfied with service provided
- Reputation of the firm with clients and the public is maintained/enhanced



Objectives from a staff perspective

- Staff are personally satisfied with the pro bono work they are doing.
- Interesting pro bono opportunities exist
- There is adequate and appropriate recognition and support for the work internally – billable credits/ performance appraisal/promotion.
- As far as possible pro bono work done matches staff interests and skills
- Lawyer(s) have competence to work/advise in the areas of law involved.
- Appropriate skill development and training is available in relation to pro bono work.
- Matters are adequately supervised by partners.
- An approachable and skilled pro bono co-ordinator exists



Objectives from a client's perspective

- The firm shows real interest in the client's problem
- Firm clearly defines its role and manages the client's expectations
- Firm establishes good working relationship with the client
- Firm displays a good understanding of the nature of the client's operation and objectives (organisation client)
- Lawyer and firm provide timely responses to queries/instructions.
- Work is done by the firm in a timely manner.
- Due attention is given to the matter by both junior and senior lawyers (as appropriate)
- Firm provides channels to give formal feedback and evaluation.



Anyone for workshops?



NATIONAL PRO BONO RESOURCE CENTRE

National Law Firm Pro Bono Survey

Australian Firms With More Than Fifty Lawyers

Interim Report

August 2010

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1. Background

This is an interim report of responses to the National Law Firm Pro Bono Survey ('the Survey'), conducted by the National Pro Bono Resource Centre ('the Centre') in July 2010. This Report has been prepared for the third Access to Justice and Pro Bono Conference, to be held in Brisbane 27-28 August 2010.

The survey targeted all 39 Australian law firms with more than 50 full time equivalent lawyers¹, of which 29 responded.

This interim report presents a snapshot of the data collected in the survey – a final report with a comprehensive analysis of all the data collected will be published later in 2010. For the purposes of this report, the Centre has analysed data regarding the amount of pro bono work being done in the 2009-2010 financial year, as well as some topics relevant to the National Access to Justice and Pro Bono Conference.

¹ With the exception of two highly specialised firms who informed the Centre prior to the survey that they do not wish to participate.

2. Methodology

This is the second National Law Firm Pro Bono Survey conducted by the Centre. The first survey was conducted in 2008. The survey questionnaire was developed by the Centre to obtain a picture of pro bono work in Australia from the perspective of large and 'mid-tier' law firms and to elicit information about practice and policy issues.² The survey is conducted every two years in order to provide a longitudinal picture of the pro bono work done by law firms in Australia.

After the first survey in 2008, the Centre conducted an internal and external evaluation of the survey and amended the original survey questionnaire to obtain more accurate data. It is for this reason that not all responses are comparable to the data obtained in 2008.

The survey was conducted online using Key Survey software provided to the Centre by the University of New South Wales.

Targeted law firms were approached by a letter from the Centre informing them of the survey and encouraging them to participate. E-mails were then sent to nominated pro bono contacts in each firm providing a link to the online survey. Those firms that are signatories to the Aspirational Target had an opportunity to identify themselves in the survey and to report on the Aspirational Target in conjunction with the survey. These survey responses will be treated as confidential and all other responses remain anonymous.

² The questionnaire was also sent to a number of law firm pro bono coordinators for comment. The Centre wishes to thank all those who provided valuable feedback.

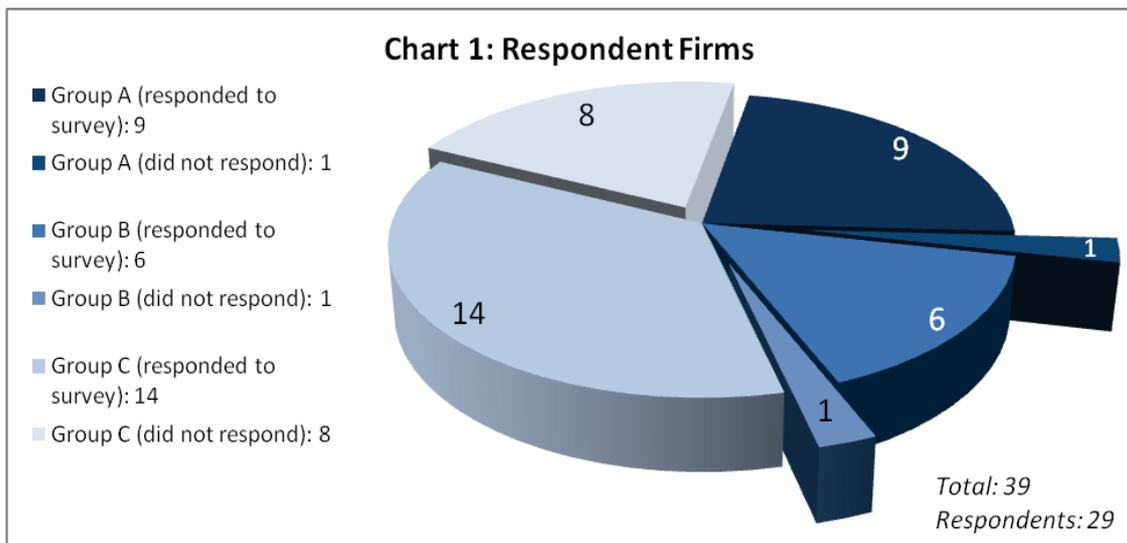
3. Survey Results

3.1 Respondent firms

Twenty-nine firms responded, representing 74% of the survey sample. They fell naturally into 3 groups by size. Nine of the firms had between 450-1000 full time equivalent (FTE) lawyers (“**Group A**”), a further six firms had between 201-350 FTE lawyers (“**Group B**”) and 14 firms had between 50-200 FTE lawyers (“**Group C**”).

Of the ten firms that did not respond one firm would have been in Group A, one in group B and eight in group C.

Altogether, the respondent firms had 10,410.3 FTE lawyers in Australia, representing approximately 18% of the Australian legal profession.³



Twenty-six out of 29 firms had more than one office, and 10 firms also had offices overseas. Twenty out of the 29 firms who responded to the survey (69%) had completed the Centre’s previous Law Firm Pro Bono Survey in 2008.

3.2 Pro bono hours

Total hours of pro bono

Twenty-four out of 29 respondents (83%) were able to provide responses to the amount of pro bono legal work done by the firm as a whole.⁴ In the 2009-2010 financial year,

³ As at May 2010, there were approximately 56,000 legal practitioners in Australia: see speech given by Glenn Ferguson, President, Law Council of Australia, at the 5th Annual IBA Bar Leaders’ Conference, Copenhagen (27 May 2010) available at http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=61FAC42A-D4A6-9B6D-7AC7-3BD9078C0DA0&siteName=lca

these 24 firms did a total of 322,343 hours of pro bono work. This total represents an average of 6,199 hours of pro bono work completed each week⁵, or 179 lawyers doing pro bono work full-time throughout the year.⁶ The total number of hours per firm varied from 300 hours (a Group C firm) to a remarkable 51,500 hours (a Group A Firm). 2 firms were around 40,000 hours, 2 around 30,000 hours and 2 around 25,000 hours. The next highest firms provided around 17,000 and 14,000 hours (these are all Group A firms).

Hours per lawyer

Twenty-four out of 29 respondents (83%) were able to provide figures on pro bono hours per lawyer in the 2009-2010 financial year. The average number of hours per lawyer across all firms was 29 hours, but the figures varied greatly from 1.7 hours per lawyer to 71 hours per lawyer per year.

Firms in group A (9 firms) recorded the highest average of 41.5 hours per lawyer per year. Firms in Group B (6 firms) reported an average of 22.5 hours per lawyer and firms in Group C (14 firms) reported an average of 27.2 hours per lawyer per year.⁷ However, the two highest numbers of hours per lawyer per year, 71 and 65, were reported by two firms in Group C, distorting the average number of hours per lawyer per year in that group. When the two top performing firms' hours are not taken into account, the average number of hours per lawyer per year for the remaining nine firms who reported total pro bono hours in Group C was 22 hours per lawyer.

The median number of hours per lawyer was 27.6, which is significantly higher than the median number of hours per lawyer reported by respondent firms in the 2008 survey, which was 21.⁸ This suggests that firms have maintained their commitment to pro bono work even during the global financial crisis and at a time when many firms have shed staff.

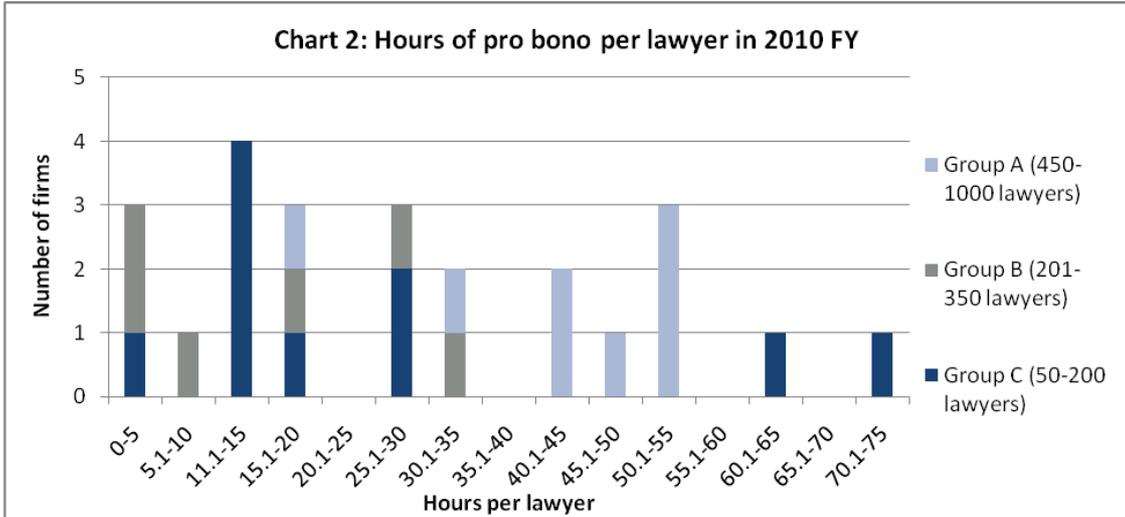
⁴ Three firms who reported pro bono hours indicated that they had no definition of pro bono legal work or used a different definition to the one in the survey. Their definitions were considered not significantly different to the one used in the survey and thus their reported hours have been included in the analysis.

⁵ Based on 52 weeks.

⁶ This figure is calculated based on a 37.5 hour working week for 48 weeks per year.

⁷ These figures are based on the number of lawyers in each group whose firm reported total pro bono hours.

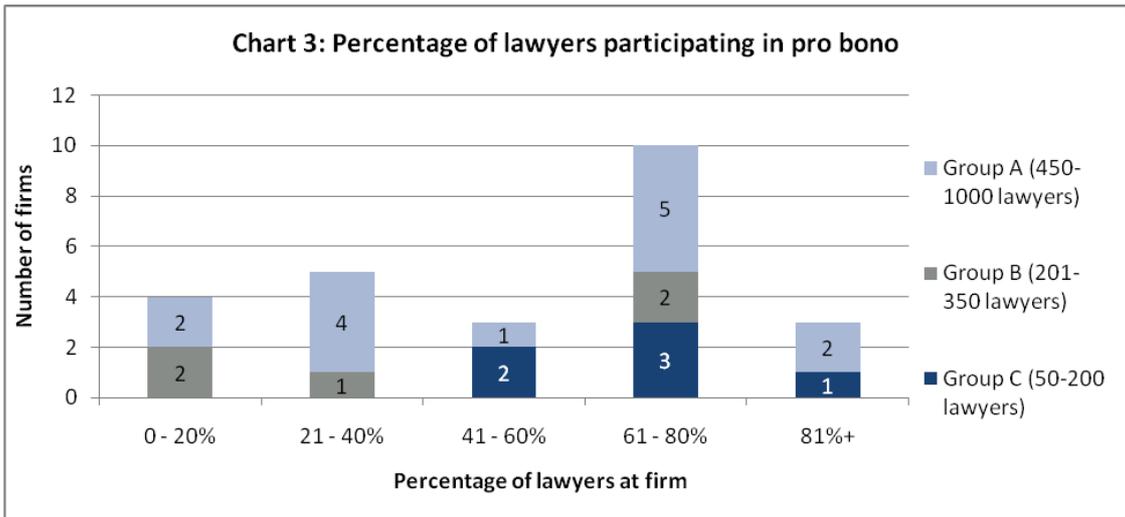
⁸ The median number of hours in 2008 was calculated based on the mid point of a range of hours, and determined on an office-by-office rather than on a firm basis.



3.3 Participation rates

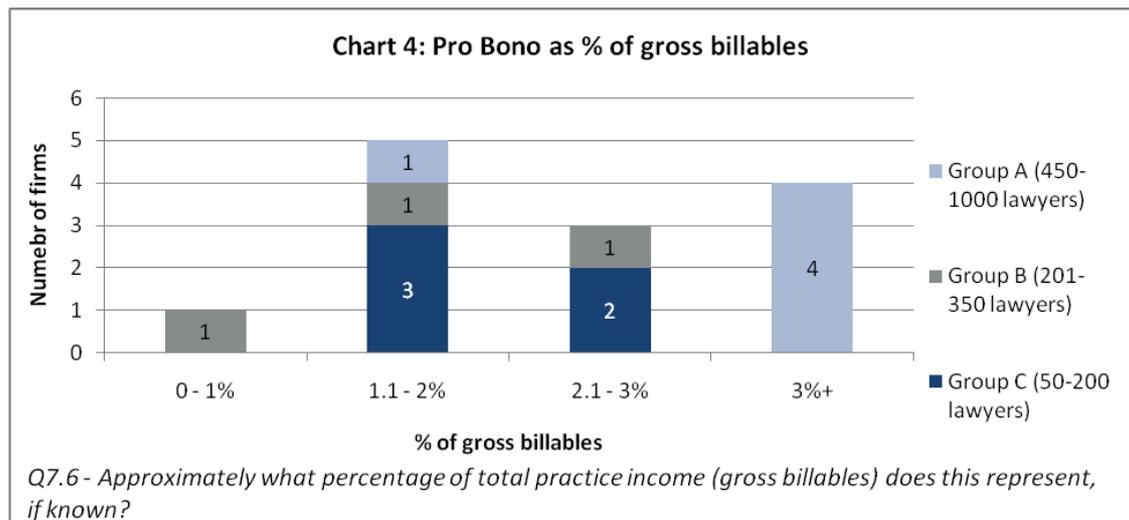
Twenty-five out of 29 firms (86%) provided the percentage of lawyers participating in (doing at least one hour of) pro bono work. Participation rates varied greatly among respondents from 10% to 90%. The average participation rate across all firms was 58.8%, and the median participation rate was 63.4%.

Eight firms in Group A (out of 9 firms) reported an average participation rate of 72%. Five firms in Group B (out of 6 firms) reported an average participation rate of 41.4%. Twelve firms in Group C (out of 14 firms) reported an average participation rate of 49%. Both the highest and the lowest participation rate were reported by firms in Group C.



3.4 Percentage of total practice income

Responses to this question were received from 13 out of 29 firms (44%). Some firms indicated that they did not keep this data. The range of pro bono represented as a percentage of total practice income (gross billables) varied from 0.15% to 3.47%, with the median and average both being 2%. Chart 4 illustrates the results.



3.5 National Pro Bono Aspirational Target

Twenty-six out of 29 firms (89.7%) indicated they were aware of the National Pro Bono Aspirational Target (**'the Target'**)⁹. Thirteen respondent firms (44.8%) were signatories to the Target.

Of the 13 signatories, seven firms (53.8%) met the Target in the 2009-2010 financial year. All of the firms that met the Target expected to meet it again next year. Of the six firms that did not meet the Target, two expected to meet the Target next year, another two expected to not meet the Target next year, and a further two were unsure as to whether they would meet the Target in the next financial year.

In responding to the question what effect (if any) has being a signatory to the Target had on the pro bono legal work undertaken by the firms responded as follows: Five firms reported that the Target had increased the amount of pro bono work done by the firm, two firms reported that the Target increased the firm's focus on the needs of disadvantaged people, three firms reported that the Target had no effect to the pro bono work done by the firm, and three firms provided the following comments:

⁹ The National Pro Bono Aspirational Target is a voluntary target of 35 hours of pro bono work per lawyer per year. It was launched by the Centre in 2007, and currently covers about 5500 lawyers, approximately 10% of the legal profession. The Target is contained in a Statement of Principles It represents a minimum number of hours of pro bono legal work that all signatories aspire to undertake.

The Target provides a benchmark in relation to which we can measure our commitment vis a vis our peers. As general engagement with pro bono rises among top tier firms and within our own, this provides a goal motivation for setting ambitious internal targets (Group A)

Was already meeting the Target when signed up. Would prefer Target changed to as per individual lawyers than target per lawyer on average. (Group B)

The Target helped encourage staff to participate (Group A)

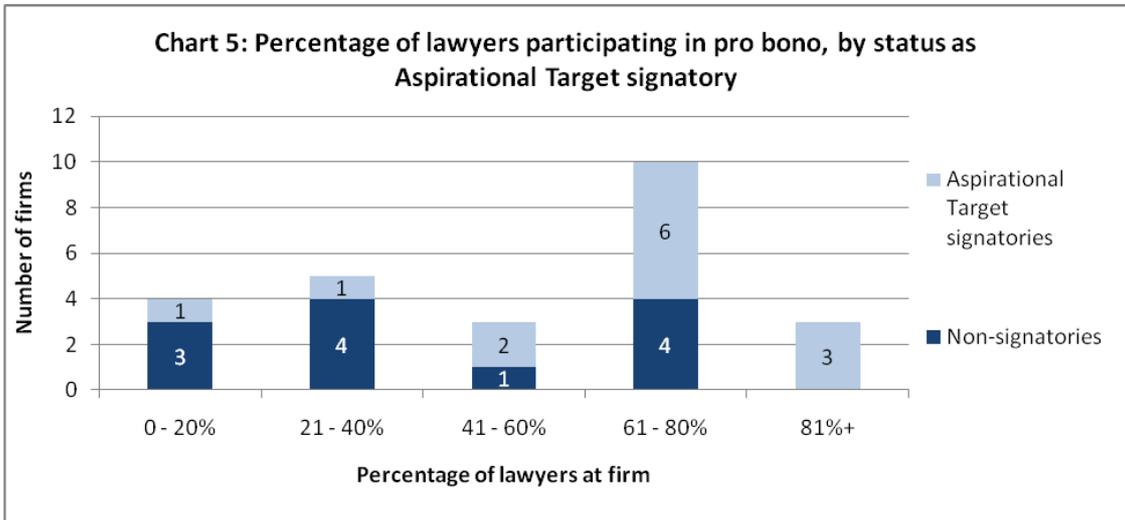
Table 1: Aspirational Target Signatories

	Aspirational Target Signatories	Non-Signatories	All
Total pro bono hours per firm	16,758 (from 13 firms)	9,499 (from 11 firms)	13,431
Average no. of FTE lawyers	425.1 (from 13 firms)	305.2 (from 16 firms)	358.97
Average pro bono hours per lawyer	37.8 (from 13 firms)	18.6 (from 11 firms)	29
Range of pro bono hours per lawyer	11 - 71	1.36 - 53	1.36 - 71
Average participation rates*	66.3% (from 13 firms)	42.4% (from 12 firms)	54.8%
% of gross billables	2.2% (from 9 firms)	1.5% (from 4 firms)	2%

* 'participation rate' means greater than one hour of pro bono legal work undertaken during the year

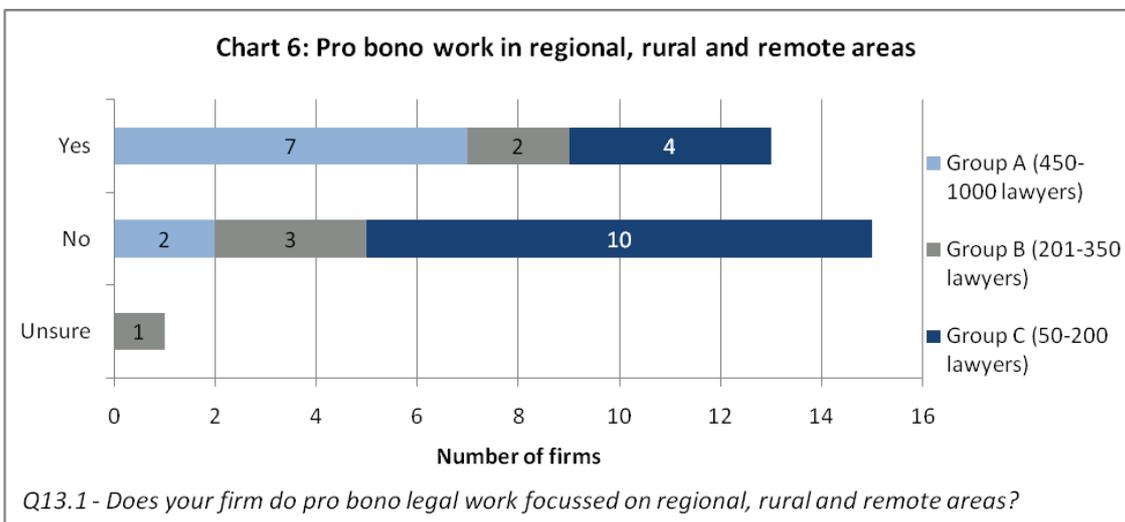
On average, signatories to the Aspirational Target reported higher hours per lawyer and higher participation rates than non-signatory firms, suggesting that generally, signatory firms have a stronger pro bono culture evidenced by significantly higher participation rates (66.3% v 42.4%) and pro bono hours/lawyer (37.8 v 18.6).

It should be noted that the survey sample included one non-signatory that significantly exceeded the Target, and recorded a high percentage (3.3%) of gross billables.

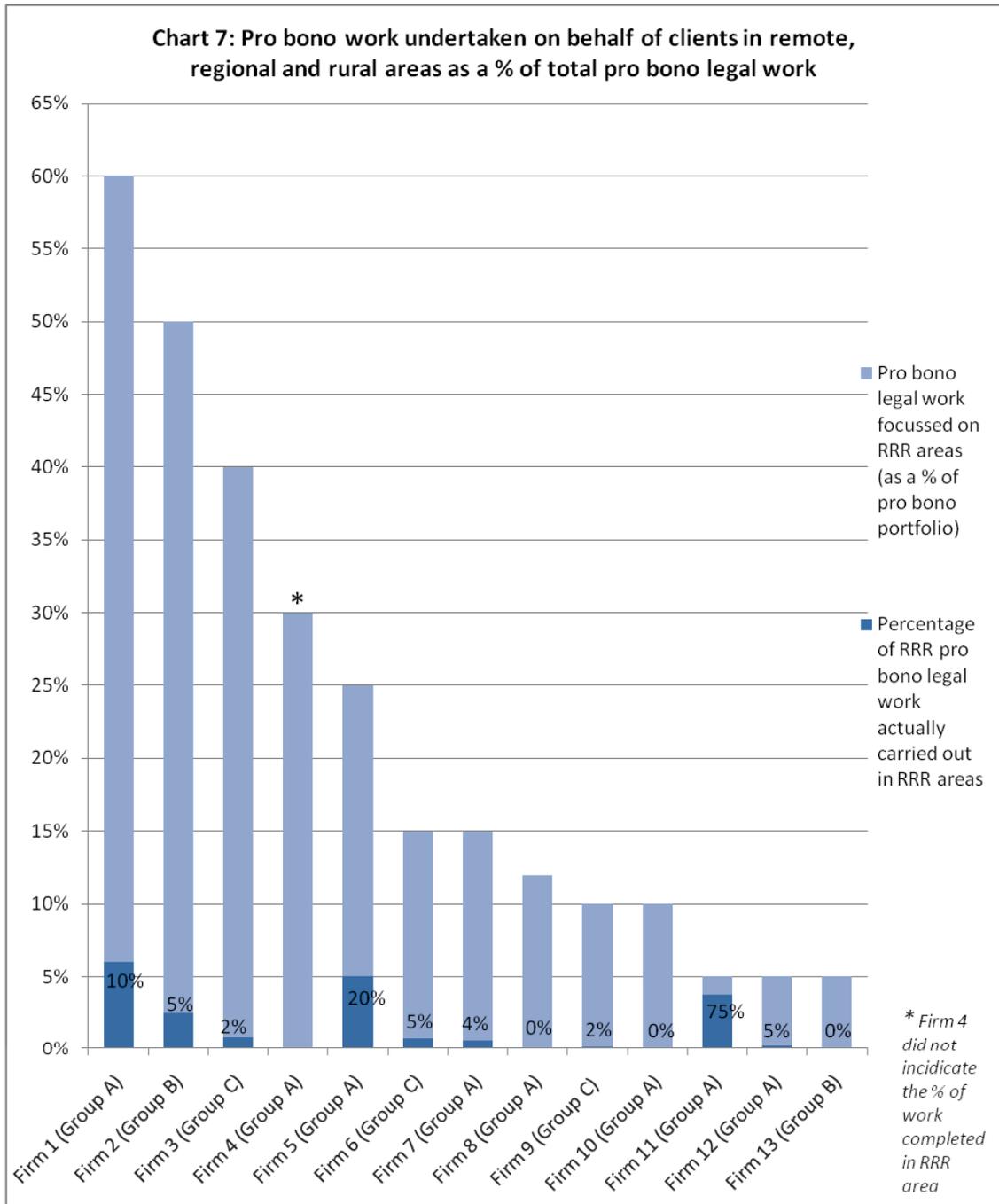


3.6 Regional, rural and remote pro bono work

Thirteen firms (44.8%) indicated that they do some pro bono work focused on clients in regional, rural and remote (“RRR”) areas. The firms that did pro bono work in RRR areas were asked to estimate what percentage of their firm’s overall pro bono work (measured in hours) was focused on clients in those areas. Responses varied greatly from 5% to 60%, with the median being 15%.

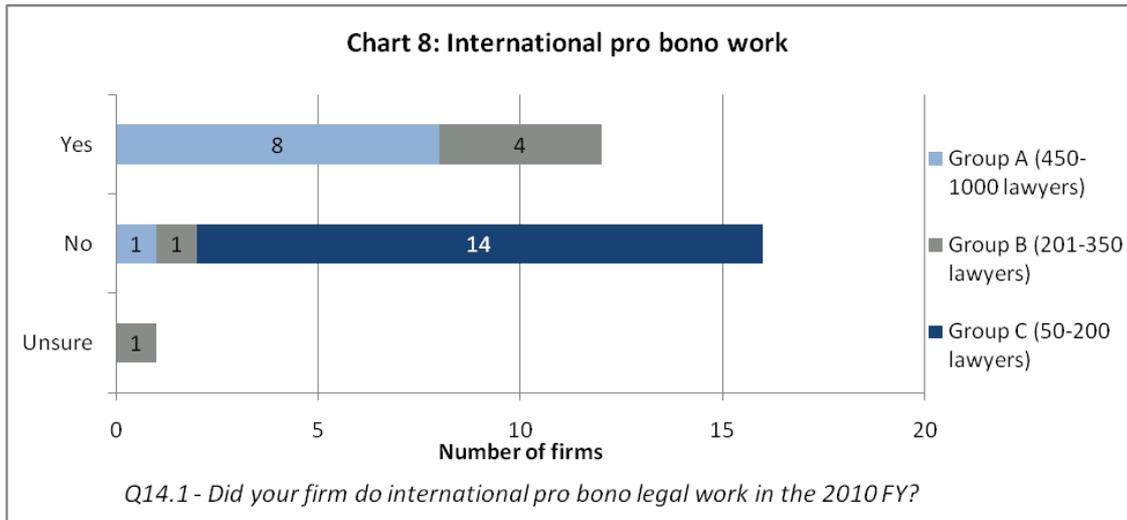


Firms were also asked what percentage of their work that is focused on RRR clients is actually carried out in RRR areas. Twelve out of 13 firms were able to give an estimate, and again answers varied greatly from 0-75%, with the median being 4%.

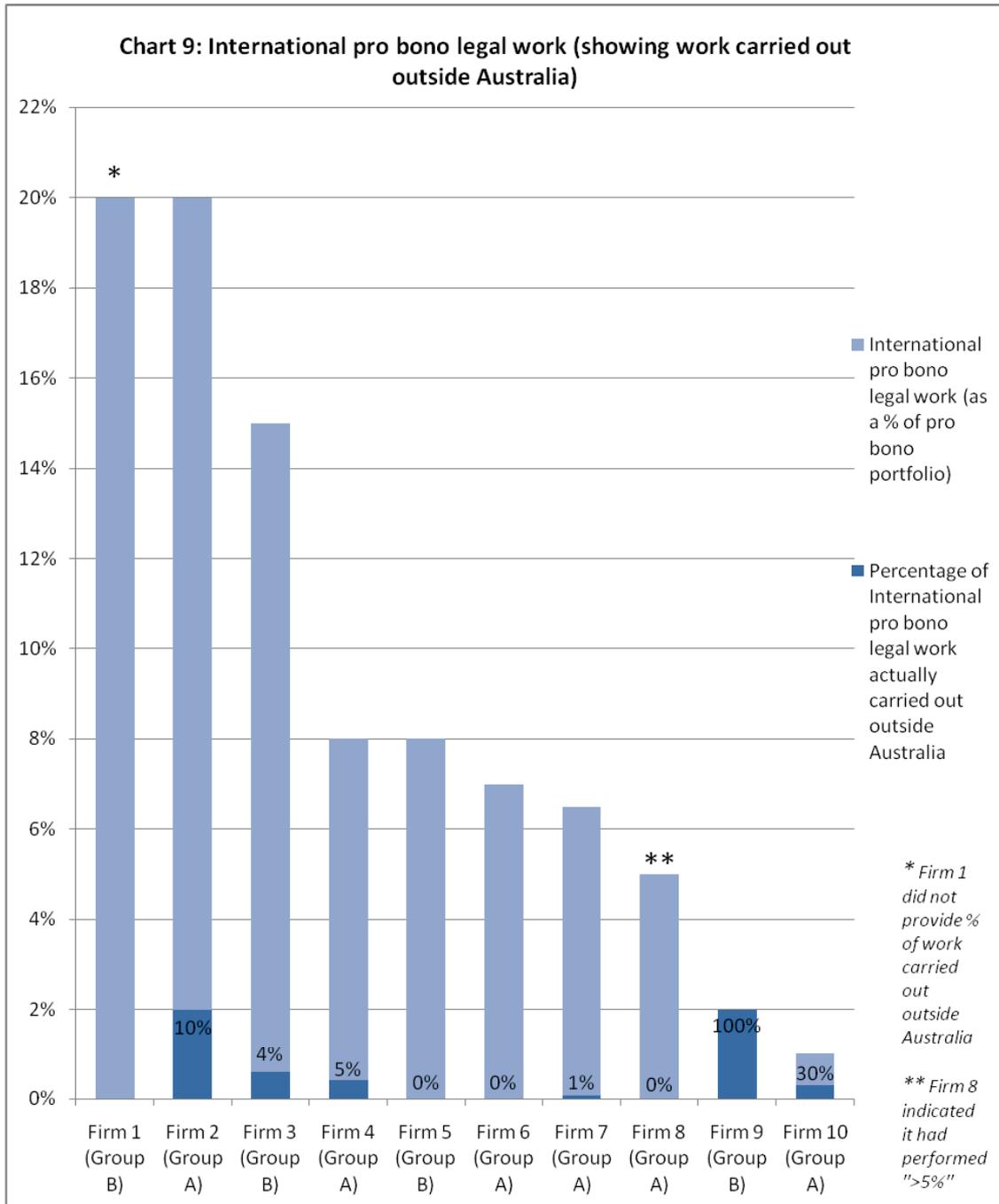


3.7 International pro bono work

Twelve firms (44.4%) reported doing international pro bono work in the 2009-2010 financial year. Ten out of those 12 firms estimated what percentage of their total pro bono work was international pro bono legal work. Answers varied between 1-20%, with the median being 7.5%.



Nine out of the 12 firms were able to estimate what percentage of their international pro bono legal work was actually carried out outside of Australia. Responses varied greatly, with one firm reporting 100% of their international pro bono work (being 2% of the firm's overall pro bono work) being carried out outside of Australia.



Respondents were also asked where international pro bono matters taken on by their firm originate from. Nine out of 12 firms (75%) nominated Australian charities as a source of referral, six firms (50%) nominated international charities, four firms (33%) nominated international referral agencies, and three firms (25%) nominated Australian agencies. Other sources of referral were Australian government contacts, international offices of the firm, existing partner contacts and foreign governments.

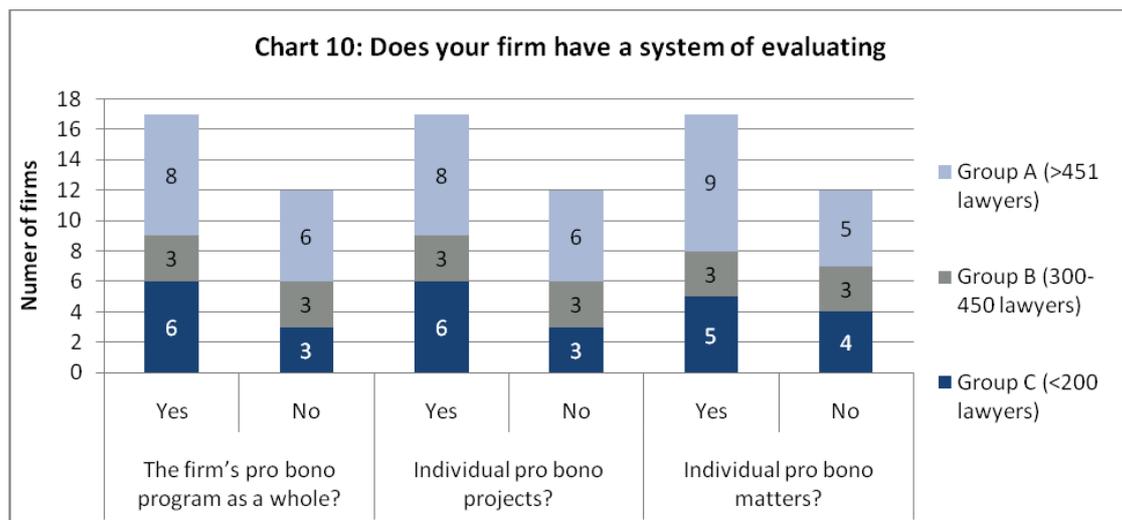
Table 2: Where do new international pro bono matters in your firm originate from?

	Australian charity	International charity	Australian referral agency	International referral agency	Overseas offices	Other
Group A (8 firms)	8 (100%)	6 (75%)	3 (38%)	4 (50%)	5 (63%)	
Group B (4 firms)	1 (25%)	0	0	0	1 (25%)	2 (50%)*

* 1 firm reported origination from Australian government contacts; 1 firm reported origination from existing partner contacts

3.8 Evaluating pro bono work

The survey also sought information on whether firms have a system of evaluating their pro bono programs. Seventeen out of 29 firms (58%) reported both evaluating their pro bono program as a whole and evaluating individual pro bono projects. Eighteen firms (62%) reported evaluating individual pro bono matters.



Firms were also asked to describe how they measure the success of their pro bono program. Responses were as follows:

- Detailed reports are considered by the governing board of the firm each 3 months (Group A)
- We have a number of measures of success including seeking feedback from clients, referrers and lawyers for qualitative review and considering number of hours, hours per lawyer, number of matters, adoption of our recommendations in law reform, attendees at CLEs etc. The measure of success depends on the project. Overall we do not consider

we can properly measure the impact of the program other than on the individual clients and the firms support for pro bono. (Group A)

- The firm seeks feedback from some pro bono service recipients, and receives regular feedback from its major referral organisations. (Group C)
- Informal discussions with lawyers, clients and referral providers. (Group C)
- We set clear measurable objectives every 3 years and measure our performance against those objectives. (Group A)
- Self review, feedback, regular pro bono committee meetings (Group C)
- Feedback from recipients (Group C)
- There is a set of criteria which includes relevance of matters to our current referrers and media engagement. (Group C)
- Developing KPIs (Group A)
- Primary measure - staff feedback about the relevance of the program Close connection with PILCH makes it more likely that our services will be responsive to identified needs. (Group A)
- Individual matters and projects are reviewed by the National Pro Bono Manager, including discussions with the client and the lawyer/s, to assess success. There is quarterly reporting about significant projects and other activities relating to the program, and a review of results, including hours achieved and client feedback, by the senior management group at the end of each financial year. (Group B)
- Informal feedback from lawyers, clients and measuring statistics as to hours spent and outcomes/impact where known. No formal KPI's. (Group C)
- Feedback - clients and staff - Year by year analysis (Group C)
- Our evaluation processes are qualitative for the most part. While we track numbers of clients & hours, we give more emphasis to the outcomes achieved on a client's behalf as reflected both by objective outcomes (successful ruling/revocation/successful completion of transaction) and feedback provided from and on behalf of clients about the difference to them made by having legal representation. We also consult with staff regularly although largely ad hoc about their experiences of doing pro bono work. (Group A)
- We report practice group and whole firm performance against the target along with billable targets in our monthly production reports and report to the board on quantitative and qualitative measures bi-annually. We measure referral rates and sources, participation rates and budgets internally; seek feedback from

stakeholders, particularly program partners and lawyers, on an ad hoc basis throughout the year and are beginning to implement a system for recording feedback from clients and participating lawyers at the conclusion of each matter. We review our processes, policies and discuss emerging areas of need in pro bono committee meetings every 2 months and are about to roll out a firm-wide survey of staff interests and engagement in pro bono; however our impact on legal needs is difficult to gauge and we have not yet identified KPIs for each program (Group B)

- The program has recently been in a state of flux. I am hoping to inject more structure into the program including seeking further feedback from our referral providers and recipients. I am implementing a yearly strategic review and the feedback will be part of this process. (Group B)
- In 2005 we agreed to work with a social scientist /academic who had been recommended to us by a leading NGO as having good experience in measuring the social impact of its projects. Our concern at the time was that we had little in place to measure the impact of our pro bono and community projects, our projects were generally described by reference to process and what we were doing, rather than outcomes.

We worked with him over a year to develop a simple logic model, a tool to be used in the planning design and management of our pro bono (and community) program and projects. The logic model required us to clearly identify as a starting point our objectives and the results that we hoped to achieve.

Logic models focus on the assumed causal relationships within a project ie - assumptions that particular inputs will allow particular activities to be carried out, which in turn will result in particular outcomes, and eventually in particular impacts on the pro bono target group (eg charities, young people etc). The model required us to identify an overall program goal that described the overall long term rationale for program.

Then the objectives which state more precisely what the program is expected to achieve (*eg community organisations will receive sound and comprehensive legal support and advice for their projects*). Inputs describe the tasks that we need to carry out to implement the program (*eg annual pro bono spend includes minimum 30% in assistance to community organisations in each centre*).

Verifiable indicators describe how the program objectives/outputs are measured and how and when the data will be collected. They provide the monitoring and evaluation framework for the program (*eg key informant interviews with samples of community organisations and internal admin record*). Wherever possible indicators are chosen from those presently available from databases used in the internal management of the program. Data/evaluation for every component of the framework will not necessarily occur annually but according to need and available resources. We view the framework as a 'dynamic' document that is designed to evolve over time. It is updated annually to include specific or new objectives for each year's action plan. (Group A)

- The firm does not actively seek feedback although often received feedback from clients (Group B)

- Regular reports to the firm's executive committee of partners. On a matter/project level, we follow up with clients for feedback but there is no formal review process. We receive feedback from QPILCH and other CLCs. (Group C)
- By reference to achievement of budget and aspirational target. (Group A)
- By assessing the number of positive outcomes reached with regard to matters taken on and through discussion with volunteer lawyers about whether we are achieving anything through the services provided. (Group C)

National Pro Bono Resource Centre
20 August 2010