



- Survey -

**Pro bono legal work undertaken by members of
the Law Society of Queensland
March - May 2006**

**Preliminary Report prepared for the
National Access to Justice and Pro Bono Conference
August 2006**



Preliminary Report

Introduction

The National Pro Bono Resource Centre is an independent, non-profit organisation established to support and promote pro bono 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.

To address the urgent need for reliable data and information about the nature and amount of pro bono work currently being undertaken by the legal profession in Australia, the Centre is undertaking a national survey of the legal profession. We propose to survey individual solicitors, barristers and law firms in each State and Territory.

The initial stage of the survey has been undertaken in conjunction with Associate Professor Belinda Carpenter from the School of Law at the Queensland University of Technology (QUT) and with financial assistance and cooperation from the Law Society of Queensland (QLS). It has involved a survey of individual lawyers in Queensland, who are members of the QLS.

The survey was conducted online over a period of 6 weeks in March-May 2006. A link to a webpage, where the survey could be found and completed, was sent out in the weekly newsletter from QLS to its members together with a message of support from the President of the QLS. Three follow up emails were sent every fortnight thereafter. 225 surveys were completed which equates to just under 5% of the QLS members. The survey took each respondent about 10 minutes to complete.

The survey focussed on 12 broad areas of research, and was developed in consultation with a survey and qualitative research specialist at Urbis JHD, an independent social policy and research company and with Associate Professor Belinda Carpenter.

This is a preliminary report prepared for the National Access to Justice and Pro Bono Conference 2006. A more comprehensive report will be published in due course. The report presents key findings and issues and is based on responses to questions about the following issues:

- Details of the law firm (location, number of partners and lawyers);
- Types of pro bono assistance provided (in-house advice, secondments to CLCs, law reform work etc);
- The amount of pro bono work carried out in the last year including a breakdown by type of pro bono assistance;
- The number of lawyers who did pro bono work in the last year;
- Details of the firm's pro bono policy (if any);
- Details of the firm's pro bono program (if any); and
- Perceived and actual barriers to pro bono;
- Motivation for undertaking pro bono work;
- Attitudes towards pro bono aspirational targets.

While the data has not yet been analysed in detail, and must be approached with caution due to the small sample, some clear trends and issues emerge. We have endeavoured to represent these accurately in this report.

We welcome comment and feedback about issues that are set out in this report or in relation to other areas of inquiry that people might find useful.

Please send all comments to survey@nationalprobono.org.au.

August 2006

The Survey Results

(225 respondents)

(i) About the respondents to the survey

Those admitted over 10 years predominated (43%), otherwise there was little difference in either or age.

Almost 80% of the respondents had undertaken pro bono legal work in the past 12 months.

Seniority

- Those in practice over ten years (91%) showed the highest percentage undertaking pro bono work in the last 12 months;
- Next were those in practice 3-6 years, where 77% had done pro bono work in the last 12 months;
- Newcomers (less than 3 years) were next with 69% doing some pro bono work;
- The least pro bono work (marginally compared to newcomers) was done by those in practice 6-10 years (68%).

Age

- There was a fairly consistently spread; 71-92% of all lawyers, over all age ranges have done pro bono work in past 12 months;
- As a group, those over 50 have highest percentage (92%) of members of any one group doing pro bono. Of those under 30, 71% have done pro bono work in last 12 months.

Geographic

- The majority of respondents were full-time employees in private practice. They were in sole practice or one partner city firms with the greatest number practising in commercial / company law, then wills/probate, and litigation;
- 46% of respondents were located in capital city CBDs, 15% in capital city suburbs, 38% in regional cities or areas, and the remaining 1% in remote areas.

Size of Firm

- Firms with 2-5 fee earners had the highest number of respondents (35%), and then in order:
 - 6-15 fee earners - 18%
 - 16-40 fee earners - 16%
 - over 40 fee earners - 16%.
- Two thirds of the respondents were from one office firms.

(ii) Who does pro bono work

The majority of respondents (79%) had done pro bono legal work in the last 12 months.

- 53% of respondents from firms with 11-20 partners (which is 6% of all firms) had done pro bono in last 12 months;
- Of those who had done pro bono legal work in the last 12 months, 97% had done this with the knowledge of their firm;
- 11% of the total respondents had never done any pro bono work. Of these, there were considerably more women than men (62% to 38%).

(iii) Pro bono legal work

Family law is major area, 48% of work is advice, 50% of matters are on behalf of individuals.

- The majority of pro bono work undertaken was in the areas of family law, crime, wills and probate then a gap to (in order of frequency) consumer law, housing and tenancy, powers of attorney / guardianship and then domestic violence;

- Overall, across all different ways of providing pro bono services, the most common legal service provided was advice (48%). This was followed by litigation, representation and transactional services (each 9%), negotiation / ADR (8.5%), CLE (7.5%) and law reform / policy (5.5%);
- Of the total matters undertaken, 50% were carried out on behalf of individuals, 30% on behalf of not for profit organisations and 20% on behalf of community legal organisations;
- The highest proportion of pro bono work (47%) was undertaken within a firm;
- Volunteering at a community organisation followed as the second most popular way to do pro bono (35%).
- Of 96 respondents who volunteered, the majority (70) volunteered at a CLC with just less than half that number (32) volunteering at not-for-profit organisations. Four people indicated that they volunteered at 'other' places (including Parents & Citizens's organisation, sporting club, development industry group and a local activist group);
- For those respondents who had been seconded (4%), more (8) indicated that they had been seconded to not for profits than to CLCs (1). One had been seconded to PILCH.
- Of these 10 secondments, six were for more than 12 months with the other four being for between one and six months.

(iv) Firms' practice

Pro bono work was taken into account positively by firms of 10% - 27% of respondents.

- Of those respondents who had undertaken pro bono work in the last 12 months, 17% stated that their firms had a written policy, while 11% did not know whether or not they did;
- 26% said the firm tracked their pro bono legal work;
- Pro bono work was undertaken with the knowledge of the firm by 96% of those who undertook it;
- Firms took positive account of pro bono work in salary reviews (10% of respondents), meeting financial targets (13%), in promotion considerations (14%), meeting billable hours targets (19%) and performance appraisal (27%).

(v) Time spent on pro bono legal work over previous 12 months

58% of respondents had done over 30 hours, 44% had done over 40 hours of pro bono work in the past 12 months.

Respondents' estimates of pro bono work during the last 12 months indicated:

- up to 10 hours - 9%
- 11-20 hours - 20%
- 21-30 hours - 9%
- 31-40 hours - 14%
- 41-50 hours - 11%
- 51-90 hours - 10%
- over 90 hours - 23%.

(vi) Sources of pro bono work

Existing clients and friends and family are common sources of pro bono work.

- The main sources of pro bono work came from existing clients (17%), family or friends (16%), CLCs or other community organisations (14%) and direct 'cold calls' from potential clients (14%);
- Less than 3% of work came from Indigenous legal organisations.

(vii) Barriers to pro bono legal work

Too busy to do pro bono work.

- ‘No time’ followed by ‘lack of expertise in community law’ were identified as the main obstacles to pro bono legal work. These were followed by ‘lack of expertise in community law’ and then ‘lack of firm support.’ Issues of billable hours were next;
- Recognition in performance appraisal was identified as an important way to increase pro bono work in a firm.

(viii) Legal Aid work

Legal Aid and pro bono work do not mix.

- The majority of respondents (67%) had not done legal aid work in past 12 months.

(ix) Lawyers and pro bono (values)

Lawyers should do pro bono work.

- 86% of respondents believed that lawyers should do pro bono legal work;
- The two main reasons identified for lawyers generally to do pro bono were ‘to help disadvantaged’ followed by ‘professional responsibility’;
- ‘Personal satisfaction’ was the most important reason given by individuals who undertook pro bono;
- The factors least motivating individual solicitors to do pro bono work were ‘employer policies’ and a belief that ‘it might lead to paid work’;
- Most respondents (39%) felt that their firms had a laissez faire approach to pro bono work – leaving the decision up to the individual;
- Aspirational targets and a statement from Queensland Law Society regarding lawyers’ commitment to pro bono were supported by the majority (58%).

Issues

At the end of the survey, respondents were asked *Is there anything else that you think that it would be useful for us to know about your pro bono work?* From responses to this, other qualitative questions and the survey data, the following issues emerged.

1 Legal Aid and pro bono legal work

67% of respondents had not done legal aid work while 79% had done pro bono legal work in the last 12 months.

Relevant responses included:

“It is extremely difficult to reconcile or justify doing pro bono legal work when we do legal aid work as well. Legal aid files are essentially charity files when you consider that we are unable to bill for travel time and wait time and when the hourly rate of pay is so nominal, in circumstances where the issues are demanding and the client profile demanding of resources, time and knowledge. Particularly when you consider the amount of work that is carried out on a legal aid complex file which has exceeded the grant of aid for that section of work. Often you just can’t, out of a sense of moral responsibility, abandon the client despite no funding. Essentially any firm carrying on legal aid work is performing a significant amount of pro bono. It is really disheartening when you consider the source of legal aid.”

“I believe as lawyers we have a social obligation to do pro bono work for genuine needy people. The decision of who to do work for should be a decision for each firm given their available time and skills. We have seen pro bono work increase due to the limits on legal aid. Legal Aid and our opinion of appropriate matters to fund now often differ. Therefore, if we genuinely believe a matter should proceed to Court but Legal Aid will not help we do it pro

bono. These clients have nowhere else to go. I get very annoyed when fellow practitioners who do not do any legal aid say they will support us to push for more money for doing legal aid work. If everyone did a bit of legal aid work I could afford the time and resources to doing additional pro bono work.”

When asked *Is there any particular reason why you did not do any Legal Aid work (in the last 12 months)?* additional responses were:

“Legal aid is pro bono work masquerading as paid work. I would rather choose my own pro bono recipients.”

“Does not pay well enough and clients have different expectations of the lawyers role and of the legal system. Pro bono clients are more appreciative that they are getting something valuable for nothing. Legal aid clients regard the legal aid as their right and can be more demanding than full fee paying clients and a little unreasonable.”

2 Unplanned nature of pro bono legal work

Pro bono matters just happen

Relevant responses included:

“Pro Bono work is not something that I look for but it is something that reasonably regularly there is a case which through circumstances simply becomes pro bono. In cases where clients are unable to afford legal services and are disadvantaged in some way through disability, illness or confidence issues then I am of the view that we have a responsibility not only to those individuals but to the legal system to ensure that those people have appropriate access to justice.”

“Often it cannot be planned or set for a fixed time. It is more likely to happen at short notice, and that is hard for full time lawyers to accommodate. It is the nature of the need that decides the importance (and urgency) of the work, not the amount of money involved, or the importance of a person to a firm or one's own ambitions.”

3 Importance of public acknowledgement of pro bono

Aspirational targets and a statement from Queensland Law Society regarding lawyers' commitment was supported by the majority (58%)

Relevant responses included:

“In the last two years my firm has done pro bono work worth more than \$150,000.00 if that work was paid. I would like to see the QLS do more to advise the public of just how much lawyers do for no pay.”

“A willingness to do pro bono work is generally proportional to recognition. There is in my view no culture of recognition or encouragement in firms or the QLS.”

“The fact solicitors do this amount of pro bono work is generally lost in the public domain – there seems to be a general belief that this type of work is expected to be done for those that need it but there is little or no acknowledgment. If it is not done how would these people/organisations survive?”

“Lots of lawyers do really good stuff in this area, and it is generally not recognised. The Law Society could do a bit toward lifting the profile of what lawyers do in their own time in this area, undoubtedly this survey will be a good start.”

4 Debate about in-firm pro bono legal work versus individual volunteering

Most respondents do pro bono legal work in-firm and/or volunteer at community legal organisations.

For most, pro bono legal work is not included in promotion, salary review, billable hours, meeting financial targets or performance appraisals.

Relevant responses included:

“My personal opinions are perhaps harsh but: 1. if you get paid anything for it beyond a fruit platter, it is not pro bono 2. if your firm gives you time sheet credit for it, then the individual has given nothing.”

“Lawyers should be forbidden from doing pro bono work at their business premises as it cheapens the value of services provided by lawyers around Australia. Doctors, accountants, engineers, builders, electricians, plumbers, etc do not do work for free, their services then have value. Ours have none and are treated as knowledge that can be given for free.”

“I think that unless the firm views volunteering as part of the billable hours that are to be achieved that day, then there should be no obligation on lawyers to do pro bono work. I do not believe that lawyers should be viewed as any different to other professions and so should not have a professional responsibility to give up their time if they still need to work the far longer hours necessary to meet firm targets.”

5 What motivates lawyers to do pro bono work?

86% believed that lawyers should do pro bono legal work.

The top reasons given for why lawyers should do this are “to help the disadvantaged” and “professional responsibility”. However, for those individuals who practice pro bono “personal satisfaction” is equally important to the former two reasons.

Relevant responses included:

“My commitment to pro bono work has everything to do with a desire to use the power and opportunities I have been given in my life to further the interests of others less advantaged and a desire to influence social change. It has nothing to do with public recognition, enhanced professional or personal reputation to improve the image of the legal profession as a whole.”

“It's all about access to justice. You either have some conscience about your status in the world or you are totally self-centred and couldn't care less about those less fortunate. It's also about enjoying your area of practice, and be willing to go a little further than just doing billable hours.”

“I think that the public perception is that the legal profession is on the whole primarily concerned with profit. The media do little to allay this perception - this is well documented. I like doing pro bono work out of a sense of professional responsibility and a desire to assist less fortunate individuals in an appropriate case. It also lifts morale in the firm. I also select which is an appropriate case - the need for pro bono work is not determined solely by economic considerations. Just because someone cannot afford legal services does not mean that we should act pro bono. A sense of ‘justice’ and ‘possible injustice’ is also essential.”

“Pro bono is hard work, because so often the reality is that people in marginalised situations are there because of their inability to properly manage their own interests (due to mental, cultural, health or other factors beyond their control). Often little can be done which will actually improve their life. Only a small percentage will thank you. Much of the advice given will be ignored. Therefore, anyone seeking to ‘get’ something from pro bono work, other than the intrinsic value of participating in the community in a more complete way, is likely to be disappointed.”

6 Barriers to pro bono legal work

‘No time’ (35%) followed by ‘lack of expertise in relevant areas of law’ (16%) were the main obstacles identified to undertaking pro bono legal work. Other significant obstacles included ‘perceived conflict of interest with fee-paying clients’ (10%) and ‘pro bono work not counting towards billable hours or financial targets’ (10%).

A majority of firms adopt a laissez-faire attitude to pro bono legal work.

Relevant responses included:

“I work in a large commercial firm. Most of the pro bono work I do is through occasional visits to a homeless shelter on a roster system. Sometimes I feel helpless in this type of situation as it is not the work that I specialise in. If there were more pro bono work available, eg. assisting large charities, on issues that are relevant to my work I think that I would be more confident completing it and senior staff would be more able and happy to provide assistance”.

“My firm has a formal pro bono policy, counts pro bono hrs toward billable targets and on paper encourages pro bono work. However, in practice partners are generally dismissive of pro bono work if it occurs in their own practice – its OK as long as it doesn’t get done within their supervised billings budget. The firm promotes itself on the basis of its pro bono policy, but in practice it is not very well implemented”.

“When I did pro bono work it nearly always involved complex family law issues which you were supposed to help with in the shortest possible time. As an inexperienced practitioner at the time it became too daunting. Your work wasn't supervised and if you didn't know the answer the client went away even more confused than when they came.”

“When I do see any opportunities for pro bono work they don't seem to be in the area of law I practice in and seem to be mainly in the areas of family/tenancy/criminal law.”

When asked “What do you think is your firm’s/employer’s attitude to pro bono?” additional responses were:

“My firm encourages pro bono, but budgets must be met.”

“Its all about billable hours so pro bono work doesn’t come into it.”

“I have received no encouragement for pro bono work.”

“Doesn’t make allowances for pro bono work during work hours.”

7 Addressing barriers to pro bono legal work

“Recognition / support of individual lawyers’ pro bono work”, and the “firm adopting a formal pro bono policy” were identified as the most effective actions by the firm for increasing pro bono work.

Relevant responses included:

“Record activities so clients and future employers take note.”

When asked *Is there anything else that you think that it would be useful for us to know about your pro bono work?* additional responses were:

“A discouraging factor for being involved in pro bono work is that not enough solicitors are involved. Many hands would make lighter work. Often, it is too much to take on a whole matter by yourself, so none of the matter is able to be completed.”

“I have moved from a large city firm to a regional firm and have found the scope for lawyers within regional firms to participate in pro bono work is limited. There are a number of factors contributing to this but I believe much of it is the absence of a pro bono culture within larger regional firms (as is often the case the majority of assistance is provided by sole practitioners).”

“My firm is not interested in supporting pro bono work or changing any aspect of the workplace to enable anyone to participate in pro bono work as it doesn't contribute to their bottom line and doesn't give them any good exposure to the public (particularly the type of pro bono work I think that is most needed - for the benefit of socially and economically disadvantaged people).”

8 What is considered to be pro bono legal work

The definition of pro bono used for the survey was:

- a. *Giving legal assistance for free or at a substantially reduced fee to: -*
 - *People who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or*
 - *individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or*
 - *charities or other non-profit organisations which work on behalf of low income or disadvantaged members of the community or for the public good;*
- b. *Doing law reform and policy work on issues affecting low income or disadvantaged members of the community or public interest matters;*
- c. *Participating in the provision of free community legal education on issues affecting low income or disadvantaged members of the community or public interest matters; or*
- d. *Providing a lawyer on secondment at a community organisation (including a community legal organisation) or at a referral service provider such as a Public Interest Law Clearing House*

Nevertheless, there were some other views expressed:

“A lot of it seems to be involuntary - that is a client that does not pay their bill because they really have no money - rather than being classified as a bad debt it just becomes pro-bono work.”

“The definition of pro bono excluding contingency briefs to counsel excludes much work done by the bar. Counsel would be mad to do pro bono on any other basis. The reality is the work is done with no expectation of a fee. However, if there is a win and an appeal then if there is no contingency agreement in place, counsel is faced with choosing to push on for no fee when one would be available or withdraw due to the drain on resources. The definition should be changed.”

“I think it is important that the many, many hours that lawyers contribute to community organisations is acknowledged. It is fine to say that it is not pro bono work, but I know of nothing that can be more accurately described than for the good of the community. You often find lawyers on every many organisations and they are there because they are lawyers. Take

them all away and these organisations would need to be seeking legal services and would then be needing to pay for them.”

“You really should include legally aided work in the definition of pro bono. Somebody has to do it yet it pays only half (or less) that of private legal work.”