



AUSTRALIAN PRO BONO CENTRE

Report on the Fifth National Law Firm Pro Bono Survey

Australian firms with fifty or more lawyers

Executive Summary and Chapter Highlights

March 2017

Australian Pro Bono Centre

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About the AUSTRALIAN PRO BONO CENTRE

The **Australian Pro Bono Centre** is an independent centre of expertise that aims to grow the capacity of the Australian legal profession to provide pro bono legal services that are focused on increasing access to justice for socially disadvantaged and/or marginalised persons, and furthering the public interest.

While the **Centre** does not provide legal advice, its policy and research work supports the provision of free legal services and informs government of the role that it can play to encourage the growth of pro bono legal services. The **Centre's** work is guided by a board and advisory council that include representatives of community legal organisations, pro bono clearing houses, the private legal profession, universities and government.

Established in 2002 as an independent, not-for-profit organisation at the University of New South Wales, it was envisaged that the **Centre** would:

*“Stimulate and encourage the development, expansion and co-ordination of pro bono services, as well as offering practical assistance for pro bono service providers (and potential providers). The **Centre** would play the key roles of facilitating pro bono practice and enabling the collection and exchange of information.”*

The strategies that the **Centre** employs to grow pro bono capacity include:

Strengthening the place of pro bono legal work within the Australian legal profession as an integral part of legal practice by

- being a leading advocate for pro bono legal work;
- promoting the pro bono ethos and increasing the visibility of pro bono legal work;
- developing policies and advocating for measures to encourage an increase in the quality and amount of pro bono legal work; and
- producing resources and sharing information in Australia, regionally and internationally, that builds pro bono culture in the Australian legal profession and participation by Australian lawyers in pro bono legal work.

Providing practical assistance to facilitate, and remove barriers to, the provision of pro bono legal services by

- undertaking research on how pro bono legal assistance can best respond to unmet legal need, including the identification of best practice in its provision;
- engaging in policy development, advocacy and law reform on issues that have an impact on pro bono legal services;
- providing practical advice to lawyers and law firms to support their efforts to increase the quantity, quality and impact of their pro bono work;
- informing community organisations about the way pro bono operates in Australia; and
- leading in the development of new and innovative pro bono project and partnership models.

Promoting the pro bono legal work of the Australian legal profession to the general public by

- informing members of the public through the media and presentations about the pro bono legal work undertaken by members of the Australian legal profession.

The **Australian Pro Bono Centre** operates with the financial assistance it receives from the Commonwealth and State and Territories Attorney-General Departments, and support from the Faculty of Law at the University of New South Wales.

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Executive Summary

The **Fifth National Law Firm Pro Bono Survey** is the latest addition to the Centre's longitudinal study of the pro bono legal work of large Australian law firms.

The overall picture is one of significant growth since 2014, but signs indicate that the capacity for further growth in the pro bono practices of many large firms may be limited.

This year, the language used in the Report seeks to better reflect the fact that the data is provided by law firms, and the Centre's role is to simply collect and analyse it. For example, the chapter headings express the collective voice of the respondent firms themselves: Who Are We?, How Much Do We Do, How Do We Partner With Others? etc.

The Report is based on data collected from 41 of the 58 firms in Australia with 50 or more full-time equivalent (**FTE**) lawyers as at 30 June 2016, including 19 of the 20 largest firms. Most data relates to the 2015/2016 FY, but some questions concerned the period since the last survey in 2014, and a couple of questions asked about changes occurring over the past five years.

The broader context of this Survey is a dynamic law firm sector that remains highly commercially competitive, as evidenced by 13 firms (32%) indicating they had been through a merger in the past five years, and nine firms identifying as international firms (that is, employing more lawyers overseas than in Australia).

Growth

The average hours of pro bono legal work per FTE lawyer in respondent firms for the 2015/2016 FY was 34.8 hours, which is a 9.7 percent increase from 2014 (31.7 hours per lawyer). Extraordinary growth was reported by the Group B size firms (201 - 449 FTE lawyers), where the pro bono hours per lawyer rose by 39.7 percent, and amongst Group C size firms (50 - 200 FTE lawyers) it rose by 26.1 percent. The Group A firms' (450 - 1,000 FTE lawyers) average showed a small 4.6 percent decline.

One of the key drivers of this growth is the increased, and increasing, unmet legal need in work for asylum seekers and refugees. In 2016, immigration was third overall in the list of areas of law in which the most pro bono work was done, moving up from twelfth in 2014. Forty percent of firms also nominated Immigration as one of their top five areas of law and pro bono practice.

The growth in pro bono hours per lawyer was accompanied by growth in lawyer participation rates which had been trending downwards in 2014. Overall, the average lawyer participation rate was 57 percent, up from 50 percent in 2014, with the partner participation rate up from 40 percent to 46 percent.

The growth was also associated with an increase in the number of firms meeting the National Pro Bono Aspirational Target of 35 hours per lawyer per annum, with 17 firms meeting the Target in 2016, up from 12 firms meeting it in 2014.

An associated issue identified through the Survey is the rising cost of external disbursements that firms are having to pay to do their pro bono work. Seventy-eight percent of firms indicated

that they had paid for external disbursements associated with a pro bono matter during the 2015/2016 FY. Whilst amounts varied widely, four firms provided a figure of between \$10,000 and \$20,000, and three firms nominated \$40,000 (Group A), \$45,000 (Group A) and \$80,000 (Group B).

Where the amounts were \$40,000 or above, the expenses were mainly incurred paying for membership fees, medical reports, filing fees, search fees, travel costs, and translation and interpreter's fees.

Limited Capacity

There were two signs that further growth in pro bono legal work may be limited by capacity. Firstly, 83 percent of firms chose "firm capacity" as the highest of the top three challenges for their pro bono program, with their next highest challenge being "insufficient expertise in relevant areas of law" at 37 percent. Secondly, whilst all firms reported internal targets as being larger or the same as in 2014, 56 percent of them indicated that their internal target was likely to remain the same for the coming year (this was up from only 23 percent of firms indicating this in 2014).

Sources of work

Direct requests remained the greatest source of pro bono work for respondent firms, with 38 percent of new matters arising this way (by number of files opened). The Survey data also showed an increasing trend towards matters being received from Community Legal Centres, with 20 percent of matters overall and 33 percent of Group B firms' matters being received that way.

Individuals vs Organisations

Encouragingly, the data showed a proportional shift towards work being undertaken for individuals rather than for organisations, particularly in the Group A and B size firms. From being a 65 percent organisations/ 35 percent individuals split in 2014, in 2016 the split was 56 percent organisations/ 44 percent individuals, with the biggest change occurring in the Group B firms, where the split shifted from 67 percent organisations/ 33 percent individuals in 2014 to 50 percent organisations/ 50 percent individuals in 2016.

Investment in the pro bono practice

The Survey results indicate a larger investment by firms in pro bono coordination and management since 2014. Twenty-six law firms (representing 70% of all firms with pro bono coordinators or managers) reported that their pro bono program/practice coordinator/manager received some measure of payment, fee relief or billable credit specifically for carrying out the role. This was a sharp increase on 2014, where only 13 firms reported doing so, and on 2012 when only 6 firms reported doing so. Forty percent of firms with a pro bono coordinator/manager also reported that the position was now a full-time one.

However, only 39 percent of firms reported having an operational budget set up to support their pro bono practice, with just over half of these firms having increased this budget in the 2015/2016 FY.

Credit and recognition

In 2016, twenty firms (54%) reported providing some form of billable hour credit for pro bono legal work, with five of these firms having moved to recording pro bono hours as a billable category from a special non-billable category since 2014.

Whilst these figures indicate a recovery in the declining trend reported in previous Survey years in terms of firms providing billable hour credits, this remains an important issue, with 12 firms still identifying this as one of their top three issues for improvement (see 'Looking Forward' below).

Figures also showed a slight drop in recognition for pro bono in performance appraisals and a significant rise in recognition through other "softer" measures, such as internal awards, events and communication. Answers to a new question also revealed that 34 percent of firms took pro bono performance into account in determining bonuses.

Looking forward

Whilst firms identified management/partner support/leadership as being the single most crucial factors to the success of their pro bono program (as they did in 2014 and 2012), the three most nominated elements of best practice (from *the Australian Pro Bono Best Practice Guide*) where firms felt their programs could be improved were:

- broad engagement of staff and appropriate training (nominated by 15 firms);
- adequate crediting and recognition of pro bono legal work within the firm (12 firms);
and
- strong and deep relationships with community partners (12 firms).

The [Chapter Highlights](#) below provide a further overview of the Final Report. The raw Survey data is available in [Appendix 1: Survey Results](#) (page 78)

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Chapter Highlights

Chapter 1: Who Are we? (p. 16)

The 2016 Survey sample consisted of 41 firms, the same number as in 2014. This sample included 19 of the 20 largest firms in Australia.

In total, 58 firms had been approached to participate, having been identified as having 50 or more FTE equivalent lawyers, up from 55 in 2014.

As in previous years, the respondent firms fell naturally into three size groupings:

- **Group A:** firms with 450 - 1,000 FTE lawyers (7 compared to 8 in 2014);
- **Group B:** firms with 201 - 449 FTE lawyers (14 being the same number as in 2014); and
- **Group C:** firms with 50 - 200 FTE lawyers (20 compared to 19 in 2014).

Thirteen out of the 41 firms (nearly a third) had been involved in a merger in the previous five years, demonstrating the ongoing dynamism of the Australian law firm market. Nine of the 41 respondent firms (22%) identified as being “international law firms” (firms that had more staff located overseas than in Australia). Six of these respondent firms (67%) reported that “more” pro bono legal work was done in their Australian offices than in their overseas offices – a testament to the relative strength of the Australian pro bono culture.

Chapter 2: How much “pro bono legal work” do we do? (p. 21)

The total number of hours of pro bono legal work reported was 371,232 hours, which is a slight decrease from 374,942 hours in 2014. However, this is largely due to one large firm not completing the survey.

The number of pro bono hours/FTE lawyer per annum was 34.8 hours per lawyer, up from 31.7 in 2014 and 29.9 in 2012. This represents a 9.7 percent increase since 2014 and is consistent with the results of the *Ninth Annual Performance Report on the National Pro Bono Aspirational Target* (October 2016), which reported that 11,185 Australian lawyers provided 402,216 hours of pro bono legal services in 2016 FY, being an average of 36 pro bono hours per lawyer. This represented an 8.3 percent increase on the pro bono hours reported by Target signatories in the 2015 FY.

By group, the overall hours of pro bono legal work per lawyer per year were as follows:

- **Group A:** 39.4 hours (2016), 41.3 hours (2014) and 38 hours (2012);
- **Group B:** 35.9 hours (2016), 25.7 hours (2014) and 20.4 hours (2012); and
- **Group C:** 22.2 hours (2016), 17.6 hours (2014) and 15.7 hours (2012).

Of the 36 respondents to the 2016 Survey that also responded to the 2014 Survey (up from 31), and provided figures on their hours of pro bono legal work per lawyer per year, 20 reported an

increase of more than 20 percent (up from 13 in 2014) between 2014 and 2016 and only two firms reported a decrease of more than 20 percent over the same period.

Of the 20 firms reporting an increase greater than 20 percent, ten were from Group B firms and ten from Group C firms.

Participation rates

The rise in pro bono hours/lawyer was accompanied by an increase in participation rates. Overall, the average lawyer participation rate was 57 percent, up from 50 percent in 2014, and the partner participation rate was 46 percent, up from 40 percent in 2014. The highest percentage of lawyers undertaking more than 35 hours per lawyer per year was reported by a Group A firm, with a figure of 46.8%.

Percentage of total practice hours

The hours of pro bono legal work expressed as a percentage of total practice hours reported by respondent firms ranged from 0.5 to 5.3 percent, delivering an average of 2.36 percent (up from 2.27 percent in 2014).

Chapter 3: What type of pro bono legal work do we do? (p. 33)

Areas of law and practice

The areas of law and practice nominated as the top five areas of law and practice in which firms spent time providing pro bono legal services were Employment Law, Commercial Agreements, Immigration, Governance and Deductible Gift Recipient Status (**DGR**) (in descending order). The area of law that has shown the most significant change since 2014 is Immigration, which is now third on the list of areas of law and practice most often nominated by Survey Respondents, compared to twelfth in 2014. Sixteen firms nominated Immigration as one of their top five areas of law and practice. Only six firms did so in 2014, similar to 2012 and 2010.

Other notable changes included an increase in the number of firms taking on Discrimination matters and a drop in those firms undertaking Intellectual Property matters.

As in 2014 and 2012, Family Law (not including Family Violence) and Criminal Law were the top two areas where the highest number of firms reported rejecting the most requests for assistance. But interestingly, Immigration, Debt and Employment law matters were the next three highest in the rejection list, which seemingly indicates the continuing unmet legal demand in these areas.

Clients: organisations or individuals?

Data showed an encouraging shift towards a greater percentage of work being undertaken for individuals as opposed to work for organisations, particularly in the Group A and B size firms. From being a 65 percent organisations/ 35 percent individuals split in 2014, in 2016 the split was 56 percent organisations/ 44 percent individuals, with the biggest change being in the Group B

firms, where the split went from 67 percent organisations/ 33 percent individuals in 2014 to 50 percent organisations/ 50 percent individuals in 2016.

Chapter 4: How do we partner with others? (p. 42)

Sources of pro bono legal work

Direct requests were the largest source of work and amounted to 38 percent of the total number of requests, with work sourced from pro bono referral schemes and organisations next at 26% (27% in 2014) and community legal centres at 20 percent (18% in 2014 and 16% in 2012).

The historical data reveals a gradual trend where the percentage of matters being sourced from pro bono referral schemes and organisations has gradually fallen, whilst the percentage of matters being sourced from community legal centres has risen. This trend is most evident in Group B firms, where 32 percent of work was sourced in 2016.

Secondments

Nineteen of the 41 respondents (46%) to this question indicated that they had provided secondees, as compared to 18 firms (44%) in 2014:

- 10 firms (53%) were providing **more** secondments than two years ago;
- 5 firms (26%) were providing approximately the **same** amount of secondments as they were two years ago; and
- 4 firms (21%) were providing fewer secondments than two years ago.

Several firms reported an increasing demand for secondment assistance, and in some cases, senior assistance for transformational projects.

Working with in-house counsel

Sixteen firms (39%) had worked with the in-house lawyers of a corporate or government client on a pro bono matter or project in the 2016 FY. This is an increase from 27 percent of firms in 2014.

Chapter 5: How do we plan for pro bono? (p. 50)

Crucial factors

The highest number of respondents (19 out of 40) nominated “management and partner support and leadership” as the single most crucial factor to the success of their firm’s pro bono program. This is consistent with responses to this question in 2014 (15 out of 37) and 2012 (12 out of 34).

Staff engagement and enthusiasm was identified as the second most crucial factor (10 out of 40), followed by culture (4 out of 40).

Challenges

The top challenge identified by respondents, by a significant margin, was firm capacity. This challenge was selected by 34 firms (83%), a significant increase on 2014. “Insufficient expertise in relevant areas of law” (37%) and “concern about conflict of interest with fee paying clients” (24%) made up the balance of the top three challenges, as they did in 2014, 2012 and 2010.

Best practice

Thirty-seven out of 41 firms (90%) indicated that they found the *Australian Pro Bono Best Practice Guide* either “useful” or “very useful.”

The three most nominated elements (from *the Guide*) where firms felt their programs could be improved were:

- broad engagement of staff and appropriate training (nominated by 15 firms);
- adequate crediting and recognition of pro bono legal work within the firm (12 firms); and
- strong and deep relationships with community partners (12 firms).

Pro bono target for the firm

Most respondents (26 firms or 63%) indicated that their firm set some sort of overall target for its pro bono program in the 2016 financial year, a decrease when compared to 2014 (76%) and 2012 (75%).

Forty-four percent of firms indicated that the figure was “larger” than in 2014, with the other 56 percent of firms indicating that their target remained the same, in contrast to 2014, where 23 percent indicated it had remained the same and 61 percent indicated it had increased from 2012.

Eighty-five percent of firms indicated that the National Pro Bono Aspirational Target of 35 hours per lawyer per annum (either meeting or exceeding it) was the basis of their own internal pro bono target.

Operational budget

Sixty-one percent of firms indicated that they did not set, and five percent did not know if they set, an operational budget in the 2016 FY. This was particularly the case amongst Group C firms, where 80 percent of firms did not set an operational budget.

Of those firms that did set an operational budget (39%) in the 2016 FY, nine respondent firms (56%) reported that their budget had increased. Of the remaining seven firms, two (13%) reported that their budget had decreased, and four (25%) that their budget had remained the same.

External disbursements

Seventy-eight percent of firms reported paying for external disbursements in 2016, including all seven Group A firms, 12 out of the 14 Group B firms and 13 out of 20 Group B firms.

Eighteen firms (58%) provided an estimate of the cost of these disbursements which varied widely. Four firms nominated a number under \$500 or noted that payments were “minimal”. Four firms nominated a figure between \$10,000 and \$20,000 and three firms nominated \$40,000 (Group A), \$45,000 (Group A) and \$80,000 (Group B). The Centre was subsequently advised that these expenses were mainly incurred paying for medical reports, filing fees, search fees, travel costs, and interpreter’s fees.

Only two firms had applied to a disbursement assistance fund during the period.

Crediting lawyer’s pro bono time

In 2016, 21 firms provided some form of billable hour credit for pro bono legal work. This represents 54 percent of the 37 firms that required their lawyers to meet billable hour targets, and indicates a slight recovery in the declining trend reported in previous Survey years. Three firms that indicated in 2014 that they had moved away from treating pro bono hours as billable hours, have now returned to billable hour treatment. However, a special non-billable category remained the single most prevalent form of treatment (46%).

Other recognition

The results in this regard were generally the same as in 2014, but with two changes. There has been a slight decrease in the percentage of firms that recognise pro bono legal work as part of the performance appraisal process, from 85 percent in 2014 to 78 percent in 2016. This decrease is partially accounted for by four firms that reported doing so in 2014 but did not this time. The other change was an increase in the recognition of pro bono through other “softer” measures, such as internal awards, events and communication. In 2016, pro bono was recognised in this way by 73 percent of firms, compared to 60 percent in 2014, 45 percent in 2012, and 48 percent in 2010.

Evaluation

Twenty-three firms (56%) reported that they did have an evaluation system. This was similar to 2014 figures (54%). Twenty-one of these firms (91%) indicated that they had conducted an evaluation of their pro bono program since the last Survey in 2014. Chart 21 in the body of the report sets out the top three factors reported by firms that were considered in evaluations together with some comments as to the usefulness of the process.

Chapter 6: How do we approach the relationship between pro bono and corporate social responsibility? (p. 63)

Thirty-three firms (80%) reported having a corporate social responsibility (CSR), community engagement (CE) or community services (CS) program.

Most respondents indicated that their pro bono and CSR, CE or CS programs were separately managed, an increase when compared to 2012 when the question was last asked.

Individual firms' answers as to the relationship between their pro bono and CSR, CE or CS programs are set out in full in the body of the report.

Chapter 7: How do we coordinate our pro bono program? (p. 65)

Pro bono coordinators

In 2016, 37 respondents (90%) reported that their firm had a pro bono coordinator or manager (a person whose primary responsibility is to coordinate their firm's pro bono legal work), compared to 38 out of 41 firms (93%) in 2014.

Fifteen firms had a coordinator who performed the role on a full-time basis, representing 40% of the 37 firms that reported having a coordinator, compared to 12 out of 38 (32%) in 2014, and 12 out of 35 (34%) in 2012.

As to the seniority of the pro bono coordinator/manager, 19 firms indicated that this was a Partner, 11 a Special Counsel or Senior Associate, 2 Associates and 4 "others".

Twenty-six respondents (70% of all firms with pro bono coordinators) reported that their coordinators received "some measure of payment, fee relief or billable credit specifically for acting in the role". This was a sharp increase compared to 2014, when only 13 out of 38 firms (34%) with a pro bono coordinator provided their coordinator with fee relief. This represents an even more significant increase compared to 2012 where only six out of 35 firms (17%) provided credit.

Pro Bono Committees

In 2016, 29 firms indicated that they had a Pro Bono Committee. These numbers are similar to those reported by firms in 2014.

Dedicated pro bono lawyers

In 2016, 24 respondents reported a total of 47.8 FTE "dedicated pro bono lawyers" and 7.45 FTE paralegals and administrative staff, totalling 55.25 FTE persons.

The 2014 and 2016 responses for this metric are not directly comparable because the 2016 Survey specifically asked firms to exclude secondees, whereas they may have been included by some firms in 2014. It is pleasing to note, however, that the 55.25 FTE reported in 2016 is only 4.95 FTE fewer than the number reported in 2014, 60.2 FTE. Given that the 2016 figure does not include most secondees, this suggests that the number of dedicated pro bono staff is likely to have increased.

Chapter 8: What has an impact on our pro bono program? (p. 71)

National Pro Bono Aspirational Target

Whilst all firms indicated that they were aware of the National Pro Bono Aspirational Target, only 35 of the 41 firms were signatories.

Of these 35 firms, 17 firms indicated that they met the Target in the 2016 FY. This is an increase in the proportion of Target signatories that met the Target in 2014 (12 out of 32 firms - 38%).

Sixty-nine percent of firms indicated that the Target had the effect of increasing the amount of pro bono work done by their firm and 54 percent indicated that it had increased their firm's focus on the legal needs of disadvantaged people and the organisations that support them.

Twenty-one firms (51%) indicated that they **did** anticipate meeting the Target in the 2017 FY. Fifteen firms (37%) reported that they **did not** expect to meet the Target in the 2017 FY and five firms did not know (12%).

Pro bono conditions in government tender arrangements

Thirty-seven of the 41 respondents (90%) indicated that they were listed on the Commonwealth LSMUL. This was a similar number to that reported in 2014.

Seventeen of the 41 respondent firms (41%) are listed on the Victorian Panel, same as in 2014.

Firms provided various comments about their experience with the pro bono obligations contained in the Commonwealth list and the Victorian panel arrangements, which are contained in the body of the report.

Managing conflicts with corporate and government clients

Nineteen firms (46%) indicated that they **had** tried to clear positional conflicts. Eight firms (44%) indicated that this process had been successful, while six firms (32%) reported that it had been somewhat successful.

Seventeen firms (41%) indicated that they **had not** attempted to clear a "positional/commercial conflict". Twelve of these firms (71%) reported that they had not attempted to clear a positional conflict because no conflict had arisen. One firm (6%) indicated that the Partners responsible for government work did not wish to seek clearance for potential conflicts in relation to pro bono legal work, and another firm (6%) indicated that a conflict protocol was to be prepared in the 2017 FY.