

# Pro Bono at Work: Report on the Pro Bono Legal Work of 25 Large Australian Law Firms

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Self-evidently, it is desirable that Australian law firms should include in their services a sizeable pro bono component. The advantages of doing so go far beyond salving the 'social conscience' of lawyers. It affords a variety of challenges to the highly talented young lawyers who need occasional rotation from a six trolley commercial dispute. It reminds them of the imperative demand for justice that may originally have sparked their interest in the profession of law. The righting of wrongs. The redress of discrimination. The protection of the underdog. Upholding the law against the strong and the powerful. Is this not why we were all, one day long ago, attracted to the law? We must make sure that we do not lose our direction and forget that original impulse.<sup>1</sup>

## 1. Introduction

Australian lawyers have an admirable history of providing pro bono services to disadvantaged and marginalised people and to organisations that assist those people. However, the growth of a structured approach to pro bono is a relatively recent development in Australia. The first documented organised law firm pro bono initiative was sparked by the apartheid protests in New South Wales in 1967, with Dawson Waldron organising a roster of its solicitors attending the local court to represent protesters. A real structured approach to pro bono only emerged, however, in the late 1980s.<sup>2</sup> Large law firms have an important role within the legal profession, and due to their wealth, have the resources to provide targeted and co-ordinated pro bono legal assistance. In addition to fulfilling a lawyer's professional responsibility and giving back to the community, having a pro bono program can be beneficial to the firms themselves. Not only is it favourable to the image of the firms, but it gives lawyers the opportunity to provide access to justice to the disadvantaged and marginalised. Today, all large Australian law firms contribute to providing access to justice through pro bono legal services. But until now there has been little information available on the extent of Australian law firms'

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<sup>1</sup> The Hon Justice Michael Kirby, *Law Firms and Justice in Australia*, Address at the Australian Law Awards, 7 March 2002, Sydney, Australia.

<sup>2</sup> See [www.nationalprobono.org.au/page.asp?from=3&id=167](http://www.nationalprobono.org.au/page.asp?from=3&id=167).

commitment to pro bono legal work. The National Pro Bono Resource Centre<sup>3</sup> therefore conducted a national survey of law firms in May 2008 to collect information on the quantity of pro bono legal work undertaken and delivered, by whom and for whom. It also provides an insight into the attitudes of the legal profession towards pro bono legal work, as well as to the degree and structure of pro bono practices across Australia.

In this short report on the survey findings, we present data from the 25 firms with more than 20 partners that responded to the survey.<sup>4</sup> These 25 firms include eight with 20–39 partners, and 17 with 40 or more partners. Of the 12 firms in Australia with more than 300 lawyers each, 10 responded to the survey. Together these 10 very large firms have a total of 10,215 fee earners, representing approximately 20 per cent of the total legal profession.<sup>5</sup> The other 15 firms included in these data are mid- to large-tier firms,<sup>6</sup> with between 40 and 299 lawyers each. Overall the survey is representative of approximately 11,000 lawyers, or 22 per cent of all lawyers in Australia.<sup>7</sup>

While there were many interesting trends revealed in the survey data, this paper will briefly report our findings on the level of commitment to providing pro bono legal services within these large law firms.<sup>8</sup>

## 2. Definition of Pro Bono

The definition of “pro bono” adopted for the survey was based closely on the definition developed by the Law Council of Australia (the peak body for state and territory legal professional associations in Australia) in 1992.<sup>9</sup> The survey definition, however, 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. The definition of pro bono legal work used in the survey<sup>10</sup> 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
- to not-for-profit organisations which work on behalf of low-income or disadvantaged members of the community or for the public good;

<sup>3</sup> The National Pro Bono Resource 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.

<sup>4</sup> A further 18 firms also answered the survey. These are not reported on here.

<sup>5</sup> According to the Australian Financial Review Law Firm Partnership Survey (July 2008) and Law Council of Australia’s (LCA) estimate of Constituent Bodies membership numbers in January 2008—communications with the LCA, September 2008.

<sup>6</sup> See Table 1 for details.

<sup>7</sup> Calculated using approximate numbers of fee earners for law firms with more than 300 partners from Australian Financial Review Partnership Survey (July 2008). Total numbers of lawyers 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. For firms with fewer than 300 partners, median number of lawyers used.

<sup>8</sup> For a full report of our research, see: [www.nationalprobono.org.au/page.asp?from=4&id=36](http://www.nationalprobono.org.au/page.asp?from=4&id=36).

<sup>9</sup> See [www.lawcouncil.asn.au/policy/2106700371.html](http://www.lawcouncil.asn.au/policy/2106700371.html).

<sup>10</sup> This definition has been adopted by the Commonwealth of Australia under the Legal Services directions which require all agencies to take into account a law firm’s pro bono contribution when purchasing legal services.

- 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 are considered *not* to be pro bono legal work for the purposes of the survey:

- 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 (eg 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.

### 3. Key Findings

The survey measured the commitment of large Australian law firms to providing pro bono legal services in a number of ways: the existence of a pro bono policy and a system of co-ordination, the amount of pro bono work being done (presented as hours and as a percentage of total practice income), the participation rate of lawyers within the firm, and being a signatory to the National Pro Bono Aspirational Target.

#### *Level of Co-ordination*

A very high proportion of the large firms that responded to the survey had some sort of formal policy and system of co-ordination for pro bono. This is a promising signal of their level of commitment to pro bono. Of the 25 firms surveyed, 24 (96 per cent) have a formal/written pro bono policy. Ninety per cent of multi-office firms indicated having a national system of co-ordination for pro bono legal work and 80 per cent of firms with only one office have some system for co-ordination of pro bono legal work. Ten firms (40 per cent) have a pro bono committee. Twenty-four of the 25 firms (96 per cent) keep written records of pro bono work.

Twenty of the 25 firms (80 per cent) employ a pro bono co-ordinator, 11 of whom work full-time, and four firms have a designated pro bono partner. This is quite a recent development, with three of the partners having been appointed in the last three years. Six firms have a designated pro bono solicitor. Some large firms, especially ones with multiple offices across Australia, employ both a partner and one or more pro bono co-ordinators.

#### *Hours of Pro Bono/Percentage of Practice Income*

Chart 1 shows that the total number of hours of pro bono work undertaken by lawyers in each firm in all States and Territories over the last 12 months is very mixed. Three firms did more

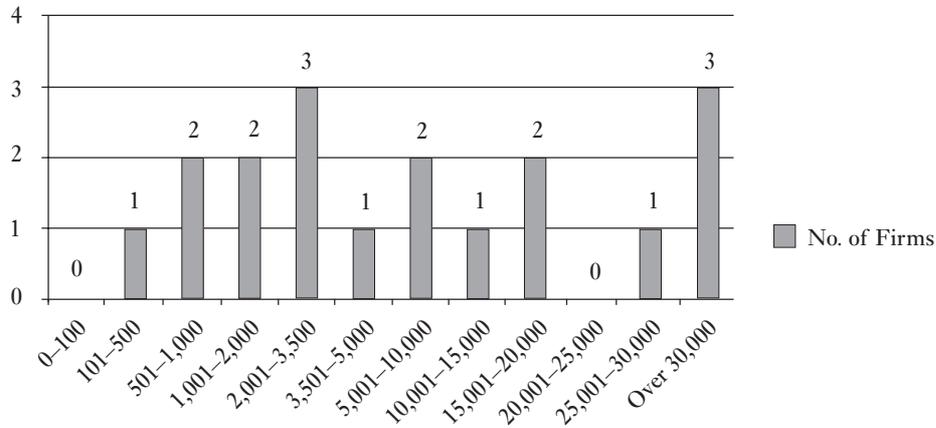


Chart 1: Hours of pro bono

than 30,000 hours, contributing among them over 90,000 hours a year, or over 1,730 hours each week, across Australia. Altogether, the services from all the 25 firms amount to a conservative estimate of approximately 194,500 hours a year or 3,740 hours a week.<sup>11</sup>

Whilst the number of hours contributed by the firms is high, it needs to be put in context, considering the size of the firms involved in the survey. In order to do so, the survey asked respondents to indicate what percentage of their total practice income was represented by their pro bono hours. As with hours of pro bono, there was great variance among all respondents. For one firm, the percentage of total practice income (gross billables) represented by their pro bono hours was over 3 per cent. For another four firms, it was in excess of 2 per cent. For a further four firms the percentage of total practice income represented by their pro bono practice was less than 1 per cent.<sup>12</sup> The median percentage of total practice income represented by pro bono hours was 1.1–1.5 per cent.

There is little comparable data available on pro bono hours as a percentage of gross billables. The Pro Bono Institute (the PBI) in the United States estimates in its Law Firm Pro Bono Challenge that 100 hours of pro bono work per lawyer equates to 5 per cent of total practice income, and just over 60 hours per lawyer equates to 3 per cent of total practice income.<sup>13</sup> Using the PBI's estimates as a measure, the median percentage of total practice income represented by pro bono hours in the survey would equal to 21–30 hours. The median number of hours per lawyer per year across all respondents in the survey was 21, falling well below the Aspirational Target of 35 hours per lawyer per year.

<sup>11</sup> Figures based on the mid-point of each hourly range.

<sup>12</sup> Responses to this question were received from 18 of the 25 firms surveyed.

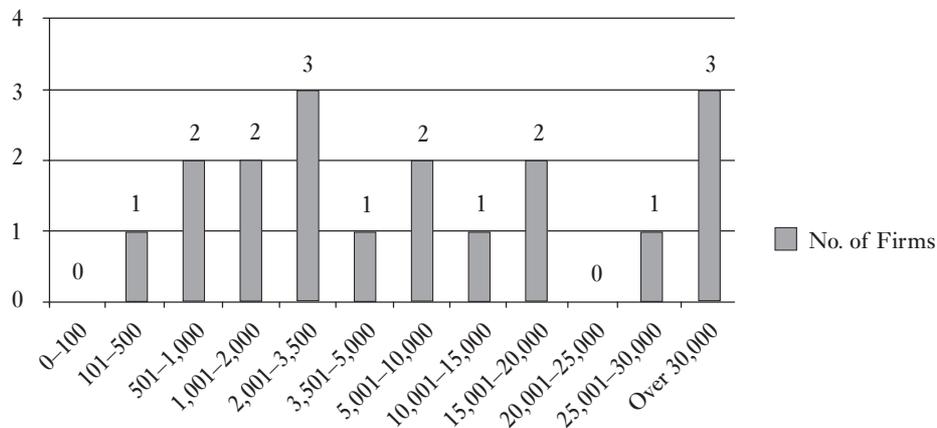
<sup>13</sup> The Law Firm Pro Bono challenge is an aspirational target for larger law firms. Signatories aspire to contribute an amount of time equal to 5% of the firm's total billable hours or 100 hours per lawyer, or alternatively, 3% of the firm's total billable hours of 60 hours per lawyer. See [www.probonoinst.org/challenge.text.php](http://www.probonoinst.org/challenge.text.php).

*Participation Rate*

The survey data regarding lawyers' participation rates was collected on an office-by-office basis. With many of the respondents having multiple offices across Australia, this approach made it possible to distinguish any differences in pro bono work on a State and Territory basis.

Chart 2 shows that the number of lawyers in each firm's office that participated in pro bono legal work varied widely between 0–5 per cent and 81–100 per cent.

The national median participation rate across all offices was 21–40 per cent. Of the 65 offices for which data was provided, approximately half had participation rates of 0–40 per cent and the other half had participation rates of 41–100 per cent.



**Chart 2: National Participation Rate**

*National Pro Bono Aspirational Target*

In 2007, the Centre introduced the National Pro Bono Aspirational Target of 35 hours of pro bono legal work per lawyer per year. The principal aim of the Target is to raise the profile of the professional commitment to conduct pro bono work across the profession by providing a benchmark for the conduct of pro bono work. The Target confirms the shared professional responsibility of lawyers to provide pro bono assistance. The Target contains principles to be followed in undertaking pro bono work. To date, the Target covers more than 4,000 lawyers in Australia. In September 2008, the Australian government amended its Legal Services Directions, which are binding on all government agencies, to take into consideration whether a firm is a signatory to the Target when purchasing legal services. Five respondent firms were signatories to the Target.

The total amount of pro bono work undertaken by lawyers in each of the Target firms in all States and Territories over the last 12 months shows that three firms each undertook more than 30,000 hours of pro bono legal work. One firm reported doing 5,001–10,000 hours and one firm gave no estimate of the total hours of pro bono.

For one Target signatory, the percentage of total practice income (gross billables) represented by their pro bono hours was over 3 per cent. For a further three signatories the percentage of gross billables represented by their pro bono hours was 2.6–3.0 per cent. One firm gave no estimate of the percentage. All the firms with pro bono hours representing more than 2.6 per cent of total practice income were signatories to the Target.

The median participation rate of lawyers across the signatories' 18 offices was 61–80 per cent, compared with the national median participation rate of 21–40 per cent which was also the median participation rate of non-signatory firms. Whilst the median of non-signatory firms was on a par with the national average, among the non-signatories there were six law firm offices with a participation rate as high as 81–100 per cent and a further six offices with a participation rate of 61–80 per cent.

This suggests that being a signatory to the Target is a good indication of a relatively strong commitment to pro bono, and can therefore be used as a benchmark for inspiring increased commitment throughout the profession.

#### 4. Conclusion

Since the emergence of the pro bono culture there has been much discussion regarding the underlying reasons for doing pro bono legal work, a debate between the resurgence of professionalism and pro bono simply being smart business rather than a commitment to providing access to justice. Whilst it is difficult to extract motives for doing pro bono from quantitative research, the differing levels of commitment seem to indicate that some firms have a strong pro bono culture that reaches across the whole firm, while other firms still have a way to go in adopting pro bono as part of their daily practice.

Although the pro bono hours reported by some firms seem impressive, they are considerably less so when presented as a percentage of total practice income. As the survey data suggests, signatories to the aspirational target demonstrate a strong commitment to pro bono on an institutional level. However, the survey data also shows that firms of equal size are making an unequal contribution to access to justice, with some firms in the sample falling well behind their peers in the provision of pro bono legal services. We believe that this research will assist firms in benchmarking their contribution against their peers and reviewing their pro bono programs. It also provides, for the first time, a snapshot of pro bono legal work in Australia, against which future developments can be assessed.