



– National Survey –

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

November 2008

Appendix VIII

Responses to survey questions – Western Australia

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As only 16 barristers in Western Australia responded to the survey, this appendix simply records their responses, including any written comments. Despite the limited response rate, some of the written comments may reflect more broadly held views and issues in this jurisdiction.

Section 1 – About you

1. How long have you been admitted to practice?

Admitted to practice	No. of respondents	%
Less than 1 year	0	0%
1-2 years	0	0%
3-5 years	1	6%
6-10 years	2	13%
11-20 years	5	31%
21-30 years	4	25%
Over 30 years	4	25%
Total	16	100%

Median: 11-20 years

2. How long have you been at the Bar?

Time at the Bar	No. of respondents	%
Less than 1 year	3	19%
1-2 years	1	6%
3-5 years	2	13%
6-10 years	1	6%
11-20 years	7	44%
21-30 years	0	0%
Over 30 years	2	13%
Total	16	100%

Median: 11-20 years

3. How old are you?

Age	No. of respondents	%
26-30	0	0%
31-40	4	25%
41-50	5	31%
51-60	4	25%
61 or over	3	19%
Total	16	100%

Median: 41-50 years.

4. Are you...?

Gender	No. of respondents	%
Male	13	81%
Female	3	19%
Total	16	100%

Section 2 – About your job

1. What is your position?

Position	No. of respondents	%
Queen's counsel	2	13%
Senior counsel	0	0%
Senior Junior counsel	10	63%
Junior counsel	4	25%
Reader	0	0%
Total	16	100%

2. Where are your chambers located?

Location	No. of respondents	%
Capital city CBD	16	100%
Capital city suburb	0	0%
Regional city or area	0	0%
Rural area	0	0%
Remote area	0	0%
Total	16	100%

3. In which area(s) do you practise?

Area of law	No. of respondents	%
Litigation	10	63%
Company/commercial	9	56%
Administrative/constitutional	8	50%
Immigration	7	44%
Insurance	6	38%
Property	5	31%
Wills/probate/estate	5	31%
Banking/finance	4	25%
Bankruptcy	4	25%
Family law	4	25%
Criminal law	3	19%
Discrimination	3	19%
Employment	3	19%
Environment	3	19%
Personal injury	3	19%
Tax	3	19%
Other	3	19%
Construction	2	13%
Consumer	2	13%
Powers of attorney / guardianship	2	13%
Social security	2	13%
Debt	1	6%
Domestic violence	1	6%
Housing/Tenancy	1	6%
Incorporations	1	6%
Intellectual property	1	6%

Other: Trade practices; International law and conflicts of law; Alternative dispute resolution.

Section 3 – Your participation

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

Pro bono in last 12 months	No. of respondents	%
Yes	14	87%
No	2	13%
Total	16	100%

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

Area of law	No. of respondents	%
Administrative/constitutional	4	25%
Other	4	25%
Family law	3	19%
Litigation	3	19%
Criminal law	2	13%
Employment	2	13%
Bankruptcy	1	6%
Company/commercial	1	6%
Domestic violence	1	6%
Immigration	1	6%
Insurance	1	6%
Personal Injury	1	6%

Other: Ecclesiastical and related law; Defamation, planning law; Advice to Legal Practice Board and educational foundation; Liquor licensing.

3. Have you ever done pro bono legal work?

This question was presented to those who had not done any pro bono legal work in the last 12 months.

Ever done pro bono	No. of respondents	%
Yes	1	6%
No	1	6%
Empty responses	14	87%
Total	16	100%

Section 4 – Types of pro bono legal work

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

Type of pro bono	No. of respondents	%
Provide verbal advice	12	85%
Drafting of documents	11	78%
Provide written advice	10	71%
Representation before a court or a tribunal	9	64%
Negotiation	2	14%
Mediation	1	7%

2. For whom was this pro bono legal work done?

Recipients of pro bono	No. of respondents	%
Individuals	11	78%
Community legal centres	3	21%
Other not-for-profits	3	21%
Other	3	21%

Other: Anglican Diocese; Legal Practice Board and educational foundation; Law Firms acting pro bono.

3. Have you volunteered legal assistance at a community organisation in the last 12 months?

Volunteered at a CLC	No. of respondents	%
Yes	5	35%
No	9	65%
Total	14	100%

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

Type of organisation	No. of respondents	%
A community legal centre or service	3	60%
Other not-for-profit organisation	1	20%
Other	1	20%
Total	5	100%

Other: Anglican Diocese of Perth

Section 5 – Practice issues

1. Do you keep a record of the pro bono legal work that you are doing?

Record of pro bono	No. of respondents	%
Yes	6	42%
No	8	58%
Total	14	100%

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

Pro bono for...	No. of respondents	%
For free	12	85%
At a substantially reduced fee	7	50%
Other	4	28%

Other: Free and on the basis that I will only be paid if we recover costs;
 Deferred/conditional fee basis; Mostly for free but in some cases under Federal Court
 O80 rules; I won't expect payment if the claim is not successful.

Section 6 – Amount of pro bono work

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

Hours of pro bono	No of respondents	%
5 hours or less	2	14%
6-10 hours	0	0%
11-20 hours	0	0%
21-30 hours	0	0%
31-40 hours	1	7%
41-50 hours	4	28%
51-70 hours	1	7%
71-90 hours	5	35%
More than 90 hours	1	7%
Don't know	0	0%
Total	14	100%

2. Have you spent more or less time doing pro bono legal work in the past 12 months than in the previous 12 months?

More or less pro bono	No. of respondents	%
More	4	28%
Less	4	28%
No change	4	28%
Don't know	2	14%
Total	14	100%

3. To what extent are you satisfied, or not satisfied, with the amount of pro bono work that you have done in the last 12 months?
- i. Satisfied? I doubt I would take it on if I wasn't satisfied with the work I was accepting on a pro bono basis. As to amount, I do what I can where I can and where I am satisfied that I should. Yes I know that's a value judgement I am making about the matters that I accept, however it needs commitment to undertake the work for no fee return.
 - ii. Substantially satisfied – although it is not always of my choosing what is pro bono and what is not.
 - iii. I have always undertaken pro bono work. However, when I first joined the Bar I had more time to take on pro bono work than when I was employed by someone else. I now feel that, as I work for myself, I can regulate my work such that I can take on a little more than I would when I was employed i.e. I can now do appearance work rather than just written and verbal advices or drafting documents. I find the work rewarding but I do find that I am being asked a lot. In conversations with those referring matters it has become clear that there are many of my colleagues who seem to always reject the work offered - although I should say I also know of some who are always prepared to help where at all humanly possible.
 - iv. I am dissatisfied to the extent that the amount of hours applied to my fee paying work limits the amount of pro bono I can do. I would do more if I had the time.
 - v. Easier to do pro bono work with the support of a firm in private practice - just starting out at the Bar and have needed to make money to make ends meet! Although undertaken a small amount of work at a reduced fee for private client, and work for Legal Aid WA.
 - vi. Because of ill health I have not done as much as I wanted. Most recent work has been on a single High Court matter. When my health improves I hope to do some community legal work in WA and Victoria, possibly in the mental health area.
 - vii. It's ok. Of course, I agree to do things in quiet patches, but it turns out they need to be done when things are busy.
 - viii. Vaguely dissatisfied, but I am fairly choosy.

Section 7 – Sources of pro bono work

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

Name on list	No. of respondents	%
Clearing house	1	7%
Bar pro bono scheme	1	7%
Court pro bono scheme	2	14%
None of the above	4	28%
Don't know	5	35%
Other	2	14%

Other: Some community groups doing pro bono refugee work; Environmental Defender's Office (WA) Inc.

2. What is the source of new pro bono matters?

Source	No. of respondents	%
Direct request from a solicitor	9	63%
referral by a community organisation	6	42%
Direct requests from a family member or friend	5	35%
Direct request to you from existing or past clients	5	35%
Referral from courts, tribunals or complaint handling bodies	4	28%
Direct request (cold call) from a potential client	3	21%
Referral from another barrister	3	21%
Other	2	14%
Referral from a clearing house	1	7%

Other: As a member of the Royal Australian Naval Reserve I also get referrals; Direct request from legal Practice Board through Barristers.

3. What percentage of pro bono matters were referred to you from your Bar's legal assistance scheme (if any)?

From Bar scheme	No. of respondents	%
0%	14	100%
Total	14	100%

Section 8 – Constraints / encouragement to pro bono

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

Barrier to pro bono	No. of respondents	%
Lack of time	10	63%
Lack of a solicitor to assist with the matter	8	50%
Insufficient expertise in relevant areas of the law	6	38%
No constraints	3	19%
The cost of disbursements involved	2	13%
Lack of information about opportunities	2	13%
Other	2	13%
Concern about conflict with fee paying clients	1	6%

Other: need to meet personal costs at the Bar (just started); Amount of unassisted research required on difficult matters.

2. What would encourage you to do more pro bono work?

Encouragement	No. of respondents	%
Clearer support for pro bono work from senior members of the Bar	5	31%
Training in areas of law that are common to pro bono	2	13%
A wide range of pro bono opportunities being made available to me	4	25%
More recognition and visibility for the work in general	4	25%
Nothing	4	25%
Other	5	31%

Other: More government funding (State & Commonwealth) for organisations; Availability of competent instructing solicitor; Instructing solicitors; Only constraint is time.

Section 9 – Legal Aid and “no win-no fee” work

Legal aid and “no win-no fee” work are not considered to be pro bono legal work for the purposes of this survey.

1. Did you do any Legal Aid work in the last 12 months?

Legal Aid work	No. of respondents	%
Yes	5	31%
No	11	69%
Total	16	100%

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

Time for Legal Aid	No. of respondents	%
0-5%	4	80%
6-10%	0	0%
11-20%	0	0%
21-50%	1	20%
Over 50%	0	0%
Total	5	100%

3. Is there any particular reason why you did not do any Legal Aid work?

- i. I'm fully occupied on pro bono.
- ii. The law firms I was working in prior to coming to the Bar did not do any Legal Aid work.
- iii. I don't do crime or family law so no real occasion for me to do Legal Aid work.
- iv. I am on three of their panels and yet have not been called as those making assignments have favourites. It is an extremely disappointing situation.
- v. None was offered and Legal Aid is not available in my fields of practice.
- vi. None offered in my area of expertise (public law). This is possibly due to the fact that LAC's or ALS's are not aware of possible opportunities because of in-house lack of knowledge or 'too busy' to lift heads, particularly in cases where there could be strategic prioritisation test cases or development group actions) if in-house educational programs were instituted to raise consciousness. Possibly occasional seminars on developments might assist. I would also be happy to be in-house consultant to a body like LACWA if the opportunity existed.

4. Do you have any comments that you would like to make about Legal Aid or 'no win-no fee' work?

- i. None about Legal Aid. I do not support "no win-no fee" as it puts counsel in conflict situation with client.

- ii. All lawyers should be prepared to do some of this type of work.
- iii. I don't like "no win-no fee" as it gives clients unrealistic expectations.
- iv. Legal Aid should be extended, e.g. to certain defamation cases where public interest/free speech is an issue. Legal Aid fees should be increased.
- v. Legal Aid is inadequately funded in areas such as family law, meaning it is not attractive to private practice nor is it accessible to all who need to utilise it.
- vi. There needs to be clarification about the terms in WA under which a barrister can quote a "no win-no fee".
- vii. I would not do Legal Aid work. I understand the paper work involved is horrendous. Also, I would prefer to do work at full rates or for free. Legal Aid rates are a significant discount on my usual rates – this discrepancy creates a gap in expectation. Client thinks I am being paid, I think I am really doing them a favour. Best steered clear of.

Section 10 – Attitudes to pro bono legal work

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

Should lawyers do pro bono	No. of respondents	%
Yes	15	94%
No	1	6%
Total	16	100%

2. What are the top two reasons why lawyers should do pro bono legal work?

Reasons for doing pro bono	No. of respondents	%
To help people who are socially disadvantaged or marginalised	5	100%
Out of a sense of professional responsibility	12	80%
Provides a positive public profile for chambers and/or individual lawyers	2	13%
Personal satisfaction from providing the service	2	13%

3. Are you aware of the National Pro Bono Aspirational Target of 35 hours per lawyer per year?

Aware of Target	No. of respondents	%
Yes	6	37%
No	10	63%
Total	16	100%

4. Is there anything else that you think would be useful for us to know about your pro bono work?
- i. I would like to do pro bono work but as a newcomer to the Bar I don't have the contacts and networks to get such work
 - ii. I sit on several statutory boards and committees where I get paid minute amounts for lots of hours of work - I am the only lawyer on them. I don't count this as pro bono for the purposes of this survey but it would easily add another 120-150 hours per year.
 - iii. I have always practised on the basis that law is a profession not a business. Because of the privileges that lawyers enjoy moral and professional obligations exist to the community at large. These are in addition to the obligations owed to the courts and clients. The professional person ought to regard such obligations as having priority, within reason, over personal interest. The administration of justice as an institution, depends on public confidence. That confidence is likely to be preserved if justice is accessible to all. Pro bono work is the most efficient way of delivering that access.
 - iv. Also does it in South Africa - for Legal Resources Centre in Cape Town there; one month a year; this time is not included in my time estimates given.
 - v. Particularly at the Bar, but also in private practice, often costs and overheads are such that it is prohibitive to undertake much pro bono work.
 - vi. In migration matters where I have helped out on the Federal Court's Pro Bono panel, I have paid hundreds of dollars out of my own pocket to get RRT tapes and the like transcribed. It is such an important part of RRT judicial review, and I do not have the time to listen and type them up myself.
 - vii. I would find it useful if the AAT would establish something equivalent to the Fed Ct O80 scheme in say social security area (although not for fees since

AAT = no fee jurisdiction, apart from some compo cases).If health permits I hope to get involved in something like PILCH in Victoria. That seems a readily available way to do pro bono work.