



– National Survey –

**Report on the pro bono legal work of individual
Australian Barristers**

November 2008

Appendix I

State analysis – Victoria

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Acknowledgements

Sincere thanks are due to:

- * Social policy and research company Urbis JHD.
- * Online research specialists, yellowSquares, www.yellowsquares.com.au/
- * All State and Territory Bar Associations for their support
- * Staff at NPBRC especially, Maria Twomey, John Corker, Lynne Spender, Olivia Wellsley-Cole and intern Markos Farag

Background

The National Pro Bono Resource Centre (**the Centre**) is an independent, not-for-profit organisation established to support and promote pro bono legal services in Australia. It was set up following the report and recommendations of the National Pro Bono Task Force (2001) and commenced operation in August 2002. It is funded by the Attorney-General Departments of the Commonwealth, States and Territories and is based at the Faculty of Law at the University of New South Wales.

Aware of the paucity of reliable data relating to pro bono practice in Australia, the Centre has for some time been collecting and publishing materials in order to document pro bono service delivery across the States and Territories. However, as little information is currently available about how much pro bono is undertaken and delivered, by whom and for whom, the Centre decided to undertake its own series of surveys. By conducting separate national surveys of individual solicitors, barristers and law firms, the Centre aimed to establish its own information base about Australian pro bono practice, both to provide an accurate picture of current pro bono practice and to establish a yardstick by which to measure and assess future developments.

Definition of pro bono legal work

As the Centre stated in *Mapping Pro Bono in Australia* (May 2007), there is no universally accepted definition of what is meant by pro bono legal work. The definition adopted for the survey was based closely on the Law Council of Australia's definition of 1992¹ but clarified some 'grey areas' to facilitate a 'like with like' comparison of responses from those who might otherwise have differing views about the definition of pro bono.

Some of these areas included whether time spent sitting on the boards of community organisations, or legal assistance given to family or friends without reference to whether

¹ See <http://www.lawcouncil.asn.au/policy/2106700371.html>

he/she can afford to pay for that assistance, should be considered pro bono legal work. Community service work, which more broadly could be said to be 'pro bono', (i.e. for the public good), was specifically excluded as the Centre was seeking information about legal work and assistance.

There is a major distinction between the ABS methodology used in its 2001-2002 survey of the legal profession and the methodology used by the Centre in relation to the definition of pro bono legal work.

The Centre's definition of pro bono legal work is time spent by lawyers:

Giving legal assistance for free or at a substantially reduced fee to:

- Low income or disadvantaged individuals who do not qualify for legal aid; or
- Not-for-profit organisations which work on behalf of low-income or disadvantaged members of the community or for the public good;
- Doing law reform or policy work on issues affecting low income or disadvantaged members of the community or public interest matters; and
- On secondment at a community organisation or at a referral service provider.

The following is not considered pro bono legal work for the purposes of this report:

Giving legal assistance:

- To any person for free or at a reduced fee without reference to whether they can afford to pay for that legal assistance or whether the case raises an issue of public interest (e.g. legal assistance to family and friends);
- Free first consultations with clients who are otherwise billed at a firm's normal rates;
- Legal assistance performed under a grant from Legal Aid;
- Contingency fee arrangements or other speculative work which is undertaken with a commercial expectation of a fee;

- The sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; and
- Time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

This definition has been adopted by the Commonwealth of Australia under the Legal Services directions which requires all agencies to take into account a law firm's *pro bono* contribution when purchasing legal services.²

Methodology

The overall design of the first round of surveys was developed in consultation with a qualitative research specialist at Urbis JHD, an independent social policy and research company, and with Associate Professor Belinda Carpenter, School of Law, Queensland University of Technology (QUT). The survey questionnaire was developed by the Centre to ascertain who had done pro bono work in the previous 12 months - for whom, what sort of work and how much, but also to elicit information about practice issues such as sources of work, barriers to delivering pro bono legal services and areas for possible improvement. The draft survey was then sent to the Australian Bar Association, which, subject to the removal of one question, endorsed the survey. Finally, the survey was sent to online research specialists, yellowSquares, for conversion to a web-based survey.

Individual barristers were approached through their Bar Associations so that the survey might access the most number of barristers with practising certificates across Australia. However, membership of a Bar Association is not compulsory in all States and Territories, which meant that in some States it was not possible to access 100% of the practitioner community via the Bar Associations.

² See <http://www.theaustralian.news.com.au/story/0,25197,24367908-17044,00.html>

Efforts were made to encourage Bar Association members to complete the Survey. Multiple follow-up emails, which included a web link to the survey, were sent to members from their Bar Associations. A prize was offered in each State and Territory to the barrister who suggested the most imaginative collective noun for a group of pro bono barristers. In addition, the survey was promoted on the Centre's website.

Access to the surveys was provided to the Centre by a separate web-link for each State and Territory. This link was promoted by each of the Bar Associations, as well as being listed on the Centre's own website. On-line software from yellowSquares was used to monitor progress of the respondents by showing frequency charts for each question of the survey. When the Survey was completed in a specific state, the relevant link was closed off. The data was downloaded by yellowSquares to the Centre as a spreadsheet and analysed using Excel, and processed for presentation as tables and charts.

Survey details

154 barristers from Victoria responded to the survey, representing approximately 9% of the State's barristers. Overall, 355 barrister responded to the survey, which represents 6.8% of the total profession³.

Due to the similar response rates in both Victoria and Queensland, this appendix compares Victorian data against the overall national data but also against Queensland data. The Appendix presents responses to all survey questions in charts and graphs, as well as key findings and issues that emerged from the overall responses of the 154 individual barristers in Victoria (8.8% of all Victorian barristers⁴) who completed the survey. Of these 136 had undertaken pro bono work in the previous 12 months. The results give a picture of pro bono work done by barristers in Victoria.

³ Number of barristers in Australia based on the Law Council of Australia's (LCA) estimate of Constituent Bodies membership numbers in January 2008 – communications with the LCA, September 2008.

⁴ Ibid.

The survey asked questions about:

- Respondent barristers (state and geographic location, age, gender, years of practice, level of seniority);
- Barristers who do pro bono;
- How much pro bono work is done (including a breakdown by type of pro bono assistance and whether such work is increasing);
- Areas of usual practice and areas of pro bono practice;
- Type of pro bono work (eg. advice, litigation, law reform work);
- Basis on which work undertaken (free, reduced fee);
- Volunteering;
- Recipients of pro bono services;
- Sources of referrals;
- Record keeping (barristers policies and attitudes);
- Legal aid work; and
- Barriers to pro bono legal work.

As well, respondents were asked more generally about their attitudes towards pro bono work, Legal Aid and aspirational targets. At the end of the survey, respondents were invited to make additional comments about their pro bono work. Some of those comments have been compiled and included in **Part 2: Issues**.

Key findings

- 88% of respondents in Victoria had spent time doing or coordinating the provision of pro bono legal work, compared with 87% of barristers nationally and 88% in Queensland.

- 32% of Victorian respondents had done more pro bono work in the past 12 months than in the previous 12 months. Twenty-six per cent reported no change in the amount of pro bono legal work and 22% had done fewer hours of pro bono legal work in the past 12 months than in the previous 12 months. On a national level, 38% of respondents had done more pro bono work, 30% reported no change and 18% reported doing fewer hours of pro bono work in the last 12 months than in the previous 12 months. In Queensland, 34% of respondents reported doing more pro bono, 38% of respondents reported no change in the amount of pro bono and only 10% reported doing fewer hours. It is worth noting though, that only 40% of barristers reported keeping records of their pro bono work, thus many of the responses are recollected rather than recorded.
- Victorian barristers reported doing more pro bono work than their colleagues nationally. The mean number of hours of pro bono legal work in the past 12 months was 51-70, compared with 41-50 hours nationally. Barristers from Queensland performed on par with their Victorian colleagues, with a mean of 51-70 hours per year. Thirty Victorian respondents (19%) reported doing more than 90 hours, and a further 23 respondents (15%) reported doing between 71-90 hours of pro bono legal work.
- The source of new pro bono matters most commonly nominated by respondents was referral from bar legal assistance scheme (49%), followed by referral from pro bono clearing house (48%) and direct requests from solicitors (44%). Compared with Queensland, the data seems to indicate the efficiency of a formal Bar Association legal assistance scheme and the Public Interest Law Clearing House (PILCH) in Victoria. Only 21% of Queensland respondents nominated referrals from the bar legal assistance scheme⁵, and 20% nominated referrals from

⁵ The Queensland Bar Association does not have a formal legal assistance scheme, although it does provide pro bono referrals to its members through inquiries for assistance made to the Chief Executive of the Bar Association.

a pro bono clearing house, as sources for new pro bono matters. These were nominated as the sixth and seventh most common sources for new pro bono matters, respectively. The sources of new pro bono matters most commonly nominated by Queensland respondents were referral from a community organisation (50%), direct requests from family or friends (49%), and direct requests from solicitors (41%). Nationally, the most commonly nominated sources of referrals were direct requests from solicitors (45%), referrals from community organisations (37%) and direct requests from family and friends (36%).

- The areas of law in which the greatest percentage of barristers had provided pro bono legal services in the last 12 months were administrative/constitutional law (27%), litigation (20%), criminal law (19%), and immigration (16%). This differs greatly from the respondents in Queensland, where the greatest percentage of respondents had provided pro bono legal services in criminal law (39%), family law (26%), administrative/constitutional law (21%) and litigation (15%). Nationally, the areas of law in which the greatest number of respondents had provided pro bono legal services were litigation (58%); company/commercial law (49%), administrative/constitutional law (43%) and criminal law (36%). See full list p. 19, Table 8 and Chart 7.
- Seventy-two percent of all respondents had provided pro bono legal work in the form of verbal advice, followed by representation before a court or tribunal (65%) and drafting of documents (61%). Responses nationally, and from Queensland showed similar results.
- Seventy-seven percent of respondents undertook pro bono legal work for individuals, whilst 30 % undertook pro bono legal work for community legal centres (CLCs) and a further 33% for other not-for-profits. The responses in Queensland differed only slightly, with more respondents undertaking pro bono legal work for CLCs (36%) than for other not-for-profits (35%). Nationally, 74%

of barristers reported undertaking pro bono work for individuals, 31% for CLCs and 32% for other not-for-profits.

- The main obstacle to doing pro bono legal work was ‘lack of time’ (65%), followed by ‘lack of a solicitor to assist with the matter’ (37%) and ‘insufficient expertise in relevant areas of the law’ (21%). This is in keeping with the responses nationally and from Queensland, although ‘the cost of disbursements involved’ was the third most nominated barrier (by 19%) to pro bono by Queensland barristers.
- Ninety-two percent of respondents agreed that barristers should do pro bono work, which is higher than the number of respondents in the survey who had done pro bono legal work in the past 12 months. The top two factors nominated as reasons for doing pro bono legal work were helping the socially disadvantaged and marginalised (70%) and a sense of professional responsibility (60%). These figures are consistent with responses both nationally and from Queensland.
- Only 15% of respondents were aware of the National Pro Bono Aspirational Target (‘the Target’) of 35 hours per lawyer per year, compared with 13% of respondents in Queensland being aware of the Target and 17% of respondents nationally.
- Thirty-four percent of respondents had done Legal Aid work in the past 12 months, with the mean percentage of a respondent’s time dedicated to legally aided clients being 6-10%. A markedly higher number of respondents in Queensland, 52%, had done Legal Aid work in the past 12 months, with the mean percentage of time dedicated to legally aided clients being also significantly higher at 21-50%. Nationally, 43% of respondents had done Legal Aid work in the past 12 months, with the mean percentage of time dedicated to legally aided clients being 11-20%.

- Only 19% of Victorian respondents had volunteered legal assistance at a community organisation, compared with a striking 41% in Queensland and 28% nationally.

Part 1: Survey results

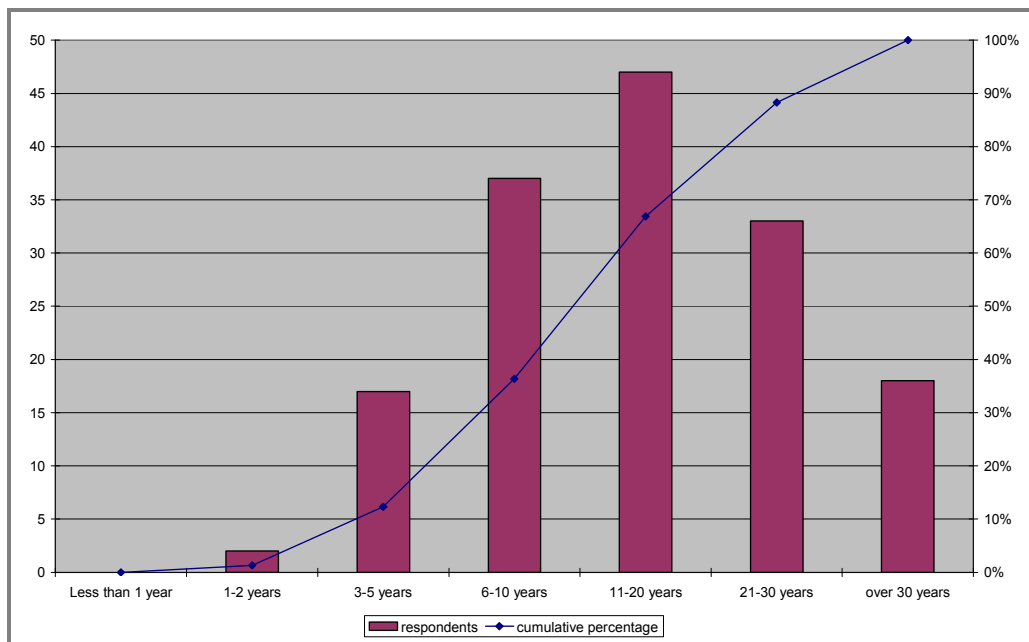
Section 1-About you

How long have you been admitted to practice?

Table 1 - Seniority

Seniority	Total	% ⁶
Less than 1 year	0	0%
1-2 years	2	1%
3-5 years	17	12%
6-10 years	37	36%
11-20 years	47	67%
21-30 years	33	88%
over 30 years	18	100%
Total	154	

Chart 1 - Seniority



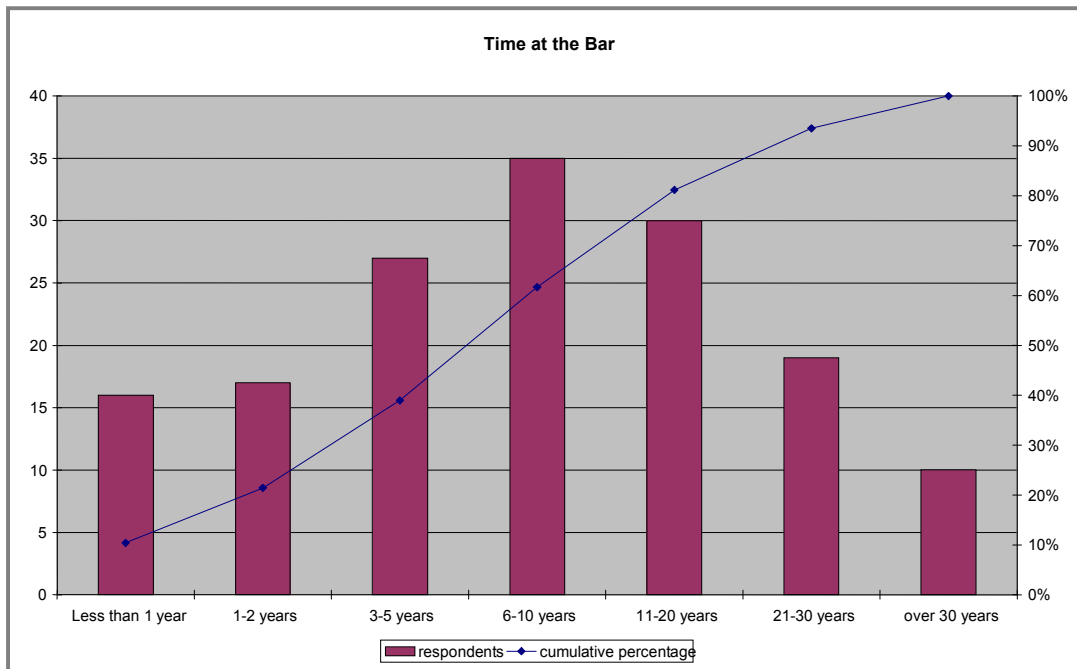
⁶ Cumulative percentage

How long have you been at the bar?

Table 2 – Length of time at the bar

Time at Bar	Total	% ⁷
Less than 1 year	16	10%
1-2 years	17	21%
3-5 years	27	39%
6-10 years	35	62%
11-20 years	30	81%
21-30 years	19	94%
over 30 years	10	100%
Total	154	

Chart 2 – Length of time at the bar



⁷ Cumulative percentage

How old are you?

Table 3 – Age of respondents

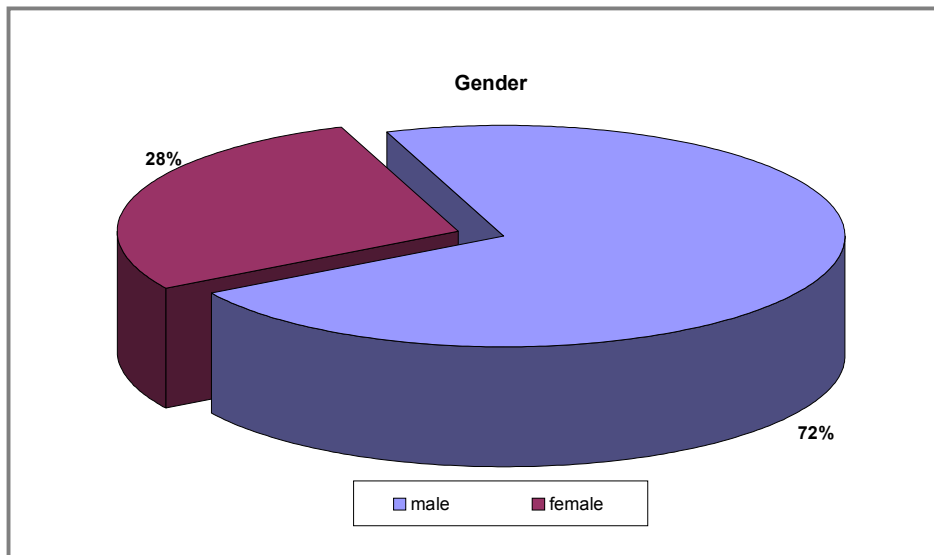
Age	Total	% ⁸
under 26	0	0%
26-30 years	8	5%
31-40	56	42%
41-50	46	71%
51-60	39	97%
61 or over	5	100%
Total	154	

Male of Female?

Table 4 – Gender of respondents

Age	Total	%
male	111	72%
female	43	28%
Total	154	100%

Chart 3 – Gender of respondents



⁸ Cumulative percentage

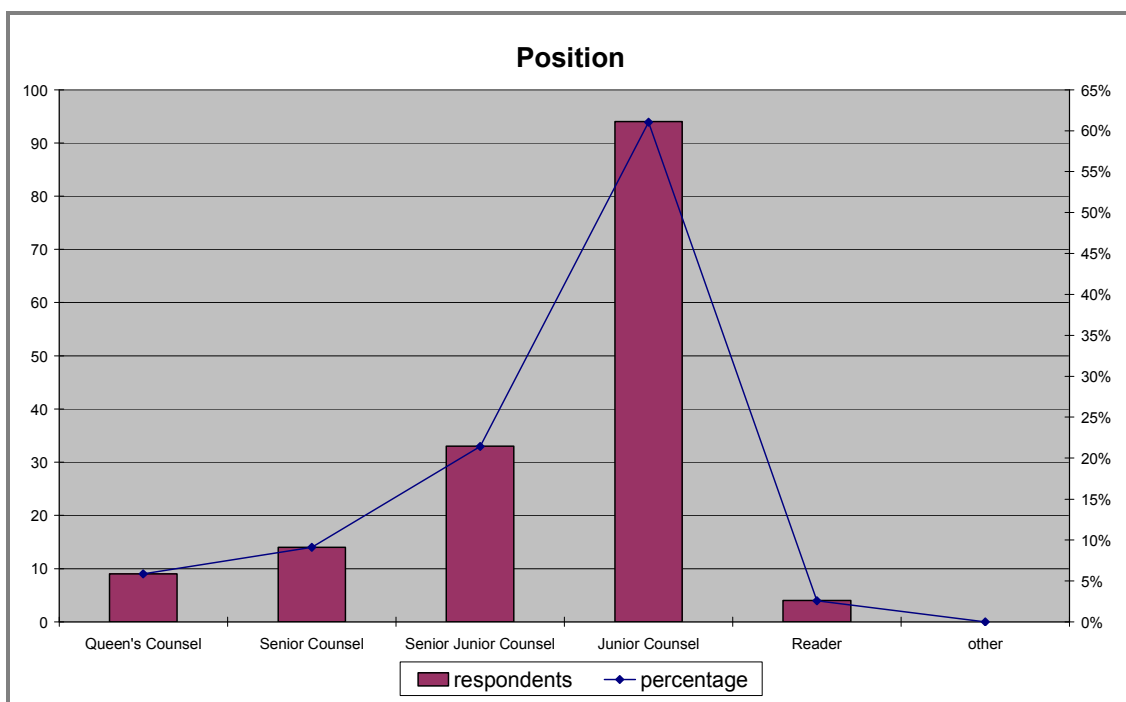
Section 2 - About your job

What is your position?

Table 5 – Position

Description	Total	%
Queen's Counsel	9	6%
Senior Counsel	14	9%
Senior Junior Counsel	33	21%
Junior Counsel	94	61%
Reader	4	3%
Other	0	0%
Total	154	100%

Chart 4 – Position

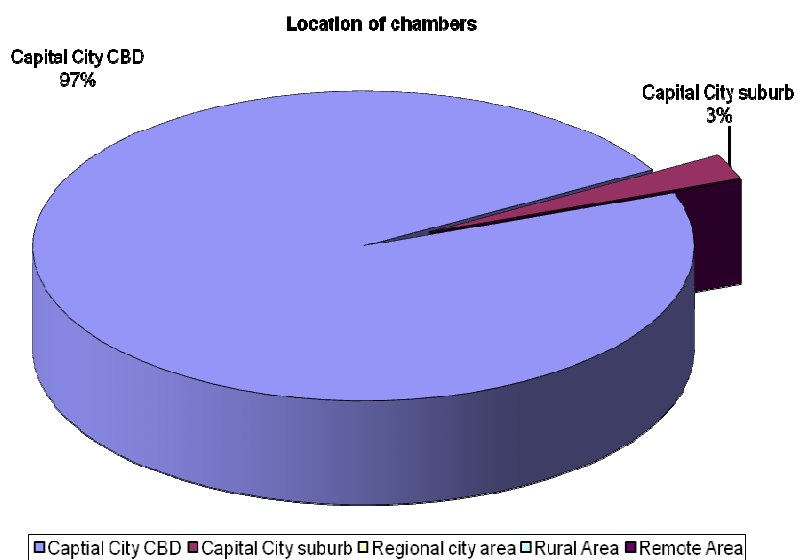


Where are your chambers located?

Table 6 – Location of Chambers

Description	Total	%
Capital City CBD	150	97%
Capital City suburb	4	3%
Regional city area	0	0%
Rural Area	0	0%
Remote Area	0	0%
Total	154	100%

Chart 5 – Location of Chambers



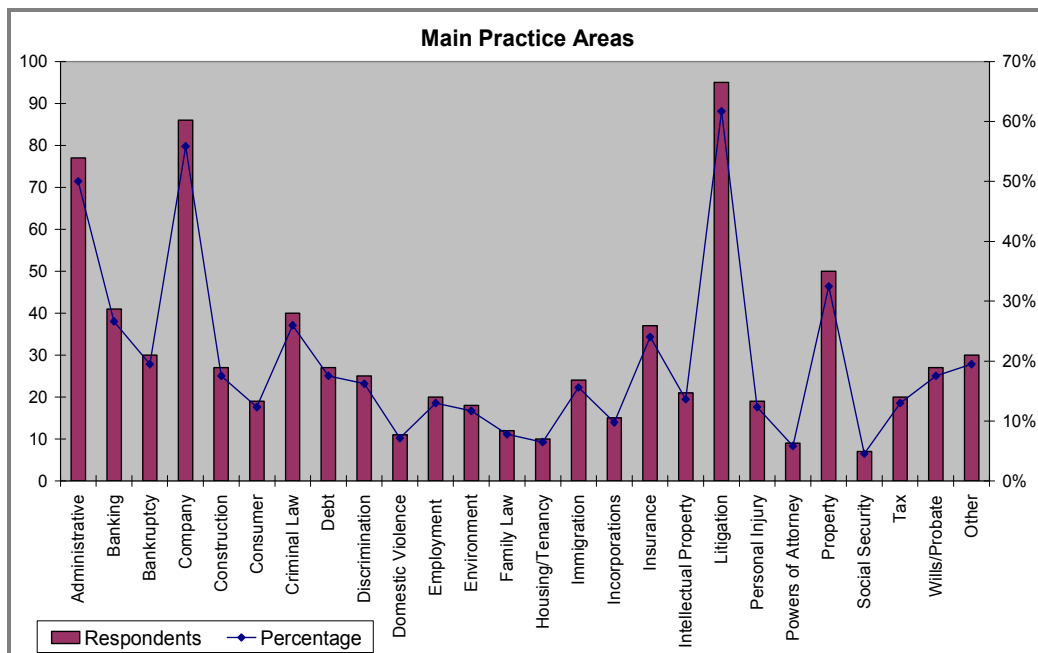
In which area(s) do you practise?

Table 7 – Main practice areas

Area of law	No. of respondents	%
Administrative	77	50%
Banking	41	27%
Bankruptcy	30	19%
Company	86	56%
Construction	27	18%
Consumer	19	12%
Criminal Law	40	26%
Debt	27	18%
Discrimination	25	16%
Domestic Violence	11	7%
Employment	20	13%
Environment	18	12%
Family Law	12	8%

Area of law	No. of respondents	%
Housing/Tenancy	10	6%
Immigration	24	16%
Incorporations	15	10%
Insurance	37	24%
Intellectual Property	21	14%
Litigation	95	62%
Personal Injury	19	12%
Powers of Attorney	9	6%
Property	50	32%
Social Security	7	5%
Tax	20	13%
Wills/Probate	27	18%
Other	30	19%

Chart 6 - Main practice areas



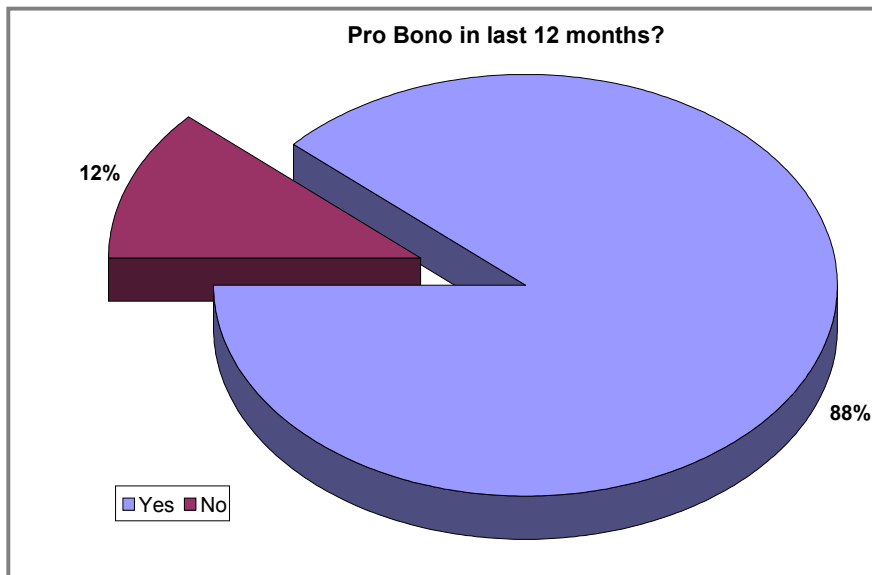
Section 3 - Your participation

In the past 12 months have you spent time doing or coordinating the provision of pro bono legal work?

Table 7 – Pro bono in last 12 months

Description	Total	%
Yes	136	88%
No	18	12%
Grand Total	154	100%

Chart 6 – Pro bono in last 12 months



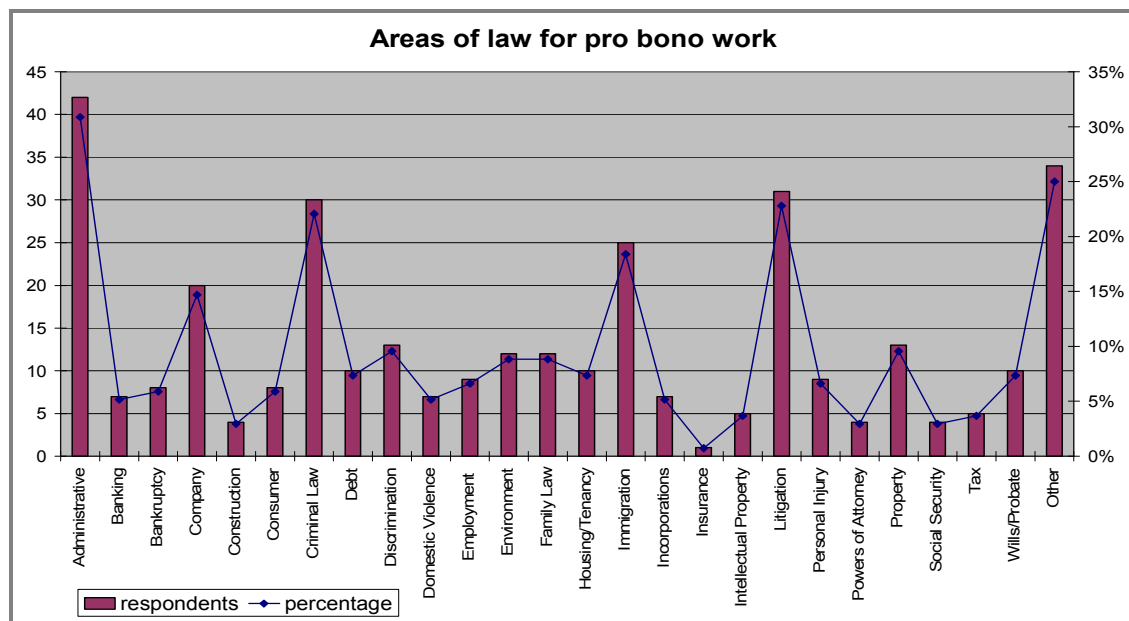
In which of the following areas have you done pro bono legal work in the last 12 months?

Table 8 – Practice areas for pro bono

Area of law	No. of respondents	%
Administrative	42	31%
Banking	7	5%
Bankruptcy	8	6%
Company	20	15%
Construction	4	3%
Consumer	8	6%
Criminal Law	30	22%
Debt	10	7%
Discrimination	13	10%
Domestic Violence	7	5%
Employment	9	7%
Environment	12	9%
Family Law	12	9%

Area of law	No. of respondents	%
Housing/Tenancy	10	7%
Immigration	25	18%
Incorporations	7	5%
Insurance	1	1%
Intellectual Property	5	4%
Litigation	31	23%
Personal Injury	9	7%
Powers of Attorney	4	3%
Property	13	10%
Social Security	4	3%
Tax	5	4%
Wills/Probate	10	7%
Other	34	25%

Chart 7 – Practice areas for pro bono

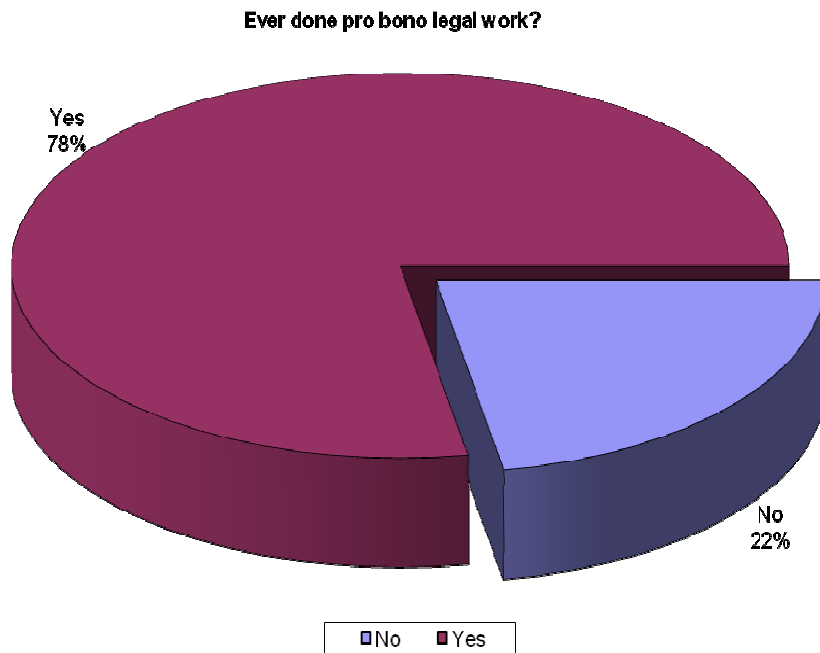


Have you ever done pro bono legal work?

Table 9 – Pro bono outside the last 12 months

Description	Response	%
No never	4	22%
Yes	14	78%
Total	18	100%

Chart 8 – Pro bono outside the last 12 months



Section 4 – Types of pro bono legal work

Which of the following pro bono work have you done in the past 12 months?

Table 10 – Type of pro bono

Description	Total	%
Verbal advice	111	82%
Representation before a court or a tribunal	100	74%
Drafting of documents	94	69%
Written advice	78	57%
Negotiation	48	35%
Mediation	25	18%
Other	11	8%

For whom was the pro bono legal work done?

Table 11 – Recipients of pro bono

Description	Total	%
Individuals	120	88%
Community legal organisations	47	35%
Other not for profit org.	53	39%
Other	13	10%

Chart 9 – Recipients of pro bono

For whom was the pro bono work done?

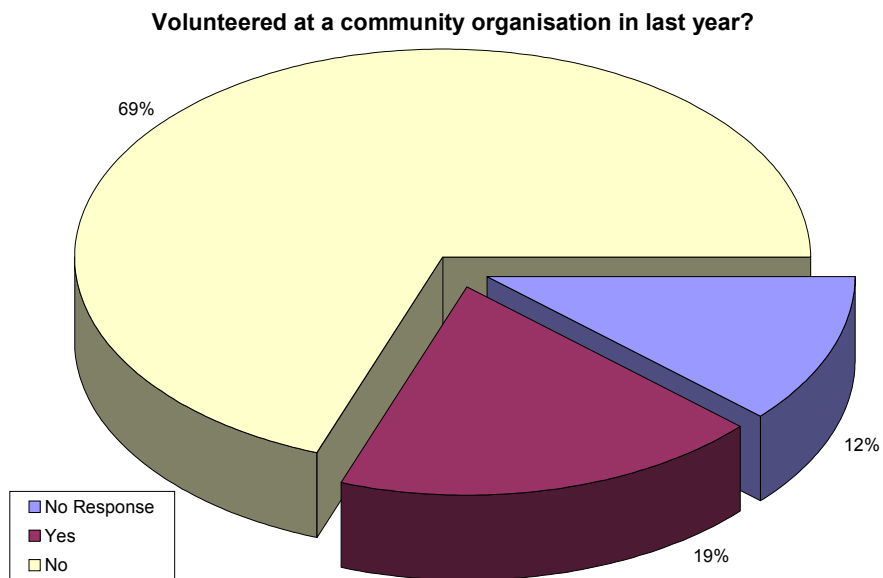


Have you volunteered legal assistance at a community organisation in past 12 months?

Table 12 – Volunteering

Description	Total	%
Yes	29	19%
No	107	69%
No Response	18	12%
Total	154	100%

Chart 10 - Volunteering

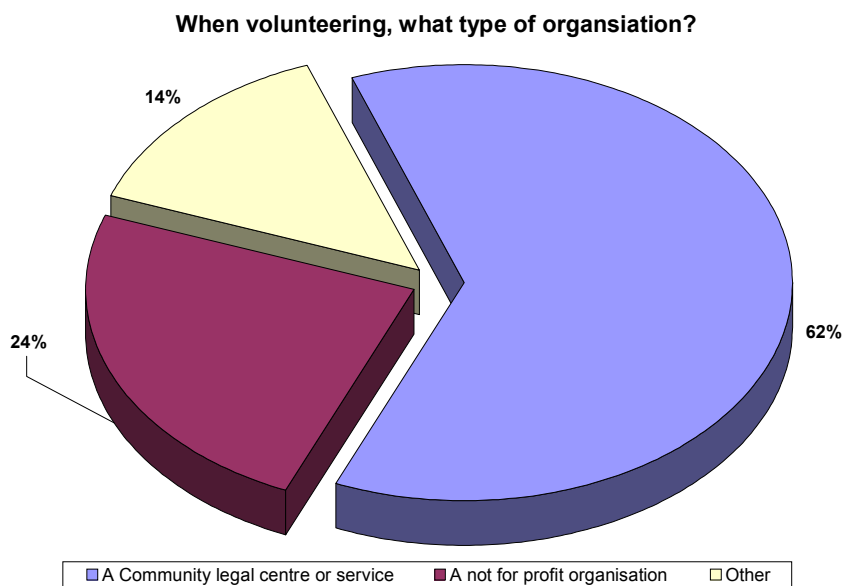


When volunteering legal assistance at a community organisation what type of organisation was it?

Table 13 – Type of community organisation

Description	Total	%
A Community legal centre or service	18	12%
A not for profit organisation	7	5%
Other	4	3%
Total	29	

Chart 11 – Type of community organisation



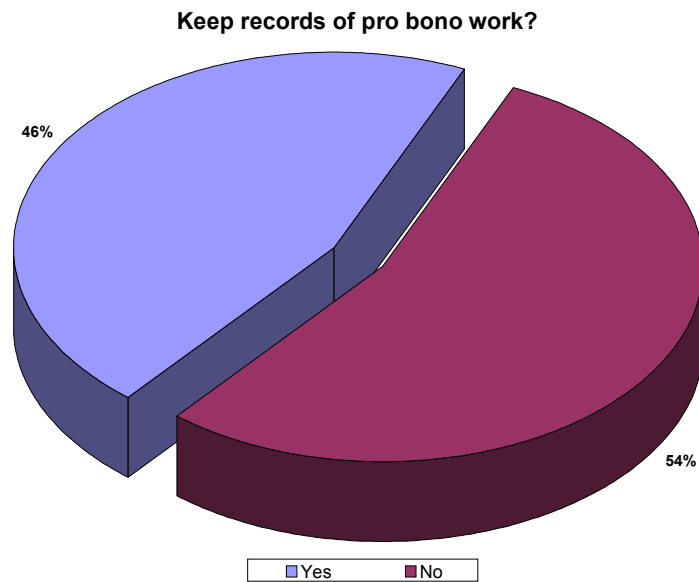
Section 5 – Practice issues

Do you keep any record of the pro bono legal work you are doing?

Table 14 – Record keeping

Description	Total
Yes	62
No	74
Total	136

Chart 12 – Record keeping

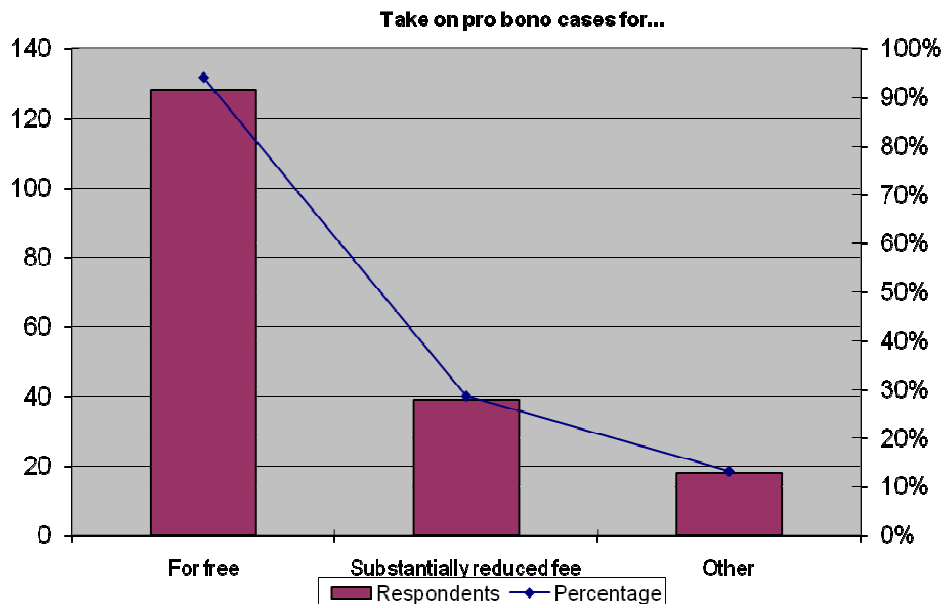


When you take on cases on a pro bono basis, do you take them on..?

Table 15 – Take on pro bono cases for...

Description	Total	%
For free	128	94%
Substantially reduced fee	39	29%
Other	18	13%

Chart 13 – Take on pro bono cases for...



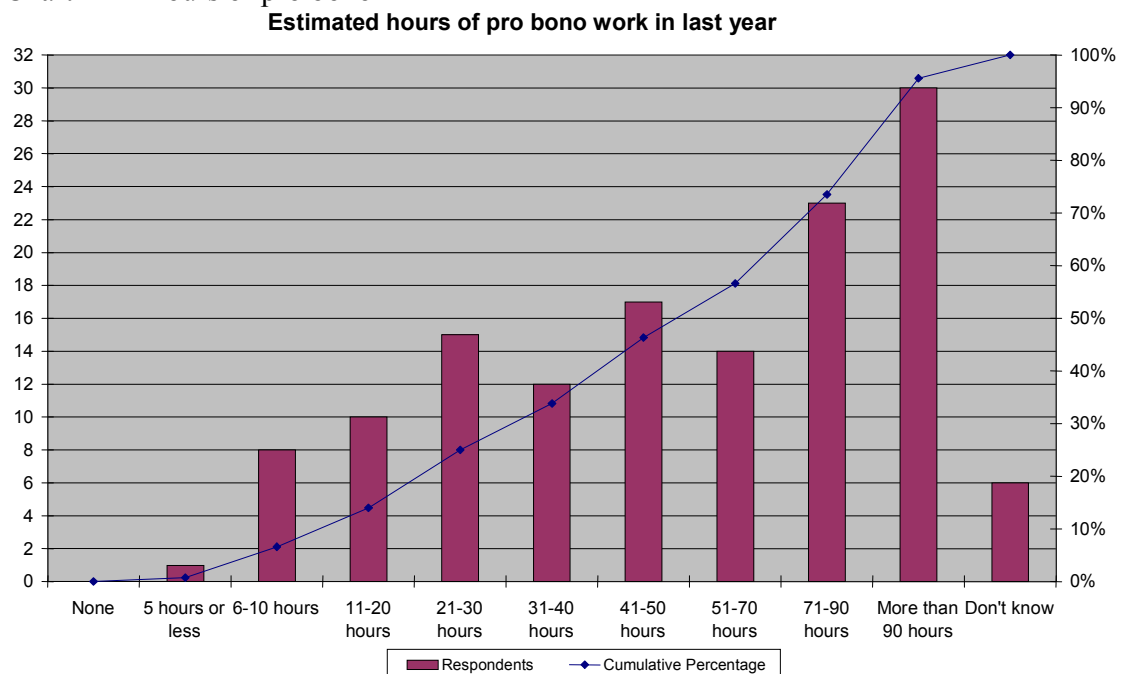
Section 6 – Amount of pro bono work

Can you estimate how many hours of pro bono legal work you have completed in the last 12 months?

Table 16 – Hours of pro bono

Description	total	%	% ⁹
None	0	0%	0%
5 hours or less	1	1%	1%
6-10 hours	8	6%	7%
11-20 hours	10	7%	14%
21-30 hours	15	11%	25%
31-40 hours	12	9%	34%
41-50 hours	17	13%	46%
51-70 hours	14	10%	57%
71-90 hours	23	17%	74%
More than 90 hours	30	22%	96%
Don't know	6	4%	100%
Total	136	100%	

Chart 14 – Hours of pro bono



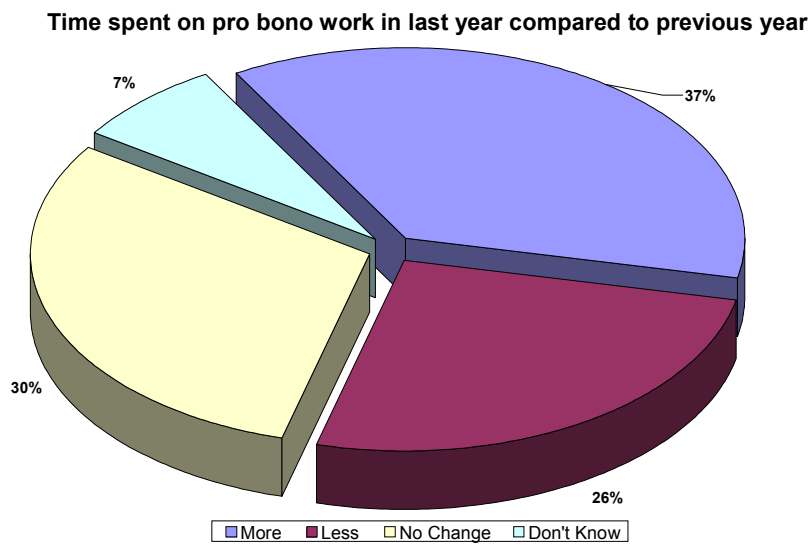
⁹ Cumulative percentage

Have you spent more or less time on pro bono work in last year, than in the previous 12 months?

Table 17 – More or less pro bono

Description	Total	%
More	50	37%
Less	35	26%
No Change	41	30%
Don't Know	10	7%
Total	136	100%

Chart 15 – More or less pro bono



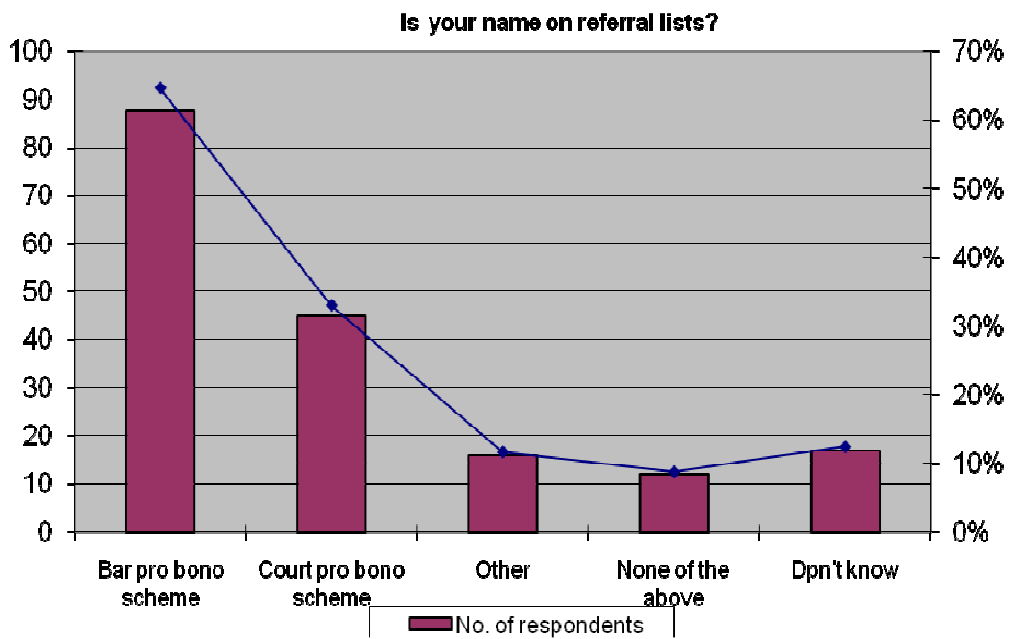
Section 7 – Sources of pro bono work

Is your name on referral lists kept by any of the following?

Table 18 – Name on referral lists

Description	Total	%
Clearing house	77	57%
Bar pro bono scheme	88	65%
Court pro bono scheme	45	33%
Other	16	12%
None of the above	12	9%
Don't know	17	13%

Chart 16 – Name on referral lists

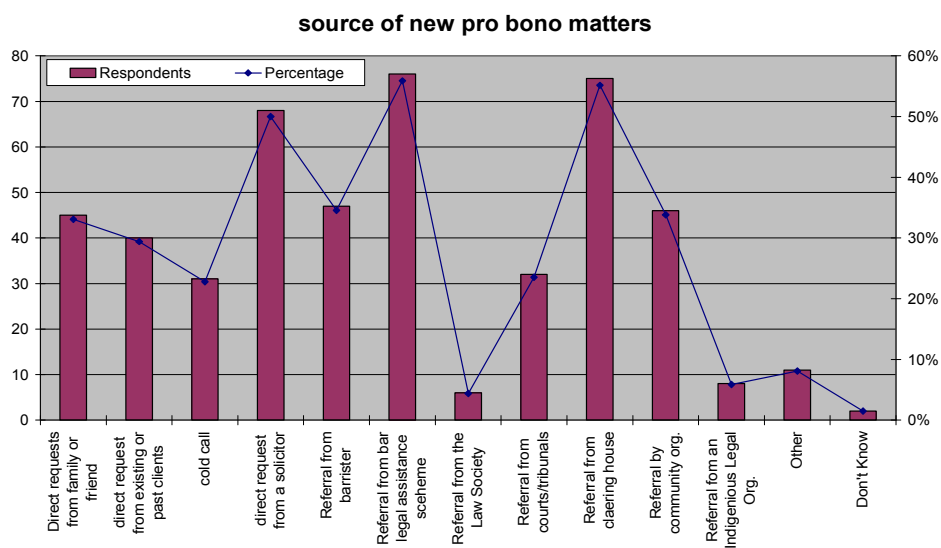


What is the source of new pro bono matters?

Table 19 – Source of new pro bono matters

Description	Total	%
Direct requests from family or friend	45	33%
Direct request from existing or past clients	40	29%
Cold call	31	23%
Direct request from a solicitor	68	50%
Referral from barrister	47	35%
Referral from bar legal assistance scheme	76	56%
Referral from the Law Society	6	4%
Referral from courts/tribunals	32	24%
Referral from clearing house	75	55%
Referral by community org.	46	34%
Referral from an Indigenous Legal Org.	8	6%
Other	11	8%
Don't Know	2	1%

Chart 17 – Source of new pro bono matters

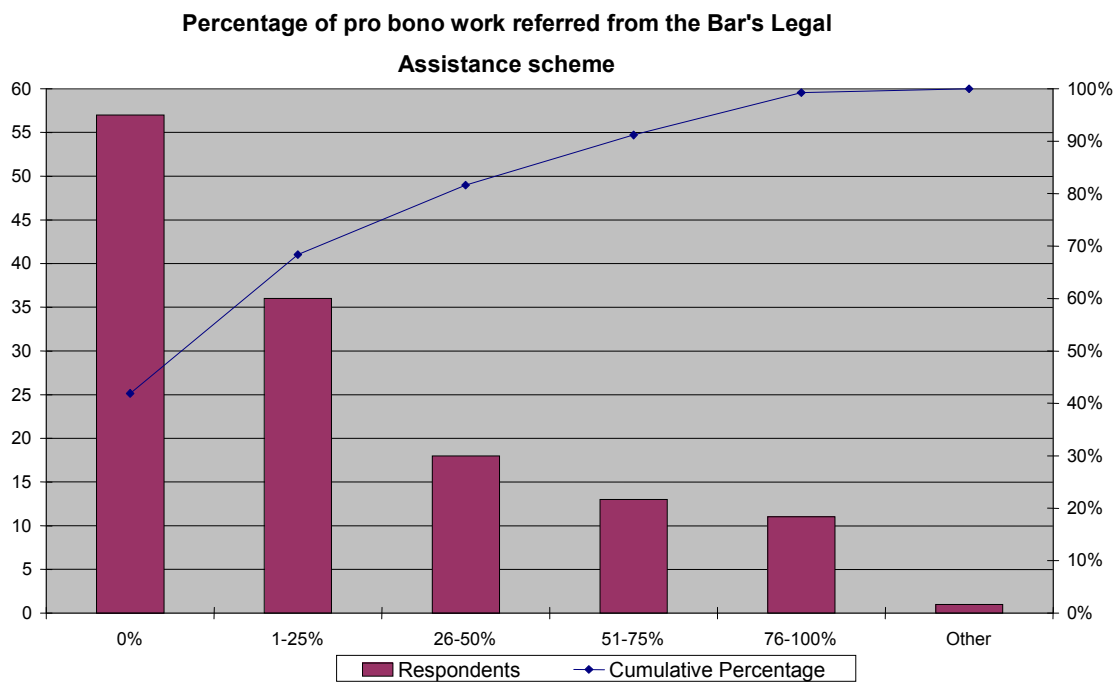


Percentage of pro bono matters referred from your Bar’s legal assistance scheme?

Table 20 – Pro bono matters form Bar’s legal assistance scheme

Description	Total	% ¹⁰
0%	57	42%
1-25%	36	68%
26-50%	18	82%
51-75%	13	91%
76-100%	11	99%
Other	1	100%
Total	136	

Chart 18 – Pro bono matters from Bar’s legal assistance scheme



¹⁰ Cumulative percentage

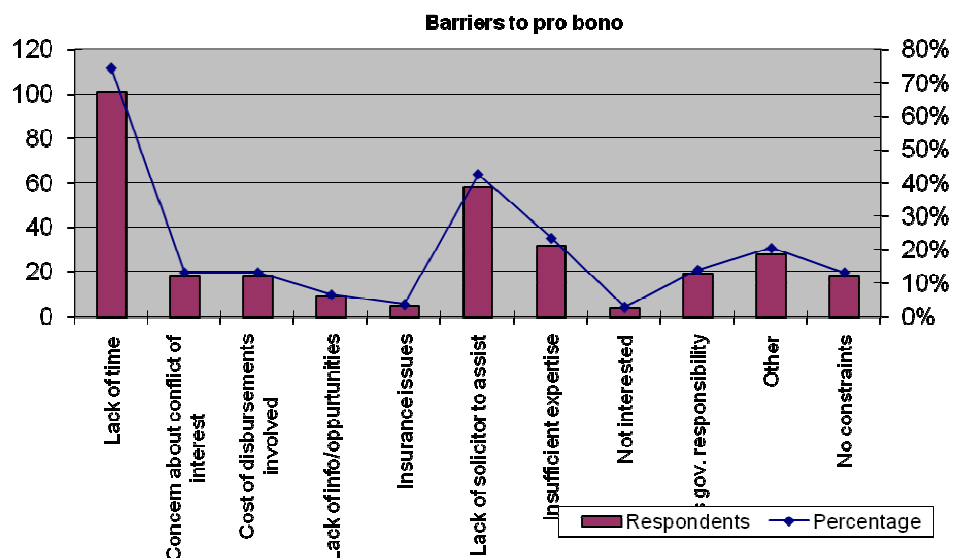
Section 8 – Constraints / encouragement to pro bono

What gets in the way of you doing pro bono legal work?

Table 21 – Barriers to pro bono

Description	total	%
Lack of time	101	74%
Concern about conflict of interest with fee paying clients	18	13%
Cost of disbursements involved	18	13%
Lack of info/opportunities/don't know how to find clients	9	7%
Insurance issues	5	4%
Lack of solicitor to assist with matter	58	43%
Insufficient expertise in relevant areas of law	32	24%
Not interested	4	3%
It's the governments responsibility to provide adequate resources	19	14%
Other	28	21%
No constraints	18	13%

Chart 19 – Barriers to pro bono



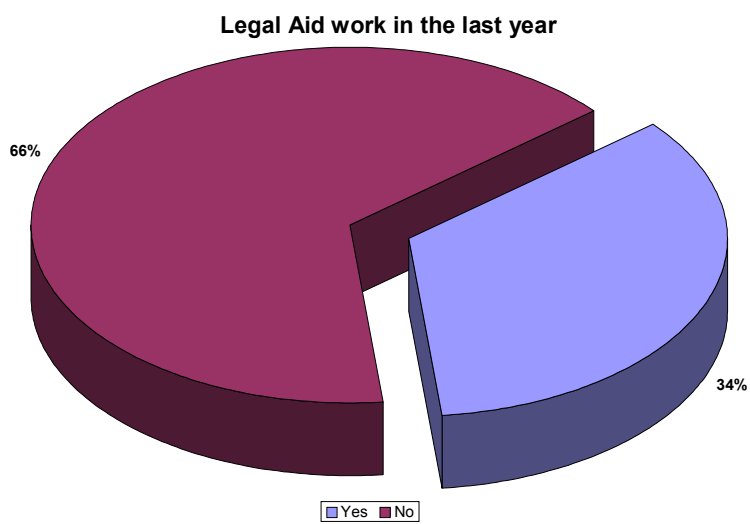
Section 9 – Legal Aid work

Have you done any legal aid work in last 12 months?

Table 22 – Legal Aid work

Description	Total
Yes	53
No	101
Total	154

Chart 20 – Legal Aid work

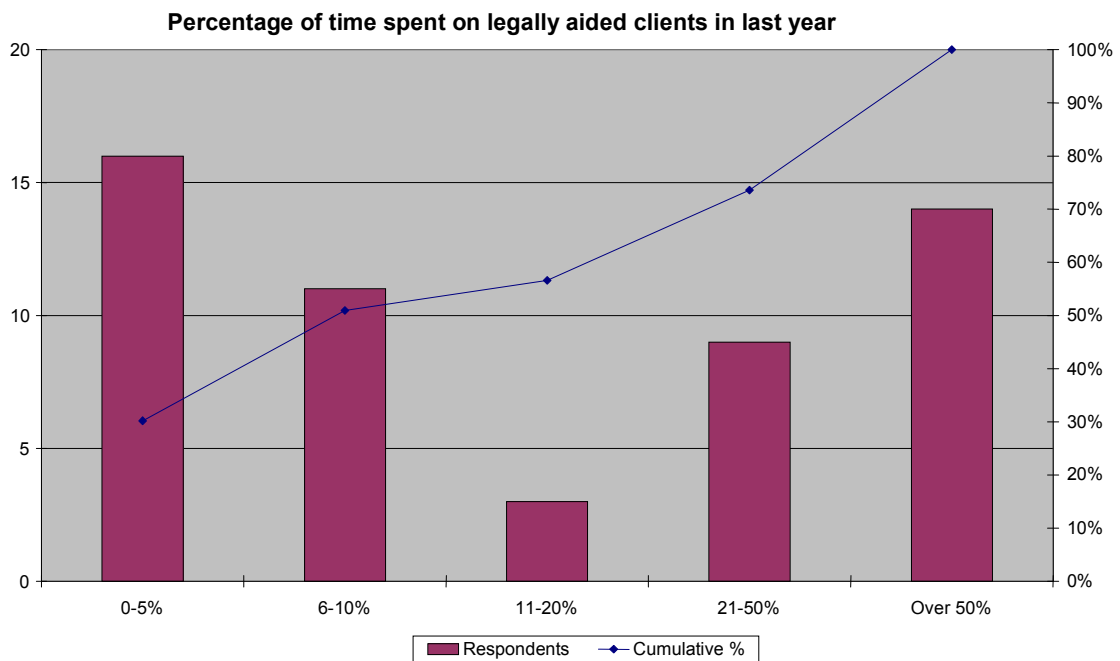


In the last 12 months, approximately what percentage of your time was for legally aided clients?

Table 23 – Percentage of Legal Aid work

Description	total	%* ¹¹
0-5%	16	30%
6-10%	11	51%
11-20%	3	57%
21-50%	9	74%
Over 50%	14	100%
Total	53	

Chart 21 – Percentage of Legal Aid work



¹¹ Cumulative percentage

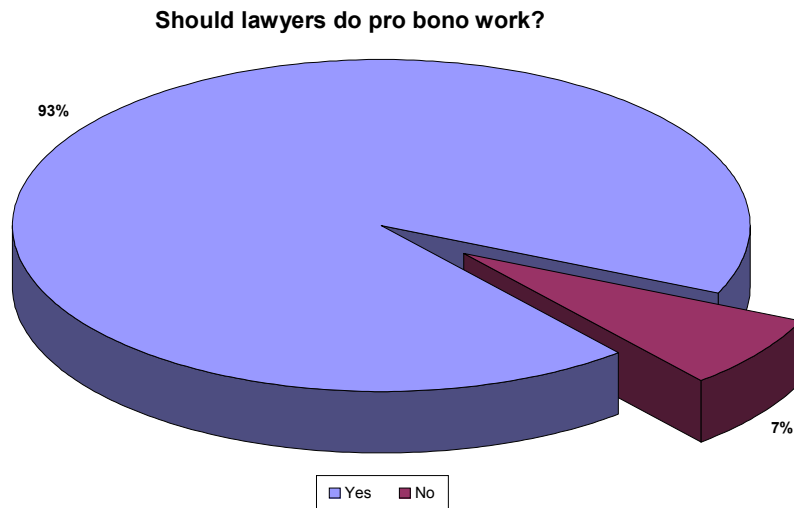
Section 10 – Attitudes to pro bono legal work

Do you think that lawyers should do pro bono legal work?

Table 24 – Should lawyers do pro bono?

Description	Total	%
Yes	143	93%
No	11	7%
Total	154	100%

Chart 22 – Should lawyers do pro bono?

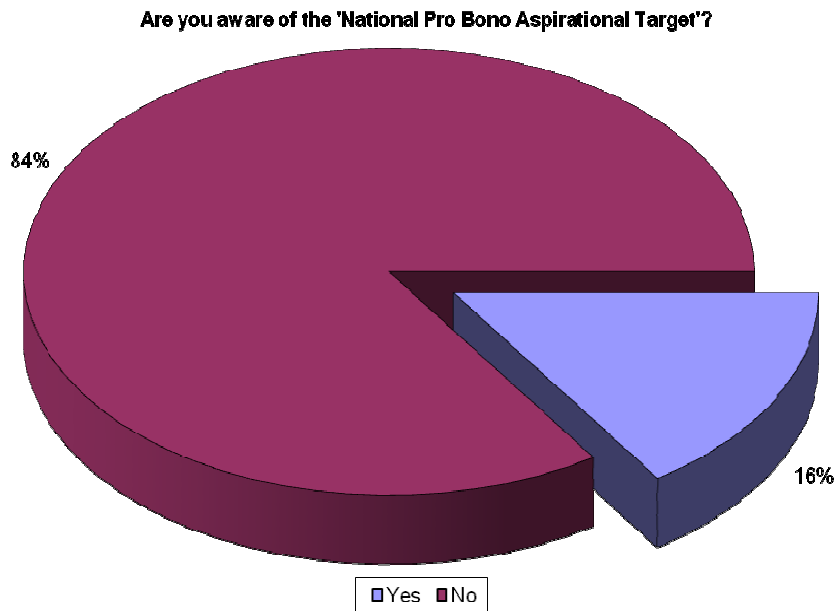


Are you aware of the National Pro Bono Aspirational Target of 35 hours per lawyers per year?

Table 25 – Aware of the Target?

Description	Total	%
Yes	24	16%
No	130	84%
Grand Total	154	100%

Chart 23 – Aware of the Target?



Part 2: Issues

There were many responses to the survey questions regarding Legal Aid as well as to the last survey question: Is there anything else that you think would be useful for us to know about your pro bono work?

Comments have been grouped into:

- General Policy concerns
- Practice issues
- The role of government
- Attitudes to Legal Aid

Where relevant, a few comments have been split across issues and comments have been de-identified.

GENERAL POLICY CONCERNS

Definition of pro bono legal work

The survey adopted a definition of ‘pro bono legal work’ based on the 1992 Law Council of Australia definition. It includes free or substantially reduced-fee, legal and legal education work done by lawyers. It does not include the considerable community service work done by lawyers. It does not include legal aid or ‘no-win, no-fee’ work which was dealt with separately in the survey.

Comments

- i. Lawyers can contribute to the community in ways beyond your definition of pro bono. I served as a volunteer and on the Boards of Legal Services for 10 years and then for 4 years on the local primary school board. I think I actually made more contribution on the primary council dealing with quasi legal issues there. What

has always motivated me is legal reform, not doing the legal work government should pay for in any event.

Mandatory or voluntary pro bono and targets

- i. Yes it is extremely hard for one to say just 35 hours – as when you get into a case it is a lot more than that – when you regularise it, it loses attractiveness because you HAVE to do it not because you want to.
- ii. It should be left to the individual, not institutionalised.
- iii. I would find it a disincentive to continue doing the work if government imposed a pro bono obligation upon practitioners.

Rationale and motivation

- i. I once appeared in, and won, an eight week murder trial without any fee. The client was impecunious, and was not being appropriately looked after by Legal Aid, who seemed to think that his case was hopeless, and that therefore he did not deserve to be provided with appropriate representation. It was decided to dispense with the services of Legal Aid, and a solicitor and myself and a junior barrister all appeared without fee. It was about a total of 10 weeks worth of work.
- ii. I do think that lawyers benefit themselves and the community from pro bono work but they should not be forced to perform it. I enjoy my pro bono work and especially my committee work...it keeps me in touch with a variety of people in the community whom I would not otherwise mix with.
- iii. I have derived more satisfaction from assisting on pro bono matters than probably any paid retainer commercial work. I was especially pleased that a disabled woman I recently assisted via a community legal centre was able to resolve her dispute with her mortgagee bank and able to keep her house on the strength of my written advice and my representation on her behalf. I am determined to seek out and make myself known for further pro bono opportunities in the future.

Recognition and visibility

- i. I believe that all lawyers should do some pro bono work. I am certain all Victorian barristers do. The problem is that to some extent in a competitive and yet collegiate atmosphere success has tended to be measured by financial success. Pro bono work has, until recently, been perceived as inconsistent with the image of success which lawyers strive to project. In recent years however the public work performed by such high profile lawyers as Julian Burnside QC and Peter Hayes QC has meant that doing pro bono work has become associated with the most successful lawyers. A number of well known firms like Herbert Geer & Rundle who were involved in the Gunns litigation has meant that lawyers are no longer embarrassed to disclose to their fellow lawyers that they do provide pro bono services.
- ii. There is no recognition for barristers who do pro bono work.
- iii. I avoid pro bono schemes like the plague – they seem to attract publicity-seeking self aggrandising barristers who are more interested in recognition of their service than the giving of assistance to the disadvantaged. More than enough pro bono work finds me without such schemes.

Pro bono and genuine need

- i. Many clients who do not pay for legal work do not appreciate it. If they have to pay, (even a small amount) then that attitude changes immediately.
- ii. There is a large pool of clients missing out on legal assistance. Almost none of my pro bono work comes through organised referrals.
- iii. You have to make sure the client has a good claim. Sometimes people try to use lawyers to settle personal grudges.

- iv. I have at times been quite frustrated that a law clearing house has not screened out matters which are unmeritorious or where the client is well able to afford legal representation.

Pro bono and other professions

- i. There is only so much legal practitioners can do – other professions are not expected to give back in the way we are.

PRACTICE ISSUES

Issues with courts in pro bono matters

- i. I find the attitude of the court difficult. I was the sole representative of my client, the other side was represented by a silk and a big 6 law firm - the court held my client to the same level, i.e. filing affidavits a year before trial and refusing to allow a small later one filed a week before trial.
- ii. There does need to be some greater support within the profession and the courts for difficult situations that pro bono lawyers can find themselves in. I have had a pro bono client referred to me by the court who turned out to have some mental health problems which became apparent only after taking on the brief, had placed me in a very difficult ethical situation which culminated with her sending defamatory emails about me to the judicial officers of the court and to others. Both the Bar ethics committee and, unfortunately, the Court registrars who had referred the brief were not particularly understanding of my situation. The Court registrars were unwilling, even though they were aware of the client's conduct and of her long history of causing difficulty for pro bono counsel, to have me released and wanted me to get released by the Bar ethics committee. The ethics committee then first criticised me for taking a direct access brief without the ethics' committee's authorisation - even though it came to me as a direct referral pursuant to a court order - and did not make it very easy for me to return the brief. That client went on to make much more serious threats against others in the legal

system. There need to be some safeguards introduced to ensure that, while pro bono clients have appropriate safeguards to ensure continuing representation, at a high standard, pro bono lawyers are not placed in a position of being forced to continue to deal with an unstable client, without any support from the professional bodies who encourage them to do pro bono work in the first place.

Facilitating pro bono and barriers

- i. Mentoring junior members of the Bar in participating in pro bono work is something which I think is very important and perhaps could be encouraged more. My impression is that senior members of the Bar (the criminal Bar aside, who generally I think perform more than their fair share of this work) – especially in the commercial area – are under-represented in pro bono work and this has got to change.
- ii. Feedback or requests for legal assistance from dedicated pro bono organisations would be desirable.
- iii. Clearer support from instructing service

Costs issues

- i. If there were a source for disbursements, this would relieve the problem of totally funding pro bono work from one's own resources.
- ii. Offer money at reduced interest rates for people to pay.
- iii. Pro bono fund to cover disbursement and admin assistance.
- iv. Reimbursement for disbursements.
- v. Payment to cover costs that may be associated with the work.

Other barriers to pro bono

- i. The ethical rules on appearing for clients in jurisdictions other than summary crime directly prevents people doing more work given that having to get an exemption is too time consuming and difficult.
- ii. With the diversity of culture, there is a need to train pro bono practitioners to deal with multicultural issues.
- iii. As a commercial barrister taking pro bono work for refugee applicants, I found the work particularly stressful both because of my lack of expertise in the area, the nature of the work, and the absence of an instructor to assist.

THE ROLE OF GOVERNMENT

- i. I am concerned that raising the profile of pro bono work and encouraging lawyers to do more of it the profession will allow the government to continue to fail to meet its responsibility of providing equal access to the legal system.
- ii. I believe all legal practitioners should undertake at least some pro bono work per year. However, it appears Governments are taking advantage of this by cutting funds to CLCs and Legal Aid. Quite simply, the justice system is failing our most vulnerable (those without money or suffering from mental illness) and it is exactly these people who need it most.
- iii. I feel that it is often exploitative of very junior barristers, such as my readers, as solicitors rarely do much work on the files and tend to allocate their most junior employees who are of little assistance to the client or counsel. The need for barristers' pro bono work often arises because of lacunae in proper government funding.
- iv. There is a danger in the systemic under-funding of Legal Aid – which is that the profession will be deliberately used by government to pick up the slack as pro bono work.

- v. Pro bono schemes should not allow themselves to be used to relieve government of its responsibilities.
- vi. While I do quite a lot of pro bono work, and think that lawyers generally should participate, I am concerned at any development of the idea that providing legal assistance to those who cannot afford it is not principally a government responsibility. Access to justice should not be a matter of whether there is a volunteer lawyer with sufficient skills available at any given time.
- vii. One of the 3 key responsibilities of the state is to provide a justice system. For the state to use the present level of negative attitude in the community to the legal profession to take the focus from its failure to properly fund the justice system would be wrong.
- viii. I think it is important not to let pro bono become a substitute for proper levels of Legal Aid. Those levels in Australia are woefully low in comparison to countries like the UK and the USA. Pro bono needs to be recognised as a stop gap measure which should only be resorted to in exceptional cases.
- ix. It would be helpful if government followed the Model Litigant guidelines.

STATE ISSUES

Victoria

- i. My website at the Victorian Bar has, for several years now, stated that I invite queries from solicitors in respect of pro bono work. I am told by PILCH that I am one of the only barristers in Victoria who is prepared to openly advertise in this manner.
- ii. There is no formal structure at the Victorian Bar for problems within the ranks of barristers. It seems to be done by word of mouth to stop embarrassment but perhaps we need a point of contact for personal problems.

ATTITUDES TO LEGAL AID AND ‘NO WIN, NO FEE’

Respondents to the survey provided a wealth of responses to questions about Legal Aid. The vast majority (101 or 65%) of all Victorian respondents did not do any Legal Aid work. Many were concerned about the funding level of Legal Aid as well as its bureaucratic nature. Respondents also had strong feelings about ‘no win, no fee’ work. ‘No win, no fee’ work raised concerns about conflicts of interest and about its suitability in the access to justice landscape.

Comments in this section have been presented under the following headings: Low fees and other constraints; Other concerns about Legal Aid; ‘No win, no fee’ work. Here are some typical responses:

Concerns about Legal Aid fee rates and restrictions

- i. The fees are so poor that it is better to work pro bono, avoid the paperwork and devote the time to doing as good a job as one can.
- ii. I have found that taking a reduced fee leads to clients who dominate your time because they feel you are getting paid so they can take as much time as they like. When you do matters for free, you have more control to say to clients that there are limits on what you are able to do for them and how much time you can spend on their matter.
- iii. The Legal Aid Commission has lost its original mandate. It has become a giant law firm that pays commercial salaries to its staff and low fees to outside lawyers. Furthermore, it does not provide the level of support that it should. The Legal Aid Commission should be dismantled in its current manifestation, and become a source of funding only to outside solicitors and counsel.
- iv. The amount paid is absurdly low. The case cannot be run in the way it needs to be run because of the way legal Aid decides its funding and grants – a cumbersome

procedure. However, Legal Aid and its clients can still be as demanding as clients who pay full fees. I find that incredibly frustrating and unreasonable.

- v. Fees are shocking. Would prefer to do it for free than be so insulted by low fees.
- vi. Legal Aid fees have become so low that fellow barristers end up supporting criminal barristers by lending them books and other reference materials as criminal barristers cannot afford that degree of support. However in an environment in Victoria at least when there is still a pool of extremely competent barristers who are prepared to take criminal legal aid work then, in a market economy where the Commission is spending scarce public funds, it is difficult to justify higher fees.
- vii. VLA rates in crime are deliberately skewed in favour of resolution of matters – hence there is enormous pressure on practitioners to press clients into pleading guilty, regardless of their guilt or innocence. Those rates are inflexible and do not allow for any significant time to be spent in preparation, or consulting with clients.
- viii. It is very poorly funded.
- ix. Legal Aid is massively underfunded. Legal Aid fees are an unfairly inadequate remuneration for the work undertaken.
- x. The administration of Victoria Legal Aid is oppressively bureaucratic.
- xi. One major frustration is Legal Aid’s attitude to funding counsel (refusing to pay for pre-hearing conferences). On occasion, lack of funding has excluded legal options for clients.
- xii. Legal Aid should develop a funding structure that is less cumbersome and properly funds the work that needs to be done.
- xiii. I think legal Aid does not recognise the hours of work put into many briefs and should have less stringent rules regarding payment of fees if more work is required.
- xiv. Enforced poverty for lawyers.

Other concerns

- i. Would do it if I got offered a brief.
- ii. No Legal Aid has been offered to me since I began practicing at the Victorian Bar.
- iii. Perhaps the Legal profession should establish a pro bono foundation that is properly funded (by govt and the legal profession) and that would be staffed by experienced lawyers. For example, in the US, even Wall Street firms have pro bono sections doing nothing but such work and able lawyers can still be made partners. While PILCH is an admirable initiative through which lawyers in top firms have fulfilling rotations, it is totally inadequate to meet the community's needs because it relies on the charitable generosity of the legal profession which will vary depending on the demands on practitioners at any point in time – the right practitioner may not be available when needed.
- iv. I don't do crime or family law so no real occasion for me to do Legal Aid work.
- v. Legal Aid don't appear to fund the sort of cases I do on a pro bono basis (admin, refugee, human rights issues) – and I am not skilled in the main areas I perceive to be the main areas of work for legal Aid – e.g. Criminal and Family Law.

Comments on 'no win, no fee' work

- i. I would not do 'no win, no fee'. I would rather do it for nothing, instead.
- ii. I find that 'no win, no fee' is not pro bono; it is speculative and simply lawyers being entrepreneurial and it is commercial.
- iii. I have done 'no win, no fee' work previously, and found: 1) it was the first work I would neglect when things got very busy; 2) to justify doing it I had to increase my hourly rate; 3) the reality is I will only run cases I think I will win anyway, otherwise my advice is to settle so there is little difference to my ordinary cases.

- iv. 'No win, no fee' work and lawyers doing pro bono work should not be used by Governments as an excuse for not funding Legal Aid properly.