



SURVEY RESULTS

Victorian Government Legal Services Tender Scheme Pro Bono Condition April 2008

1. Background

In March 2008, the National Pro Bono Resource Centre (**Centre**) contacted the 35 law firms who are on the Victorian Government Legal Services Panel to gather information on the 'pro bono condition' in the panel arrangements (the **Scheme**).

The Centre provided all Panel Members with a questionnaire (**Attachment B**) which aimed to assess the support for and effectiveness of the Scheme, with a view to properly informing the Commonwealth Attorney-General of the pros and cons of introducing a similar Scheme.

2. Sample

66% of the Panel Members¹ responded to the survey. Of those who responded, 83% derived revenue from the Victorian Government Legal Services Panel in 2006-2007. The Centre collected data from a wide range of respondents, from large firms with more than 200 lawyers to small firms with less than 10 lawyers.² The sample also covered members with a broad range of time served on the panel.

3. Key Findings

3.1 *Impact on pro bono*

70% of the respondents reported an increase in pro bono legal work undertaken by the members of the firm in the time that it was a Panel Member. Of those who reported an increase in pro bono legal work, 62.5% indicated that the 'pro bono condition' was a factor in the increase, compared with 37.5% who indicated that the condition was not a factor in the increase. 30% of respondents (which included large, medium and small firms) indicated that they had commenced or increased *because* of the Scheme.

Of those who indicated that the 'pro bono condition' led to an increase in pro bono work undertaken by members of their firm, 50% indicated that the condition was a major factor in that increase, and 50% said the condition was a minor factor in that increase.

43% of the respondents identified other factors which contributed to the increase in pro bono work, including:

- an increase in staff interest in pro bono work
- the general expansion of their pro bono practice
- becoming a member of PILCH
- employment of a pro bono manager
- adoption of a formal pro bono policy
- the expansion of Homeless Persons' Legal Service
- the National Pro Bono Aspirational Target, and
- an increase in referrals from referral Schemes.

¹ 23 of the 35 Panel Members responded to the survey. In 2005/2006, a total of 28 Panel members received revenue. Source: Victorian Government Legal Services Annual Report, Department of Justice (April 2007), p. 7.

² Data collected includes responses from 6 of the 7 top-tier national law firms on the panel
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74% indicated that the 'pro bono condition' did not affect the diversity of pro bono activities undertaken by their firm, compared with 26% who reported a change in diversity. Of those who reported a change, 83% reported an increase in diversity, whereas 17% reported a decrease.

3.2 *Support for the Scheme*

70% of respondents considered that the Scheme was beneficial, compared with 21% who did not and 9% who did not comment. Of those who did not think the Scheme was beneficial, 40% did so purely because their firm did not derive revenue from the Scheme.

The key reasons that were cited in support of the Scheme were that it:

- has revived discussion about the provision of pro bono services
- recognises the value of pro bono in improving access to justice
- increases the amount and diversity of pro bono work undertaken
- provides lawyers with valuable experience outside their traditional areas of expertise
- recognises that many lawyers want to do pro bono and has created an incentive for firms to implement policies which enable them to do so, and
- creates a commercial imperative to undertake pro bono.

The reasons cited by those who did not believe the Scheme to be beneficial were:

- mandating pro bono does not promote a genuine commitment to pro bono as it seeks to encourage pro bono for commercial reasons. 9% of respondents noted that the mandatory pro bono requirement is contrary to the voluntarist ethic of pro bono work. Further, requirements to do certain amounts of pro bono work were seen as discriminating against smaller firms which lacked the financial capacity to provide free services
- the Scheme privatises the government's responsibility to provide access to justice, and
- many firms were deeply committed to pro bono prior to joining the panel.

3.3 *Reporting*

74% reported that completion of the annual Pro Bono Activity Report was straightforward, compared with 22% who disagreed, and 14% who did not comment because they did not derive revenue under the Scheme and were not required to complete the report.

26% of respondents made comments about the annual report and how it could be improved, including:

- It requires too much detail. The report requires firms to enter information manually. In particular, the requirement to separately list the work done by lawyers at each level (e.g. article clerk or Senior Associate) and their hourly rate at the government rates, makes reporting fiddly and burdensome
- It is time consuming to prepare
- It should be accompanied by guidelines on the reporting process. It is unclear what level of detail is sought about the pro bono work performed.

9% of respondents stated that the report is easy to prepare if you keep accurate records and have the appropriate procedures in place.

3.4 *Definition of 'approved cause'*

65% of respondents supported the definition of 'approved cause' in the Panel Contract, compared with 13% who opposed the definition, 13% who suggested changes to the definition but did not indicate whether they supported the definition, and 9% who did not comment.

48% of the respondents suggested amendments to the definition 'approved causes', most of which called for a broadening of the definition by:

- Including all pro bono work undertaken for charities, not-for-profits, non-government organisations, including but not limited to serving on the Boards of these organisations³
- Including all pro bono work undertaken within the definition, whether referred by a CLC or PILCH or otherwise (refers to the proof required that the 'client has no other access to the courts and the legal system' which is automatically accepted if a matter is referred through a PILCH or a CLC but can be difficult to establish otherwise)
- Including pro bono work undertaken by staff outside office hours i.e. volunteer work done by employees at a CLC after 5pm (point raised by a small firm)
- Amending the definition to include all services included in the Law Council of Australia's definition of pro bono, and/or
- Removing the requirement that the pro bono work must enhance 'access to justice'.

One respondent also suggested that the definition of 'approved cause' should be narrowed by removing financial or in-kind assistance from the definition and omitting the words 'or at a reduced fee' from part (a) of the definition. Another respondent suggested that a Commonwealth government scheme might include international pro bono work as part of approved causes.

4. Respondents' suggestions for change

Respondents made a number of suggestions to improve the Scheme, which can be summarised as follows:

- The definition of 'pro bono' and 'approved cause' should be broadened
- The definition of 'approved cause' should be accompanied by guidelines which provide practical examples of services that fall within the definition
- The reporting process should be simplified so that it is less time consuming
- The government should prepare guidelines which clearly identify the level of detail required in the report
- The Scheme should give greater prominence to the conflicts protocol⁴
- Feedback should be provided to firms on whether the volume and quality of pro bono performance has any value in decision made by Government to distribute work to Panel Members
- The government should support all Panel Members who are supporting pro bono initiatives by referring matters fairly between Panel Members, and
- The Scheme should consider long-term performance rather than year-by-year 'accounting' approach to measuring performance.

5. Summary

- The survey corroborates existing evidence that the amount of pro bono work done by Victorian firms has increased significantly since 2002.⁵ Respondents identify a broad range of contributing factors. Significant amongst them is the operation of the 'pro bono condition' in the Scheme.
- 70% of the respondents considered that the Scheme was beneficial even though only 43% of the respondents said that the pro bono condition was a factor in the increase. So it seems fair to conclude that there is considerable support for the Scheme amongst Panel Members, notwithstanding that 22% of respondents indicated they do not consider the Scheme to be

³ At present, the definition is limited to 'the giving of legal advice and/or representation to charitable and community organisations'

⁴ The conflicts protocol, developed by the Centre in 2003, states that government agencies and authorities should not prejudice law firms who act against them in pro bono matters. The protocol is not incorporated in the text of the Panel Contract or Service Level Agreement but has been provided to Panel Firms. The full text of the draft protocol is available at <http://www.nationalprobono.org.au/page.asp?from=3&id=166>

⁵ Government Legal Services Annual Report (2005/2006), April 2007, page 1: Panel firms delivered \$5.2m in 05/06 out of \$11m delivered since 2002 and PILCH Annual Report 2005-2006, p.5 and casework statistics. Also see ref 9 above.

beneficial for the reasons set out in paragraph 3.2. 40% of these were opposed purely because their firm did not derive revenue from the scheme.

- It is noteworthy that 7 firms or 30% of respondents said they had commenced or increased pro bono *because* of the Scheme.
- 74% of respondents reported that implementation of the Scheme did not adversely affect the diversity of pro bono work being provided. Of the 26% who did report a change, 5 firms reported an increase in diversity and 1 firm reported a decrease.
- There is a significant level of support for changes to the Scheme, primarily in relation to its definitions and reporting requirements.
- Whilst most found completion of the annual Pro Bono Activity Report straightforward (74%), there were 26% who made suggestions for streamlining reporting and improving the guidelines on the level of detail expected.
- 65% supported the definition of 'approved cause' (that describes the type of work that counts under the Scheme) but 50% suggested amendments to the definition, mainly seeking a broadening of it. Some of this was substantive in nature (i.e. include all pro bono work for charities and not-for-profits and remove financial or in-kind assistance). Other issues such as proof of whether a person has no other access to the legal system could perhaps be addressed by more extensive guidelines that provide practical examples to clarify grey areas.