Fourth National Law Firm Pro Bono Survey

Australian firms with fifty or more lawyers

Interim Report

October 2014
About the NATIONAL PRO BONO RESOURCE CENTRE

The National Pro Bono Resource 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 National Pro Bono Resource 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.

This work is licensed under a Creative Commons Attribution-Non-commercial-ShareAlike 3.0 Australia licence
http://creativecommons.org/licenses/by-nc-sa/3.0/
1 INTRODUCTION AND METHODOLOGY

This is an Interim Report on responses to the fourth biennial National Law Firm Pro Bono Survey (“Survey”) conducted by the National Pro Bono Resource Centre (“Centre”) in 2014. The Survey of Australian law firms and incorporated legal practices (“firms”) with 50 or more full-time equivalent (FTE) lawyers has been undertaken every two years since 2008 to provide a snapshot of the ‘pro bono landscape’ of large law firms in Australia, identify trends over time and gather information about current topics of interest. This Interim Report is intended to provide a brief overview of a selection of the data collected.

After extensive consultation with potential survey respondents during the design process, law firms with 50 or more FTE lawyers were approached by the Centre and encouraged to participate. The Survey could be completed either online using a survey service provided by SurveyMonkey™¹ or in hard copy.

Survey respondents could answer anonymously, but all firms had the opportunity to identify their responses and most chose to do so. All Survey responses are treated as confidential, and the data is provided in this report in a de-identified form.

Where possible, the results of the Survey are compared with the results of the surveys conducted in 2012 and 2010. Any possible comparisons with data from the 2008 survey will be made in the Final Report, which is due to be released later this year and will cover all of the topics raised in the Survey (for details, please refer to Appendix A on page 15).

¹ http://www.surveymonkey.com
2 THE LARGE LAW FIRM LANDSCAPE

Over the last two years since the last Survey in 2012, large Australian law firms experienced another period of significant change following the turbulence created by the Global Financial Crisis (2010-2012). As at 30 June 2014, there were 55 law firms with 50 or more FTE lawyers in Australia, employing approximately 13,450 FTE lawyers.

This time, change has been driven by new market entrants, mergers and acquisitions among older mid-size firms and the increasing globalisation of the legal services market in Australia. Leading benchmarking firm FMRC describes the profession as one in transition. The landscape has also been affected by the increasing use of in-house counsel, decreases in chargeable hours and the emergence of smaller new entrants, these often being new offices of existing global firms.

A number of lawyers at large national firms have chosen to leave and move to mid-size and new-entrant firms, in many cases taking a structured ‘pro bono culture’ with them. The emergence of new entrants is noted by the Macquarie Bank’s 2013 Legal Best Practice Benchmarking Report (“Macquarie Bank Report”) which reports that only 57% of the 134 small and mid-size firms surveyed by Macquarie Bank were over 10 years old as compared to 67% two years earlier.

Of the 40 firms that responded to the Survey, 12 (40%) had gone through a merger or acquisition in the last four years, compared to 10 firms (28%) in 2012. As at 1 July 2014, eight of these firms (20%) indicated that they are “international law firms”; that is, they employ more lawyers overseas than in Australia, thus highlighting the significance of globalisation in the legal market.

3 SURVEY RESPONDENTS

The Survey looks at the pro bono legal activity of law firms in Australia with 50 or more FTE lawyers during the 2013/2014 financial year. As at 30 June 2014, there were 55 such firms. Between them they retain approximately 13,450 FTE lawyers.

Of these 55 firms, 40 firms (representing 11,695 FTE lawyers) responded to the Survey, including 24 of the 25 largest firms (by size) in Australia. As in 2010 and 2012, these firms fell naturally into the following three groups:

---


3 Macquarie Bank, 2013 Legal Best Practice Benchmarking Report: mid-size firms described as having revenue between $4 million and $20 million in gross fee revenue annually; small firms described as having less than $4 million in gross fee revenue annually.
• **Group A** – firms with 450 - 1,000 FTE lawyers
• **Group B** - firms with 201 - 449 FTE lawyers
• **Group C** - firms with 50 - 200 FTE lawyers

### Table 1: Firms with 50 or more FTE lawyers

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2012</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of law firms with 50 or more FTE lawyers in Australia</td>
<td>55</td>
<td>51</td>
<td>39</td>
</tr>
<tr>
<td>Respondent firms*</td>
<td>40</td>
<td>36</td>
<td>29</td>
</tr>
<tr>
<td>• <strong>Group A</strong> (450 - 1,000 FTE lawyers)</td>
<td>8 (of 8)</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>• <strong>Group B</strong> (201 - 449 FTE lawyers)</td>
<td>14 (of 15)</td>
<td>11</td>
<td>6</td>
</tr>
<tr>
<td>• <strong>Group C</strong> (50 - 200 FTE lawyers)</td>
<td>18 (of 32)</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>Total FTE lawyers employed by firms that completed the Survey</td>
<td>11,695</td>
<td>11,460</td>
<td>10,227</td>
</tr>
</tbody>
</table>

* Please note that a number of firms have moved between Groups A, B and C since the last Survey in 2012.

The head offices of respondent firms are predominantly found in Sydney, with 25 firms’ head offices in New South Wales, ten in Victoria, three in Queensland and one each in the Australian Capital Territory and Western Australia.

### 4 HOURS OF PRO BONO LEGAL WORK

Thirty-eight of the 40 respondent firms use the Centre’s definition of “pro bono legal work.” This is similar to the proportion that had adopted the Centre’s definition when completing the Survey in 2012 (34 of 36) and 2010 (24 of 29). One of the remaining two firms uses a definition that is substantially the same as the Centre’s definition while the other firm is currently finalising its pro bono policy.

---

4.1 Total hours of pro bono legal work

All 40 respondents provided information on their firm’s total hours of pro bono legal work. In the 2013/2014 financial year, they performed a total of 373,976 hours of pro bono legal work. This is equivalent to 208 FTE lawyers doing pro bono legal work full-time for a year. The increase in total hours of pro bono legal work since 2010 is outlined in Table 2 below.

Table 2: Total hours of pro bono legal work

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2012</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total hours of pro bono legal work</td>
<td>373,976</td>
<td>343,058</td>
<td>322,343</td>
</tr>
</tbody>
</table>

In total, four respondent firms reported performing over 30,000 hours of pro bono legal work (all from Group A), three reported over 20,000 hours (two from Group A and one from Group B) and three firms reported over 10,000 hours (two from Group A and one from Group B).

Whilst the total number of hours of pro bono legal work has increased by nine percent since 2012, the total number of firms reporting their hours has increased by eight firms. Therefore, a better metric for evaluating the change in law firm pro bono performance is hours of pro bono legal work per lawyer per year. These figures are outlined in Table 3 on the next page.

4.2 Hours of pro bono legal work per lawyer per year

“Hours of pro bono legal work per lawyer per year” is calculated by dividing the total number of pro bono hours undertaken in the last financial year by the number of FTE lawyers in the firm, calculated as the number at the beginning of the financial year and the number at the end of the financial year, divided by two.

The Centre considers that, compared with other methods, the “hours per lawyer per year” figure provides the best way of measuring and comparing firms’ pro bono contributions, as an hour is a fixed constant across firms and it takes into account firms’ relative sizes.

The overall figure of 32 hours of pro bono legal work per FTE lawyer in 2013/2014 records an increase of 7.0% since the 2012 Survey and an increase of 10.3% since the 2010 Survey (see Table 3 on the next page).

---

5 This figure is calculated based on a 37.5 hour working week for 48 weeks per year.

6 For more information see the definition of “pro bono hours per lawyer per year” provided in the Glossary of the Survey questionnaire, at http://www.nationalprobono.org.au/page.asp?from=2&id=315#PBH.
### Table 3: Hours of pro bono legal work per lawyer per year

<table>
<thead>
<tr>
<th>Total hours of pro bono legal work per lawyer per year</th>
<th>2014</th>
<th>2012</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Group A (450 - 1,000 FTE lawyers)</td>
<td>41.3</td>
<td>38</td>
<td>41.5</td>
</tr>
<tr>
<td>• Group B (201 - 449 FTE lawyers)</td>
<td>25.7</td>
<td>20.4</td>
<td>22.5</td>
</tr>
<tr>
<td>• Group C (50 - 200 FTE lawyers)</td>
<td>18.1</td>
<td>15.7</td>
<td>27.2</td>
</tr>
</tbody>
</table>

The total number of hours of pro bono legal work per FTE lawyer in each of Groups A, B and C rose when compared to 2012, but the sizes of the increases are markedly different. The growth in Group A firms since 2012 is 8.7%, whereas the growth in Group B firms is 26.0% and in Group C firms is 15.3%.

The large increase in the hours of pro bono legal work per lawyer amongst Group B firms is largely attributable to two factors:

- a growth in pro bono performance amongst some Group B firms; and
- the movement of a high performing firm from Group A to Group B.

More in-depth historical comparisons and trending data will be provided in the Final Report, which will be published by the Centre later this year.

### 4.2.1 De-identified results of individual firms

The reported hours of pro bono legal work per lawyer for the year varied greatly between individual firms. The responses ranged from a high of 67.4 hours of pro bono legal work per lawyer to a low of 1.6 hours. **Chart 1** on the next page outlines each individual firm’s performance in a de-identified form with figures arranged in descending order by Groups A, B and C.

Of the 30 firms that reported on hours of pro bono legal work per lawyer in both 2013/2014 and 2011/2012:

- 11 firms reported a significant (more than 20%) increase; and
- 4 reported a significant (more than 20%) decrease in the hours per lawyer performed.
Chart 1: Hours of pro bono legal work per lawyer - individual firms

Group A (8 firms)
- Firm 1: 50.1
- Firm 2: 47.5
- Firm 3: 47.1
- Firm 4: 45.3

Group B (14 firms)
- Firm 5: 38.2
- Firm 6: 37.3
- Firm 7: 36.1
- Firm 8: 20.4

Group C (19 firms)
- Firm 9: 58.9
- Firm 10: 44.2
- Firm 11: 35.6
- Firm 12: 30.0
- Firm 13: 26.1
- Firm 14: 26.1
- Firm 15: 25.5
- Firm 16: 24.4
- Firm 17: 23.3
- Firm 18: 15.2
- Firm 19: 12.9
- Firm 20: 10.2
- Firm 21: 9.5
- Firm 22: 6.0
- Firm 23: 36.2
- Firm 24: 29.9
- Firm 25: 27.1
- Firm 26: 25.9
- Firm 27: 20.8
- Firm 28: 16.3
- Firm 29: 15.6
- Firm 30: 13.5
- Firm 31: 12.3
- Firm 32: 10.5
- Firm 33: 6.7
- Firm 34: 6.0
- Firm 35: 5.9
- Firm 36: 5.9
- Firm 37: 5.2
- Firm 38: 3.8
- Firm 39: 1.6
- Firm 40: 1.6
PARTICIPATION RATES

A good indicator of the maturity and sophistication of a firm’s pro bono program and the strength of its pro bono culture is the percentage of its total number of lawyers undertaking pro bono legal work.

The Centre asked respondents to provide the percentage of lawyers at their firm doing at least one hour of pro bono legal work in the last financial year (“participation rate”).

Thirty-eight out of 40 firms reported a participation rate in the 2013/2014 financial year, with 16 (42%) indicating that their answers were estimates. The participation rates reported varied greatly between firms. The responses ranged from a high of 89.1 percent (a Group A firm) to a low of 8 percent (a Group C firm).

Of the 26 firms that responded to this question in both 2013/2014 and 2011/2012, nine reported a significant (more than 20%) increase in their participation rate. A further nine firms reported a significant (more than 20%) decrease.

The average participation rate across all firms was 50 percent, compared to 53 percent in 2012 and 59 percent in 2010. See Table 4 below for a Group by Group breakdown.

Table 4: Participation rates

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th>2012</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average participation rate across all firms</td>
<td>50%</td>
<td>53%</td>
<td>59%</td>
</tr>
<tr>
<td>• Group A (450 - 1,000 FTE lawyers)</td>
<td>64%</td>
<td>61%</td>
<td>72%</td>
</tr>
<tr>
<td>• Group B (201 - 449 FTE lawyers)</td>
<td>50%</td>
<td>50%</td>
<td>41%</td>
</tr>
<tr>
<td>• Group C (50 - 200 FTE lawyers)</td>
<td>44%</td>
<td>49%</td>
<td>49%</td>
</tr>
</tbody>
</table>

5.1.1 Partner participation rates

For the first time, respondents to the 2014 Survey were also asked to report on participation rates for their partners. The responses of the 32 firms that reported on this metric provided an average partner participation rate of 40 percent (compared to an overall participation rate of 50% reported by these same firms). Thirteen firms (41%) indicated that their answer was an estimate.

Five firms in Group A reported an average partner participation rate of 56 percent (compared to an average overall lawyer participation rate of 64%), 11 Group B firms reported an average of 45 percent (compared to 50% overall) and 16 Group C firms reported an average of 31
percent (compared to 44% overall). See Chart 2 below for a comparison of overall and partner participation rates.

**Chart 2: Average participation rates (all lawyers v partners)**

(\% of all lawyers/partners who undertook more than 1 hour of pro bono work)

<table>
<thead>
<tr>
<th>Average participation rate</th>
<th>Lawyers (overall)</th>
<th>Partners</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>50%</td>
<td>40%</td>
</tr>
<tr>
<td>Group A</td>
<td>64%</td>
<td>56%</td>
</tr>
<tr>
<td>Group B</td>
<td>50%</td>
<td>45%</td>
</tr>
<tr>
<td>Group C</td>
<td>44%</td>
<td>31%</td>
</tr>
</tbody>
</table>

*Data only includes firms that provided answers to both questions

### 5.1.2 The Relationship between Participation Rates and Secondments

The overall average trend for participation rates has been downward since 2010 (see Table 4 on the previous page). This can be partly explained by the increase in the number of respondents to the Survey (29 in 2010, 36 in 2012 and 40 in 2014), and by the fact that in many cases these new respondents are in the early stages of developing their pro bono programs. It is notable, however, that over the same period the hours of pro bono legal work per lawyer has increased (see Table 3 on page 7).

Another factor affecting these figures may be an increase in secondments over the same period. Of the 18 firms\(^7\) that provided secondments in the 2013/2014 financial year:

- 11 (61\%) are providing more secondments than two years ago;
- 4 (22\%) are providing the same amount of secondments than two years ago; and
- 3 (17\%) are providing less secondments than two years ago.

When a firm is providing more secondments, it is possible for its average hours of pro bono legal work per lawyer per year to rise while the number of its lawyers participating in pro bono legal work falls.

---

\(^7\) This number includes all nine Group A firms.
Notably, the three Group A firms with the highest participation rates are providing fewer than or the same amount of secondments as they were two years earlier, whereas four of the other five firms are providing more. The three Group B firms with the highest participation rates are providing the same or fewer secondments, whereas the other five firms are providing more.

6 TYPES OF LEGAL ASSISTANCE

6.1 Clients: organisations or individuals?

Respondents were asked to calculate or estimate the proportion of pro bono legal work that they carried out for individuals and for organisations in the 2013/2014 financial year. Thirty-eight firms responded to this question, with 28 (74%) indicating that their answers were estimates.

As in 2012, respondents generally provided more assistance to organisations than to individuals. The average percentage of pro bono legal work undertaken for organisations was 64 percent (63% in 2012), and for individuals was 36 percent (37% in 2012). The responses ranged from five percent (a Group C firm) to 100 percent (a Group B firm) for organisations. Only eight of the 38 firms carried out more pro bono legal work for individuals than for organisations. For overall and Group A, B and C averages see Chart 3 on the next page.

Group A firms reported that of the pro bono legal work they performed, an average of 56 percent was for organisations, the same as in 2012, and in general the proportions of work were closer to being equal than in Groups B and C. Three out of eight firms reported performing more work for individuals than for organisations.

Group B firms reported that of the pro bono legal work they performed, an average of 67 percent was for organisations (compared to 60% in 2012). One out of 13 firms reported performing more work for individuals than for organisations, and two performed an equal amount of work for each.

Group C firms reported that of the pro bono legal work they performed, an average of 67 percent was for organisations (68% in 2012). Four out of 17 firms reported performing more pro bono legal work for individuals than for organisations.
6.2 Areas of law and practice

6.2.1 Top five areas of law and practice

Respondents were asked, “To the best of your knowledge, what were the top five areas of law and practice in which your firm in Australia spent time providing pro bono legal services in the 2014 FY (not including work undertaken by lawyers seconded to other organisations)?” Respondents could select from 37 options, or they could answer “Other” and specify any area not covered.

The 39 (of 40) firms that responded to this question placed “Governance” and “Employment Law” most often in their top five (22 firms), followed by “Commercial Agreements” (17 firms), “Deductible Gift Recipient Status (DGR) Applications” (14 firms) and “Intellectual Property” (12 firms) (see Chart 4 on the next page). These results reflect the large amount of pro bono legal work that large firms undertake for not-for-profit organisations, as illustrated in 6.1 on the previous page.
These results are similar to those obtained in the 2012 Survey (where the top five responses were, in order, “Governance”, “Deductible Gift Recipient Status (DGR) Applications”, “Employment Law”, “Commercial Agreements” and “Incorporations”).

The Centre notes that:

- the most common requests for pro bono assistance from not-for-profit organisations involve areas of law and practice in which corporate law firms are most likely to have expertise (eg “Governance”); and
- that there is a large unmet legal need in this area that cannot be met by others in the legal assistance sector (including Legal Aid, community legal centres and other organisations that provide legal assistance) (eg “Commercial Agreements”).

### 6.2.2 Top five rejected areas of law and practice

Respondents were then asked “To the best of your knowledge, in which areas of law or practice in the 2014 FY was your firm required to reject the most requests for assistance (for reasons other than means or merit)?” and given the same options as in the previous question. Results can be found in Chart 5 on the next page.

As in 2012 and 2010, “Family Law (not including Family Violence)” was most often placed in respondents’ top five (20 firms). For a discussion of why large firms are not well placed to
assist clients in family law matters, please refer to the Centre’s 2013 Research Report *Pro Bono Legal Services in Family Law and Family Violence: Understanding the Limitations and Opportunities*. 8

Twelve firms placed “Criminal Law” in their top five most rejected requests for assistance, and nine firms placed “Deductible Gift Recipient Status (DGR) Applications”, “Immigration” and “Wills/Probate/Estate” in to this category. In 2012, the areas of law and practice most often rejected by firms were, in descending order, “Family Law (not including Family Violence)”, “Immigration”, “Employment Law”, “Criminal Law”, “Wills/Probate/Estate” and “Debt.”

It is notable that a number of areas of law and practice have been consistently identified by respondents to the 2014, 2012 and 2010 Surveys as those where pro bono assistance is frequently provided but also frequently rejected, including “Deductible Gift Recipient Status (DGR) Applications”, “Employment Law”, “Immigration” and “Wills/Probate/ Estate”. This may evidence that while many requests are accepted, unmet legal need remains high in these areas.

---

APPENDIX A: TOPICS TO BE COVERED IN THE FINAL REPORT

The following topics will be covered in greater depth in the Final Report on the 2014 National Law Firm Pro Bono Survey, due to be released later this year:

- More information on the law firms surveyed (including geographic distribution and size)
- Definition of “pro bono”
- Coordination of firms’ pro bono programs (including the nature of the coordinator’s role, pro bono policies and dedicated pro bono lawyers)
- Areas of focus for pro bono programs
- Sources of pro bono work (including referral schemes and organisations)
- Participation rates
- Hours of pro bono legal work undertaken (including percentage of total firm practice hours)
- Types of pro bono legal work (including areas of law and practice and work with in-house lawyers)
- Budgeting and setting targets
- Crediting and recognising individual lawyers’ pro bono legal work (including treatment in billable hour and financial targets)
- Secondments
- Challenges and strengths (including factors in the success of and greatest threats to programs)
- Cost of disbursements
- Systems for evaluating pro bono programs
- The effect of law firm mergers and the globalisation of law firms
- Pro bono legal work in regional, rural and remote areas
- International pro bono legal work
- The effect of government tender arrangements for legal services
- The National Pro Bono Aspirational Target