PRO BONO PARTNERSHIPS AND MODELS

A PRACTICAL GUIDE TO

WHAT WORKS

NATIONAL PRO BONO RESOURCE CENTRE

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ABBREVIATIONS AND GLOSSARY

ASIC  Australian Securities and Investments Commission
CLC  Community legal centre
CLE  Community legal education
CLSD  Cooperative legal service delivery
CSR  Corporate social responsibility
ELC  Employment Law Centre of Western Australia
G+T  Gilbert + Tobin
HRLC  Human Rights Law Centre
HSF  Herbert Smith Freehills
K&WM  King & Wood Mallesons
LCCLC  Loddon Campaspe Community Legal Centre
MOU  Memorandum of Understanding
NCYLC  National Children's and Youth Law Centre
NMLS  North Melbourne Legal Service
QPILCH  Queensland Public Interest Law Clearing House
PILCH  Public Interest Law Clearing House
RRR  Regional, rural and remote

*Community legal centre*

Independent, not-for-profit community-based organisation that exists to provide free legal services to the community, with a focus on economically and socially disadvantaged people who have the least access to justice.

*Community service program*

A program dedicated to community service other than pro bono legal service, such as a workplace giving program, or a charitable, volunteering or mentoring program.

*Corporate social responsibility*

The concept of corporate social responsibility is generally understood to mean that corporations have a degree of responsibility not only for the economic consequences of their activities, but also for the social and environmental implications.
**Individual volunteer**

For the purposes of this resource, a person who has, as an individual, made a personal choice to provide their skills and experience to undertake pro bono legal work in their own time, and is distinguished from a lawyer participating in an organised pro bono program.

**International pro bono legal work**

International pro bono legal work is pro bono legal work focused outside of Australia, and in response to both need and disadvantage within a recipient country. It may include the provision of direct legal advice and representation, assistance with law reform or other systemic legal issues, legal training and education, and judicial assistance.

**Large law firm**

For the purposes of this resource, a large law firm is considered to be one with between 450 and 1,000 full-time equivalent lawyers. This corresponds with the “Group A” firm grouping in the biennial National Law Firm Pro Bono Survey: Australian firms with fifty or more lawyers.

**Mid-sized law firm**

For the purposes of this resource, a mid-sized law firm is considered to be one with between 50 and 350 full-time equivalent lawyers. This corresponds with the “Group B” and “Group C” firm groupings in the biennial National Law Firm Pro Bono Survey: Australian firms with fifty or more lawyers.

**National Pro Bono Aspirational Target**

The National Pro Bono Aspirational Target is a voluntary target of at least 35 hours of pro bono work per lawyer per year. For more information see the National Pro Bono Resource Centre’s website at www.nationalprobono.org.au.

**Not-for-profit organisation**

A not-for-profit organisation (NFP) is one that does not operate for the profit, personal gain or other benefit of particular people (see “What is a not-for-profit” at the Australian Charities and Not-for-profits Commission website.

**Pro bono legal work**

For the purposes of this resource, pro bono legal work is time spent by lawyers (including law graduates not yet admitted to practice):

- giving legal assistance for free or at a substantially reduced fee to:
  - individuals 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

- conducting law reform and policy work on issues affecting low-income or disadvantaged members of the community, or on issues of public interest

- participating in the provision of free community legal education on issues affecting low-income or disadvantaged members of the community or on issues of public interest; or
• 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.

The following is not regarded as pro bono work for the purposes of this resource:

• giving legal assistance to any person for free or at a reduced fee without reference to whether he/she can afford to pay for that legal assistance or whether his/her case raises an issue of public interest
• free first consultations with clients who are otherwise billed at a firm's normal rates
• legal assistance provided under a grant of legal assistance from Legal Aid
• contingency fee arrangements or other speculative work which is undertaken with a commercial expectation of a fee
• the sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities
• time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

Pro bono provider

For the purposes of this resource, any individual or organisation providing pro bono legal services, and may include law firms, in-house/corporate legal departments, government lawyers, individual solicitors and barristers.

Pro bono referral scheme and/or clearing house

A Public Interest Law Clearing House (PILCH), JusticeNet SA, and/or any professional association pro bono referral scheme (eg the Law Society of NSW Pro Bono Scheme).

Regional area

This is a regional city or large town that is outside of the state capital, but is a large centre in its own right. Examples are Mount Gambier, Albany, Alice Springs, Mount Isa, Burnie, Geelong, Wollongong and Queanbeyan.

Remote area

A remote area is far from the nearest regional centre or small town. It may be difficult as well as time-consuming to reach the area from the nearest population centre by road.

Rural area

A rural area is either in a small town that is dependent on rural industries, or is outside of such a town.

Small law firm

For the purpose of this resource, a small law firm is considered to be one with fewer than 50 full-time equivalent lawyers.
ABOUT THE NATIONAL PRO BONO RESOURCE CENTRE

The National Pro Bono Resource Centre (“the Centre”) 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 people experiencing disadvantage, 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 activities that the Centre undertakes to grow pro bono capacity include:

**Strengthening the view within the Australian legal profession that pro bono is an integral part of legal practice**

- promoting the pro bono ethos and the rationale for doing pro bono work by increasing its visibility
- developing measures to encourage an increase in the quality and amount of pro bono work
- encouraging the sharing of information that supports the growth of and participation in the pro bono community.

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

- undertaking research on the unmet legal need that pro bono legal assistance may be able to address, and best practice in its provision
- engaging in advocacy and law reform on issues affecting the delivery of pro bono legal services
- providing practical advice to lawyers and law firms to support their efforts to increase the quantity and impact of their pro bono work
- encouraging pro bono partnerships and innovative pilot projects.

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Building awareness of pro bono legal services within the legal profession and the broader community

- networking with relevant stakeholders, particularly those in the legal assistance sector
- producing and distributing information resources and organising conferences and forums.

The 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.
AIM OF THE RESEARCH

“If, as lawyers, we are serious about promoting access to justice we have an obligation to work together regardless of whether we are public or private, big or small, radical or conservative in our culture. Often the greatest barrier to cooperation is fear of the unknown. Let’s get to know each other better, work together and make a difference together.” (Community legal centre principal solicitor)

Pro Bono Partnerships and Models: A Practical Guide to What Works is intended to be a resource that assists those involved in providing, seeking and brokering pro bono legal assistance to:

- better understand best practice working models of pro bono legal assistance
- better understand the issues that affect what works in pro bono
- design and develop a project proposal that is easily recognisable by pro bono service providers as a worthwhile opportunity and maximises the likelihood that the project will work well
- use relevant case studies as evidence to support their proposed use of that model
- evaluate the likelihood of the project’s success using criteria developed from the identified features of successful projects.

In conducting its research, the Centre reviewed existing research and evaluations of past and current pro bono projects and models of delivering pro bono legal assistance, and consulted a broad range of stakeholders.

It is hoped that the publication will provide a resource that, by increasing knowledge about best practice working models of pro bono, will enhance the capacity of pro bono projects and partnerships developed by those providing, seeking and brokering pro bono relationships to address unmet legal need.
CONSULTATION PROCESS

In conducting the consultation process for this research, the Centre aimed to draw on the experience of a wide variety of stakeholders that represent all Australian jurisdictions, different parts of the legal profession, organisations of all sizes, particularly those involved in delivering, brokering or seeking pro bono legal assistance, and also those with experience with the models outside of the pro bono context. Those consulted include pro bono clearing houses, law firm pro bono coordinators and other law firm staff involved in pro bono work, community legal centres (national, specialist and regional), government, members of the bar, not-for-profit organisations, universities and research organisations.

The Centre prepared a consultation paper providing a non-exhaustive list of established models for delivering pro bono legal services (case referral, specialist clinics, outreach clinics, student clinics, co-counselling, secondments, law reform, telephone advice and online advice) that included:

- a description of each model
- how the model aims to address unmet legal need
- how pro bono legal service providers contribute to addressing the need
- possible benefits of the model
- possible challenges/limitations of the model
- possible features of effective projects using that model.

The aim of the consultation process was to verify and expand on the information provided in the consultation paper about the models and issues, with a focus on the following questions:

1. Are there key models we have not identified?
2. Is our description of each model, the legal needs it aims to address, and the contributions required from pro bono service providers, correct?
3. What are the benefits of each model?
4. What are the limitations/challenges faced by each model?
5. What are the features of an effective project using each model?
6. Are there other important issues to consider in identifying best practice for each model?
7. What case studies would you use to best illustrate the model, benefits, and challenges? (not necessarily limited to pro bono - can be drawn from other contexts eg CLCs)
8. Are there any other issues relating to what works in pro bono that we should consider?
THE PRO BONO LANDSCAPE IN AUSTRALIA

The role of pro bono legal services in the access to justice landscape is becoming increasingly visible and it is now clear that these services are playing an important role in expanding access to justice.3

“There are Australians who, despite their difficulties and their need to appear in court, may not qualify for legal aid... Sometimes there are issues of great legal complexity, and even greater public interest... In these and other situations, the importance of pro bono contributions from the legal profession becomes clear, as pro bono services often provide vital assistance where no other avenue is available.⁴

(The Hon Mark Dreyfus QC MP, Attorney-General of Australia)

Pro bono comes from the Latin phrase “pro bono publico” which means for the public good. There is no universally accepted definition of what is meant by “pro bono legal services” although several definitions have been influential in developing pro bono practices. Most definitions focus on legal assistance provided to disadvantaged or marginalised clients who could not otherwise access legal assistance, or clients whose cases raise a wider issue of public interest. The term often includes legal services provided to organisations working for disadvantaged groups or for the public good. Many definitions include lawyers engaging in free community legal education and/or law reform. Most pro bono legal services are provided without a fee being charged to the client, although some are provided for a substantially reduced fee. There is general consensus that pro bono work should not be seen as a substitute for publicly funded legal services and that pro bono legal work complements these services. This is often reflected in definitions of pro bono work, sometimes as a criterion for acceptance of a pro bono referral.⁵ (See the National Pro Bono Resource Centre's definition of “pro bono legal work” in Abbreviations and Glossary.)

“...pro bono work tangibly contributes to improving access to justice for Australians who cannot otherwise get the help they need to enforce their legal rights and to resolve their problems....This is not to say that pro bono work should be used as a substitute for government funded legal services. Rather, pro bono legal services form one essential element of a mix of services that the government and the legal profession provide to enhance access to justice within the Australian community.”⁶

(The Hon Mark Dreyfus QC MP, Attorney-General of Australia)

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Since its beginnings in the mid-1990s the pro bono movement in Australia has grown to encompass the diverse range of stakeholders, programs and services that exist today, namely:

- structured pro bono legal programs in all of the large and increasingly in the mid-sized law firms
- formal pro bono referral schemes and clearing houses run by legal professional associations
- Public Interest Law Clearing House schemes established by their law firm members in Victoria, New South Wales, Queensland and South Australia
- legal assistance referral schemes created by rules of court
- informal rosters of pro bono lawyers in some courts and tribunals taking on a duty lawyer’s role
- inclusion of pro bono in the Commonwealth and Victorian Governments’ policy frameworks for legal assistance services, particularly ‘pro bono conditions’ in government tender schemes for the purchase of legal services from the private profession
- conferences dedicated to the discussion of pro bono legal services
- the National Pro Bono Resource Centre.

Pro bono legal services are provided across the legal profession by lawyers working in law firms of all sizes (ranging from the structured pro bono programs of large firms to the individual contributions of sole practitioners), barristers, in-house corporate lawyers, government lawyers and law students (see section on Partners, Part 3A). The National Pro Bono Resource Centre’s National Law Firm Pro Bono Survey of Australian firms with fifty or more lawyers shows that 32 of these firms, representing close to a fifth of the Australian legal profession, undertook 343,058 hours of pro bono work in the 2012 financial year. Another significant contribution comes from individual lawyers who volunteer their services at community legal centres across Australia in their own time, contributing over 8,369 hours of pro bono work per week.

The pro bono legal work undertaken by these legal professionals takes many forms. While much of it involves legal advice and representation of individual clients in the course of normal practice, other
examples include preparation of law reform submissions, corporate governance, transactional assistance and training for community organisations and charities.\(^{13}\)

There are many pathways to pro bono, including: personal contacts, links between law firms (and their staff) and non-legal community agencies, referral by legal aid agencies, CLCs and Indigenous legal organisations, and referral by other community organisations and agencies.\(^ {14}\) However, recent Australian research on pathways to justice indicates that when people who are socially or economically disadvantaged or marginalised are faced with a legal problem, they do not initially go directly to a lawyer for assistance. Some do nothing, some deal with the issue themselves, and some seek advice and assistance from non-legal sources and services.\(^ {15}\) This is why partnerships with community organisations that have closer links to those in need, and can identify and refer people with legal problems, are essential for pro bono service providers seeking to make a significant impact on unmet legal need.

Pro bono clearing houses and referral schemes provide one of these important pathways for people to access pro bono legal services by acting as an intermediary between people or organisations needing legal assistance and lawyers prepared and able to assist (see section on Pro bono clearing houses and referral schemes, Chapter 9). In addition to their core case referral function, clearing houses also coordinate projects using some of the other models discussed in this resource, for example, legal clinics like the Homeless Persons' Legal Service/Clinics in Sydney, Melbourne and Brisbane (see case study at 21.5.2).

"Government legal assistance funds are used to fund the work of PILCH in recognition that it is an effective way of meeting the legal need of certain client groups (eg outreach to people experiencing homelessness and NFPs). Pro bono lawyers bring different skills and are able to be used in different ways as compared to salaried legal aid or CLC lawyers. Sometimes legal aid commissions fund pro bono programs that complement work they are doing (eg the Equal Opportunity Legal Service at VLA in Victoria)." (A pro bono clearing house manager)

While case referral is probably the most commonly recognised model of delivering pro bono legal assistance, pro bono is delivered in many other ways with innovative new models being developed in response to changing needs, partnerships and technology.

"Pro bono legal work has undergone a profound transformation in the past 25 years. For much of legal history, pro bono was ad hoc and individualised, dispensed informally as charity, but increasingly it has become coordinated and structured particularly within large law firms."\(^ {16}\)

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This resource aims to shed light on best practice for a wide range of established models that are being used to deliver pro bono legal assistance. It provides practical information and case studies that are intended to help those involved in partnering to deliver pro bono assistance to use these models as effectively as possible.

“Effective pro bono is about partnerships, between firms, organisations that help clients access them, and with government and other funders. We are all partners together in the main game, which is to ensure that disadvantaged people can access justice.” (A pro bono clearing house manager)

17 Lawyers’ and law firms’ community service programs are not included here as a ‘model’ of pro bono legal service delivery, however the Centre notes that there are circumstances where lawyers’ community service/non-legal work does cross over into pro bono legal service.
PART 1. WHO WILL FIND THIS RESOURCE USEFUL?

1 WHAT IS IN THIS RESOURCE?

THE TOOLKIT is a practical resource divided into two main parts.

The first part of the Toolkit focuses on potential PARTNERS (Part 3A) that might work together to deliver pro bono legal services or projects, namely pro bono clearing houses and referral schemes (Chapter 9), large and mid-sized law firms (Chapter 10), small law firms and sole practitioners (Chapter 11), community legal centres (Chapter 12), not-for-profit organisations (Chapter 13), barristers (Chapter 14), in-house/corporate lawyers (Chapter 15), government lawyers (Chapter 16), individual volunteers (Chapter 17) and law students (Chapter 18).

Given the finding in this resource that relationships are key to the success of any pro bono program or project, it is hoped that promoting a better understanding of stakeholders’ motivations in doing pro bono work will assist potential partners to develop and maintain effective working relationships (see section on the importance of relationships, Chapter 3). The first part also contains helpful tips about developing and maintaining relationships with different potential partners; for example, what makes a Community Legal Centre attractive to a firm and vice versa?

The second part of the Toolkit contains information about MODELS (Part 3B) that are being used to deliver pro bono legal assistance. For most of the models the toolkit contains:

- a short description of what the model involves
- a quick summary which provides information “at a glance” about the benefits, challenges and features of effective projects using that model
- a full discussion of the benefits, challenges and features of effective projects using that model, supported with direct quotes from people who have experience with the use of that model
- case studies that bring each model to life with real life experiences of the lessons learned.

All quotes have been de-identified unless the person has explicitly provided their permission to be quoted. These quotes represent a broad range of views from stakeholders with different perspectives that come from their varied experiences of pro bono partnerships and models. While not everyone will agree with all of the views expressed, and they may not apply to every partnership or project, the Centre believes that promoting a greater understanding of different perspectives will assist in the development of strong and effective working relationships, which are the key to what works in pro bono.

The included models are:

- Case referral (Chapter 19)
- Clinics (Chapter 20)
- Outreach (Chapter 21)
- Secondments (Chapter 22)
- Fellowships (Chapter 23)
- Co-counselling (Chapter 24)
• “Secondary consults” or “phone a friend” assistance (Chapter 25)
• Telephone, video conferencing, online and mobile technology (Chapter 26)
• Law reform (Chapter 27)
• Assistance to non-legal not-for-profit organisations and charities (Chapter 28)
• Community legal education (Chapter 29)
• Non-legal assistance (Chapter 30)
• International pro bono (Chapter 31).

In reality, the models are not necessarily as distinct as they are presented in this resource and may overlap with each other. Many effective pro bono projects and practices involve elements of some or all the models described. However, each model is examined separately as a way of presenting the wealth of practical information received in an accessible form, and as a way of highlighting different types of pro bono projects for those who are interested in being involved in a particular aspect of pro bono work rather than developing or running an entire pro bono practice.
2 WHO WILL FIND THIS RESOURCE USEFUL?

Pro Bono Partnerships and Models: A Practical Guide to What Works is intended to be a practical resource. The toolkit provides useful ideas, tips and case studies that will be especially helpful to those in the early stages of developing a pro bono practice, seeking pro bono partnerships, wanting to increase their pro bono participation, or simply looking for a place to start doing pro bono work. It is intended that users of the toolkit will be able to refer directly to the particular sections they are interested in.

For those with a deeper knowledge and involvement in the Australian “pro bono community” (eg National Pro Bono Coordinators and others from large law firms with established pro bono practices, or those from Pro bono referral schemes or Public Interest Law Clearing Houses), this will provide an informative overview of the current issues affecting the delivery of pro bono legal assistance in Australia (see the section on Themes arising from consultations, Part 2). Those who are extensively involved in pro bono may also find the toolkit helpful as a resource that they can use to explain what they do in an accessible way to those who are less familiar with pro bono, potential partners and those seeking pro bono assistance. They can also compare case studies and ideas about best practice from others in the pro bono community, and perhaps even spark new ideas.

This resource may also be of interest to those in the “legal assistance sector” (eg Community Legal Centres, Legal Aid commissions, legal assistance forums) who want to find out more about how pro bono works so they can more effectively leverage the available pro bono resources, and policy makers and researchers in the access to justice space (eg government, legal professional associations, law foundations).

The following provides suggestions for sections of this resource that may be of particular interest for different users.

2.1 I AM IN THE EARLY STAGES OF DEVELOPING A PRO BONO PRACTICE (OR GROWING AN EXISTING PRACTICE)

Find out about working models of delivering pro bono legal services beyond case referral. See the section on Models (Part 3B), which in addition to covering Case Referral (Chapter 19), also covers Clinics (Chapter 20), Outreach (Chapter 21), Secondments (Chapter 22), Fellowships (Chapter 23), Co-counselling (Chapter 24), Secondary consults (Chapter 25), Technology-based projects (Chapter 26), Law reform and policy (Chapter 27), Assistance to not-for-profit organisations (Chapter 28), Community legal education (Chapter 29), Non-legal assistance (Chapter 30) and International pro bono (Chapter 31).

Target community organisations that can provide your pro bono program with a link to those with unmet legal needs. See Tips for planning and maintaining relationships (Chapter 8) and the section on Understanding your potential pro bono partner, Part 3A, particularly Pro Bono Clearing Houses and Referral Schemes (Chapter 9), Community Legal Centres (Chapter 12), Not-for profit organisations (Chapter 13) and Assistance to Not-for-profit organisations (Chapter 28).

See how pro bono partnerships between firms and their corporate clients have strengthened those relationships. See the section on In-house counsel (Chapter 15) and the case study: National Children’s and Youth Law Centre, King & Wood Mallesons, Telstra, ASIC and Sparke Helmore (26.5.1).

Apply best practice to your pro bono program. Learn from the successes and challenges faced by other pro bono partnerships/projects in the many case studies contained in the Toolkit (Part 3).
Understand the issues affecting the provision of pro bono legal services in Australia. See the section on Themes arising from consultations (Part 2), particularly the Importance of developing a strong pro bono culture (Chapter 4).

For more information on planning and developing a pro bono program, including precedents and pro forma documents, see the *Australian Pro Bono Manual - A Practice Guide and Resource Kit for Law Firms*.

### 2.2 I AM A SMALL LAW FIRM OR A SOLE PRACTITIONER

Read about the pro bono experiences of other small firms. See section on Understanding your potential pro bono partner: Small firms (Chapter 11).

Spark ideas about where to start with pro bono. See the section on Case referral through pro bono referral schemes and clearing houses (Chapter 9). It has been suggested that community legal education is a good place to start for small firms because it offers a contained time commitment while engaging the local community, potentially reaching larger numbers of people than individual casework and avoiding the risk of conflicts. See the case study on Phang Legal and Harris Park Community Centre (29.1.1) in the section on Community legal education (Chapter 29). **Volunteering at a community legal centre** may be another good way to start doing pro bono work that limits the time commitment to a controlled and manageable amount. See sections on Individual volunteers (Chapter 17) and Community legal centres (Chapter 12).

Explore the possibility of joining an established pro bono project. This may make it easier to become involved, as there are already structures in place for managing the relationships with any community partners, coordination, administration, training and supervision of the work. See Tips for planning and maintaining relationships (Chapter 8), the case study on the Arts Law Centre of Australia’s Document Review Service (19.5.2) and the case studies in the sections on Clinics (20.5) and Outreach (21.5).

### 2.3 I AM A COMMUNITY LEGAL CENTRE OR A NOT-FOR-PROFIT ORGANISATION

Start making connections with pro bono providers that lead to pro bono assistance. See Tips for planning and maintaining relationships (Chapter 8), and the section on Understanding your potential partner (Part 3A), particularly Large law firms (Chapter 10), Small law firms (Chapter 11), Barristers (Chapter 14), In-house/corporate lawyers (Chapter 15), Government lawyers (Chapter 16), Individual volunteers (Chapter 17) and Law students (Chapter 18). Find out what makes community organisations attractive to large law firms (10.1).

Read about the experience of other CLCs (Chapter 12) and NFPs (Chapter 13). See also the section on Assistance to not-for-profit organisations (Chapter 28).

Spark ideas for new ways to partner with pro bono providers to improve access to justice and make the most of your existing partnerships. See section on Models (Part 3B). For example, see the case study on Redfern Legal Centre and Clayton Utz Unfair Dismissal project (22.5.3) in the section on Secondments (Chapter 22).

Find out about the possibility of getting administrative support. See section on Non-legal assistance (Chapter 30).
2.4 I AM AN IN-HOUSE/CORPORATE LAWYER

Find out about the issues affecting in-house/corporate lawyers doing pro bono work. See the section on In-house/Corporate lawyers (Chapter 15) and the section on Themes arising from consultations (Part 2).

Spark ideas for how your legal team can become involved. See Tips for planning and maintaining relationships (Chapter 8) and the case studies: Arts Law Centre of Australia's Document Review Service (19.5.2) and National Children's and Youth Law Centre's LawMail, Lawstuff and CourtStuff projects with King & Wood Mallesons, Telstra, ASIC and Sparke Helmore (26.5.1), particularly Telstra's experience of the Project (15.2.1). The skills of in-house/corporate lawyers are a good match for the legal needs of not-for-profit organisations. See section on Assistance to not-for-profit organisations (Chapter 28).

Consider volunteering at a community legal centre. See the sections on Individual volunteers (Chapter 17) and Community legal centres (Chapter 12).

2.5 I AM A GOVERNMENT LAWYER

Find out about the issues affecting government lawyers doing pro bono work. See the section on Government Lawyers (Chapter 16) and the section on Themes arising from consultations (Part 2).

Seek out your own pro bono opportunities. See Tips for planning and maintaining relationships (Chapter 8) and the case studies on the Telephone Advice Service at Macarthur Community Legal Centre (26.11.2), the Arts Law Centre of Australia's Document Review Service (19.5.2) and the National Children's and Youth Law Centre, King & Wood Mallesons, Telstra, ASIC and Sparke Helmore (26.5.1).

Consider volunteering at a Community Legal Centre. See the sections on Individual volunteers (Chapter 17) and Community legal centres (Chapter 12).

2.6 I AM AN INDIVIDUAL LAWYER OR BARRISTER LOOKING FOR OPPORTUNITIES TO GET INVOLVED

Volunteer at a community legal centre. See the sections on Individual volunteers (Chapter 17) and Community legal centres (Chapter 12).

Seek out pro bono opportunities at your firm. Even if you are working in a practice area that may not naturally lend itself to pro bono referrals, there are other ways to become involved, for example, see the sections on Clinics (Chapter 20), Outreach (Chapter 21) and Secondments (Chapter 22).

Create your own pro bono opportunities. For examples, see the case studies on Sessional Secondments (TARS and Sparke Helmore) (22.5.5) and Trial Advocacy Workshops (31.5.1). See examples of how barristers (Chapter 14), in-house lawyers (Chapter 15), government lawyers (Chapter 16) and law students (Chapter 18) have become involved in pro bono projects.

2.7 I AM INTERESTED IN PRO BONO IN REGIONAL, RURAL AND REMOTE (RRR) AREAS

Read about the issues affecting the provision of pro bono in RRR areas. See section in Themes arising from consultations on Size matters (Chapter 6), particularly Size of jurisdiction (6.1), Distance from big cities (6.2) and Size of law firm (or office) (6.3).
Find out about successful outreach projects and best practice in outreach. See section on Outreach (Chapter 21), Fellowships (Chapter 23) and Technology-based services such as video conferencing (Chapter 26). See the case studies Medical legal partnership in a rural context (Bendigo Health Outreach) (19.5.3) and Full-time/long-term secondments (North Australian Aboriginal Justice Agency and Ashurst) (22.5.1).
PART 2. THEMES ARISING FROM CONSULTATIONS

3 IMPORTANCE OF RELATIONSHIPS AND COMMUNICATION

Relationships are the key to success

“Relationships are the key to a successful pro bono project. No model or structure can get around a poor relationship.” (Community legal centre coordinator)

“The most important factor in determining whether a project is going to work well is the strength of the relationships between the parties involved in the pro bono model. Both sides need to work at building and maintaining a relationship of trust, and not take the other partner for granted.” (Large law firm pro bono coordinator)

Many of those consulted expressed the view that the health of the relationship between the partners to a pro bono project or program was the most important factor affecting the success of the pro bono work, no matter what model is used for the delivery of the pro bono assistance. It was acknowledged that a good relationship can open the floodgates for assistance, increasing both the quantity and speed of the assistance obtained from pro bono providers.

“Assistance can be obtained much more quickly when a pro bono relationship is well established.” (Community legal centre principal solicitor)

“Direct relationships with firms provide for faster case referral than using a clearing house.” (Community legal centre coordinator)

Relationships between law firms and community lawyers

“Trust” and “respect” were mentioned over and over again, particularly by those consulted from CLCs and clearing houses, as the necessary ingredients of an effective working relationship. CLC lawyers explained that their centres valued relationships with firms that were equal partnerships and were keen to avoid situations where “pro bono assistance was treated by firms as a gift to the CLC.” In the context of firms being attracted to the idea of doing more pro bono work via online technology like Skype or podcasts to community organisations, one clearing house manager said “their perception is very much of the lawyer imparting information, rather than relationships where there is understanding and contributions on both sides.”

Some CLCs talked about strong relationships of trust they had established with firms, for example, Caxton Legal Centre noted that its requests for assistance to the Brisbane office of Clayton Utz had rarely been refused over the past few years and that Clayton Utz will take cases from Caxton on an urgent basis. “When it assists Caxton directly, it treats Caxton like a valued client even though it is not paying.” Some CLC managers thought that CLCs needed to be more open to relationships with pro bono providers rather than being too over-protective of their territory and pointed to the benefits of doing so.

“Some CLCs can be over-protective of their territory, seeing themselves as the only carriers of social justice. Working towards positive relationships can yield real benefits for clients.” (Community legal centre coordinator)

“Ensure that firms have a good experience with the CLC so they feel good about helping.” (Community legal centre manager)
Several CLCs and clearing houses noted that firms did not always recognise and respect the skills that lawyers from the legal assistance sector had developed from working directly on a daily basis with people experiencing profound disadvantage. However, it was observed by one CLC coordinator that pro bono coordinators and lawyers who also volunteer at a CLC have a much better understanding of the work and clients of CLCs.

“Corporate firms are not always fully aware of the additional skills that CLC/Legal Aid lawyers have developed when dealing with clients who are seriously distressed, traumatised, mentally ill, and experiencing multiple forms of disadvantage, and that these are skills that are required when working with these clients. Often it is only after you have dealt with a client who is distressed and threatening to harm themselves that you realise you are entirely unprepared for that side of it.” (A pro bono clearing house manager)

Some law firm pro bono coordinators recognised that there were “barriers to overcome between pro bono providers and CLCs” and suggested that firms also needed to take responsibility for relationship building by showing respect.

“It is helpful to relationship building if firms have some humility and listen to those who work with disadvantaged people every day about where firms can make useful contributions” (Large law firm pro bono coordinator)

Open communication between the partners at an early stage in the relationship about their motivations and interests for being involved in a pro bono project can facilitate the development of a project that will work for everyone and can prevent the problems arising from having one partner asking the other to do something they do not really want to do.

“Both parties to a partnership need to be open and clear about what their interests are - Is the firm doing it to improve staff retention, to be involved in law reform, to the keep up with the other firms’ pro bono numbers?” (Community legal centre solicitor)

“It is positive when firms are interested in capacity building for the CLC as well as high profile cases that will raise the firm’s profile. Relationships are built between CLCs and firms by undertaking day to day work together.” (Community legal centre coordinator)

**Strong relationships lead to ongoing support**

The personal relationships that can be cultivated between individuals who share a similar commitment to social justice and access to justice can really drive the development of pro bono projects, especially when they are individuals in a position to influence their organisation. It is very important to develop these personal relationships and allies. The Executive Director at the Arts Law Centre of Australia, Robyn Ayres, explained that the Centre tries to develop relationships/alliances with partners at firms involved in the area of practice relevant to a pro bono matter, in addition to dealing with the firm’s pro bono coordinator.

Strong, effective working relationships are not only likely to lead to the decision to provide support in the first place, but are also likely to lead to the provision of ongoing additional support. Throughout the consultations, many examples of partnerships emerged that started with a particular matter or project but ended up in a close and sometimes long-term relationship that provided support beyond what was originally asked for or expected.
For example, the relationships that several firms have with the Arts Law Centre of Australia started with providing lawyers to staff its document review and telephone advice service (see case study at 19.5.2) but developed into long term relationships of support. After working closely with Arts Law over a long period, DLA Piper is recognising their pro bono partnership with Arts Law as a “signature project” of the firm. This involves casework for “Artists in the Black”\(^{18}\) clients, lawyers travelling to remote communities to assist with the wills project, and work on advocacy issues affecting Indigenous artists. One matter even involved running a debt collection matter involving a London-based gallery (referred to the London office of DLA Piper). The Australian Government Solicitor has expanded its support to Arts Law, by not only providing secondees but also providing assistance to the Centre with updating its agreements, as well as presenting a number of legal education sessions to clients of the Centre.

“Celebrating partnerships with awards is a good way of recognising the work that pro bono lawyers do, but can also help to motivate the provision of more assistance.”
(Community legal centre manager)

Relationships that facilitate support on an ongoing basis can be particularly important in areas where it is more difficult to obtain assistance, for example, in rural, regional and remote communities where the physical/geographical distance makes it difficult to form relationships in the first place.

“Our experience is that obtaining pro bono assistance in regional areas relies on being able to form and rely on relationships between lawyers... Our experience is that it is better to be partnered with a law firm’s pro bono coordinator directly.”
(Community legal centre coordinator)

Geraldton Resource Centre (GRC) and Clayton Utz, for example, have developed a close working relationship over more than five years which has led to an increasing amount and variety of assistance. The firm assists the CLC with employment and industrial law issues and runs training in Perth to coincide with state conferences when people from remote regions are there. The firm also provides a temporary solicitor to act as principal when the GRC principal is on leave for 3-4 weeks. Given GRC’s long standing close relationship with the firm, it has been able to facilitate the provision of pro bono assistance for other community organisations in the Geraldton area. (See also case study on Indigenous wills support at 23.2.1)

This toolkit aims to provide an understanding of how to make the most of each model of delivering pro bono legal assistance, but the real value of many of the ideas contained in this resource is to provide tips on how to encourage positive relationships between potential and existing pro bono partners, as these are the key to what works in pro bono.

If relationships are key to the success of pro bono projects then it is vitally important to understand the perspectives of different stakeholders who are the potential partners in a pro bono relationship. The Partners section of the Toolkit (Part 3A) provides information about each stakeholder, answering questions like: What drives them to become involved in pro bono work? What resources and skills do they have to contribute? What is their culture? How do they work? What are their limitations and barriers to providing assistance? What are they looking for in a pro bono partner?

\(^{18}\) An instance of the Artists in the Black wills project’s work involved four lawyers including two Arts Law lawyers and the DLA Phillips Fox (now DLA Piper) lawyers drafting wills for 22 artists in Derby, Western Australia, over a period of a week following recent deaths in the community and the realisation of many artists that it is important to have a will so that the artist can decide what is to happen to their property and possessions after they pass away. For more information see [www.artslaw.com.au/art-law/entry/wills-pilot-project](http://www.artslaw.com.au/art-law/entry/wills-pilot-project).
See also the section in the Toolkit that provides practical tips on planning and maintaining relationships (Chapter 8).

4 IMPORTANCE OF DEVELOPING A STRONG PRO BONO CULTURE

Following on from relationships, the strength of the pro bono culture within an organisation providing pro bono assistance was seen as the next most important factor determining whether a pro bono program or project will work well.

“The culture of a firm is more of an issue than size and resource constraints. There can be resistance within firms to doing pro bono work.” (A pro bono clearing house manager)

“While some partners have a strong personal commitment to pro bono, there are varying levels of support from firm management for pro bono work. Pro bono hours do not count towards billable targets and are discounted by 25% in the timesheet system. It can be seen as one of the many non-billable demands on lawyers. Pro bono opportunities have not been centrally advertised. There are some lawyers at the firm who are not interested in pro bono and would not necessarily welcome unsolicited emails about it.” (Mid-sized law firm pro bono coordinator)

The importance of leadership support

The absence of support from a firm’s leadership can not only make it very difficult to obtain resources, but can also affect relationships and the quality of work, for example, because work is de-prioritised and therefore not completed in a timely manner, or the junior lawyers doing pro bono work are not properly supervised.

“Ensuring the quality of pro bono work is an ongoing and universal challenge for pro bono practices. The message needs to come from the partner level down given they are supervising the work. We try to entrench a culture of quality within the firm, drumming it into our grads that work for pro bono clients needs to be at the same level of quality as for commercial clients and requiring lawyers undertaking pro bono work to complete a closure report in the same way they would for a commercial file.” (Large law firm pro bono coordinator)

“Many firms do not have a culture that embraces or prioritises pro bono work. Some pro bono coordinators struggle to obtain approval from partners in the firm to take on matters/projects that they would like to do.” (Community legal centre coordinator)

“Some junior lawyers have said that they do not hear anything about pro bono opportunities (despite it being part of the promotion that has attracted them to the firm) and do not have any opportunities to do it.” (A pro bono clearing house manager)

“Some secondees have been told by partners in firms that are not supportive of pro bono that doing a secondment will be a black mark in their career. We recently lost a secondee this way.” (A pro bono clearing house manager)
Many of those consulted explained that the culture of a law firm tended to follow the attitude of its leadership, and therefore having or cultivating the support of the firm’s leadership was very important. For example, the Director of the National Children’s and Youth Law Centre (NCYLC), Matthew Keeley, explained that their Cyber Project works well because there is support for the project within King & Wood Mallesons (K&WM) at a senior management level (see case study at 26.5.1). One large firm pro bono coordinator suggested that it was helpful to understand the personal interests of the firm’s partners when trying to build support within a firm for particular areas of need.

“Building and continuing to encourage a culture that is supportive of pro bono within a firm is easier if strategically targeting the personal interests of partners. Ask partners about the causes they feel passionate about.” (Large law firm pro bono coordinator)

The positive impact of having leadership that is supportive of pro bono and a strong pro bono culture is equally relevant for smaller firms. For example, Ern Phang, the solicitor director of Phang Legal, a small law firm in Parramatta, was awarded the Law Society President’s Award at the 2010 Justice Awards presented by the Law and Justice Foundation of NSW in recognition of his success in building a firm culture with a strong focus on community service (See also section on Small firms, Chapter 11). Over the years, his small team of lawyers have assisted the Law Society Pro Bono Scheme by providing advice and representation to disadvantaged individuals, and have supported social enterprises in partnership with the National Pro Bono Resource Centre and Parramatta City Council. Ern also supports various community and not-for-profit organisations with legal advice and representation, as well as being a volunteer director. “With an interest in good corporate governance, Ern has been the catalyst behind the culture change in several organisations, guiding them towards a more self-sustainable model with a focus on improving the social dividend.”

Where support does exist at a leadership level, and the partners and managers are actively involved and interested in the pro bono practice, this can lead to innovative projects with successful results. Solicitors at Caxton Legal Centre Inc have observed that individual leaders who are committed to pro bono and have innovative ideas can really influence the development of pro bono. For example, Scott McDougall (Director, Caxton Legal Centre Inc) and David Hillard (Pro Bono Partner, Clayton Utz) are great thinkers who come up with innovative projects.

For more information on promoting a pro bono culture, see section 1.4 of the Australian Pro Bono Manual.

Large firms and the impact of Corporate Social Responsibility (CSR) programs

Several pro bono coordinators explained that there can be different cultures in different offices of the same firm and that it was important to take the time to develop a program that fits not only the firm’s culture, but the culture of the particular office.

“A national program needs to have common features but needs to suit the size of the office and work with the culture in the specific office eg what might work in the Sydney office will not necessarily work in the Canberra office.” (Large law firm pro bono coordinator)

“Ultimately it is essential for a pro bono coordinator to understand what works for the culture of the firm, to have a central coordination and reporting point for senior people in the firm.” (Large law firm pro bono coordinator)

Special Counsel, Pro Bono and Community at K&WM, Jane Farnsworth, explained that having charitable targets has helped to build that firm’s pro bono culture. K&WM surveyed staff across core areas to find out the areas of need where staff had an interest and would therefore be a good fit for the firm, following up with one-on-one meetings with a staff consultant. Staff nominated children and young people at risk, and alleviating poverty and improving community welfare, as being the areas of need that they felt were a good match for the firm and should be a consistent focus.

“The firm’s pro bono program is embedded into the culture of the firm by having focus areas, which make it clear to everyone within the firm what the pro bono program is trying to achieve.” (Large law firm pro bono coordinator)

There are differing views in the pro bono community regarding whether pro bono legal and Corporate Social Responsibility (CSR) programs should be kept separate. Many are concerned about the risk that limited firm resources will be spent undertaking community service work, rather than providing pro bono legal assistance which is a need that only lawyers can address. However, other pro bono coordinators, including Jane Farnsworth, expressed the view that the synergy between pro bono and CSR programs can result in a greater impact than either program separately. She explained that, in her experience at K&WM, not only does CSR not detract from professional responsibility, but in fact “the longevity of a pro bono program depends on being able to embed a culture of pro bono, which is something that CSR assists with.”

The Head of Pro Bono and Community at Herbert Smith Freehills, Annette Bain, has observed that having separate CSR and pro bono legal work “silos” can be divisive rather than building pro bono culture within a firm. She explains that the traditional distinction between legal professional staff and “others” in the firm can be demeaning to the “others”, and is not reflective of the potential and current contributions of non-legal staff.

See also the section on Understanding your potential partner (Part 3A), particularly the discussion of helping pro bono coordinators to make the business case for pro bono in Large law firms (Chapter 10).

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20 See Abbreviations and Glossary
Where Pro Bono Resources Should Be Directed: Greatest Need Vs Achievable Goals

The consultations reflected a tension between the ideal that pro bono resources should be directed to address the greatest unmet needs where they can make the greatest impact, and the reality that pro bono is a voluntary concept and that lawyers will choose to support the work and causes that they feel strongly about.

This tension is being felt at an ideological and practical level, and influences decisions about how pro bono resources are allocated. For example, one large firm pro bono coordinator said there was a distinction to be made between not-for-profit organisations which delivered services directly to those in need (e.g., The Salvation Army) and those which empower others to provide services to those in need (e.g., Engineers Beyond Borders) or public interest causes, and explained that their firm was more likely to support those in the public benevolent institution space than something like the arts.

“We have been careful to ensure that the pro bono work done by our firm is addressing a high priority unmet legal need. We are not involved with seniors’ rights services, or animal rights.” (Large firm pro bono coordinator)

The Executive Director of the Arts Law Centre of Australia, Robyn Ayres, said that while it is understandable that some firms take the view that supporting artists may not be as high a priority as more obvious forms of poverty alleviation (for example, some view artists as undeserving as they have made a lifestyle choice, and some firms only provide assistance to Indigenous clients), providing pro bono legal services in this area indirectly and proactively reduces poverty and conflict in Indigenous communities, as artists are less likely to be exploited. The Artists in the Black (AITB) wills project, for example, helps to avoid community conflicts and ensures that an artist’s wishes are followed in relation to who in their community is paid. “Supporting artists is also about valuing the contribution that artists make to quality of life.”

Clients with the capacity to pay

Some of those consulted questioned the allocation of pro bono resources to services targeting client groups who generally have the capacity to pay. For example, one mid-sized firm pro bono coordinator expressed the view that a number of people who approach the Seniors Rights Legal Clinic in Melbourne could afford to pay for legal services and are sometimes “service shopping.”

Peter Noble, the Coordinator at the Loddon Campaspe CLC (which established the Bendigo Health Outreach Service), explained that “Some solicitors criticised the program [Bendigo Health Outreach Service] for providing a free service where it was reasonable to request remuneration. They declined to support such an initiative in their region. Further, they felt that the services could be provided on an ad hoc basis and that patients that could afford legal services would receive them in the ordinary manner.” However, Peter Noble explains that many of the clients might have assets but have no

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21 An instance of the Artists in the Black wills project’s work involved four lawyers including two Arts Law lawyers and the DLA Phillips Fox (now DLA Piper) lawyers drafting wills for 22 artists in Derby, Western Australia, over a period of a week following recent deaths in the community and the realisation of many artists that it is important to have a will so that the artist can decide what is to happen to their property and possessions after they pass away. For more information see www.artslaw.com.au/art-law/entry/wills-pilot-project.

cash flow. “A simple will or power of attorney can be done quickly. If the matter is more complex, and the person has capacity to pay, then the service will end the retainer and refer the person.”

“The lawyers involved in the service are comfortable with the idea of providing the service to people who are not necessarily without the means to pay for it. Means is only one of three considerations for providing the service - 1) Capacity to pay, 2) Urgency and 3) Vulnerability.” (Peter Noble, Loddon Campaspe CLC)

The pro bono work that lawyers are interested in doing

Some of those consulted expressed the view that given the voluntary nature of pro bono, it is important to take into account the type of pro bono work that lawyers want to do and is easy for them to do, and their existing skills and interests, even if the work is not necessarily about meeting the greatest unmet legal need.

The pro bono coordinators of some large firms explained that their choice of focus areas, in addition to assisting where there is a public interest and areas of greatest need, is a response to feedback from their partners and staff about needs that they feel a connection to. For example, Special Counsel, Pro Bono and Community at King & Wood Mallesons (K&WM), Jane Farnsworth, explained that matching the firm’s unique mix of skills and interests with areas of need ensures that its pro bono assistance resources are strategically targeted to areas where it can make the most impact. K&WM surveyed staff across core areas to find out the areas of need where staff had an interest and would therefore be a good fit for the firm. Children and young people at risk, and alleviating poverty and improving community welfare, were confirmed by both the initial survey and in one-on-one feedback with a staff consultant as being the areas of need that K&WM staff thought were a good match for the firm and should be a consistent focus. “The firm’s pro bono program is embedded into the culture of the firm by having these focus areas, which make it clear to everyone within the firm what the pro bono program is trying to achieve.”

“The future of pro bono relies on capturing the interest of young lawyers (who are the future partners of the firm) so providing them with opportunities to participate in pro bono work (even if it is only work within their comfort zone) is still valuable.” (Large law firm pro bono coordinator)

Similarly, Peter Noble explained that the Bendigo Health Outreach Service (see case study at 19.5.3), which currently has 13 lawyers volunteering, creates targeted, structured and supported (rather than ad hoc) pro bono opportunities for smaller firms in regional areas, many of whom have considerable skills to offer in the health setting but would not normally do much pro bono, and might not be so inclined to do pro bono work for a less sympathetic client group.

“It is often the client group that evokes the most sympathy that can obtain better pro bono assistance. It is often the client group that is seen as more blameless (for example, being diagnosed with a terminal illness) rather than someone who has had a difficult and traumatic life and is not coping well (criminal convictions, addictions, homeless, mentally ill etc).” (A pro bono clearing house manager)

What if the greatest needs are not popular ones?

One clearing house manager expressed concern that clients with the greatest needs may also be the ones who are least likely to obtain legal assistance because there is more work involved in assisting them.
“Firms are generally reluctant to take on litigation. However they are still willing to take offshore asylum seeker cases because they are attracted to the work with refugees. In contrast, matters involving a complaint to the Human Rights Commission are often refused on the basis that they could lead to litigation. We have had to do a number of discrimination matters in-house because, although the barristers who gave the advice on prospects were willing to run the matters, they couldn't find instructing solicitors who were willing to take on clients with complex needs. Whilst it is appreciated that this work is time consuming, it means the clients with the greatest needs are unable to get assistance. Note both examples are about clients who are arguing about their human rights, procedural fairness etc.” (A pro bono clearing house manager)

While it is concerning that people with high needs may be less likely to obtain legal assistance if they are not from a sympathetic client group, understanding what drives pro bono providers to give their support may provide some guidance for those seeking/brokering pro bono assistance about how to pitch their requests for assistance, and realistically which matters are likely to be placed (see section on Understanding your potential partner (Part 3A).

“The reasons that firms provide for not taking referrals are not consistently applied. While firms think their guidelines are clear, they are often difficult to apply. Often it comes down to personal relationships with pro bono coordinators and people's personal experience of issues (for instance, if someone has a family member or friend that has had a specific legal issue - eg has been made homeless - then they are more likely to want to engage with the issue).” (A pro bono clearing house manager)

Some of the clearing house managers that were consulted were pushing for firms to acquire the skills needed to address the greatest unmet legal needs, believing that the criteria or parameters for pro bono programs should be based on responding to the greatest unmet legal need.

“The model chosen for the delivery of pro bono legal assistance is not as important as the law firm’s willingness and openness to address unmet legal need as it is identified and when firms are willing to skill up in an area of law where they do not have expertise, but there is a clear unmet legal need.” (A pro bono clearing house manager)

“It feels like it is getting more and more difficult to refer cases to firms. Firms are by nature risk averse and will often not want to take on a matter if they do not have legal expertise in the area. This is difficult to fathom from a CLC lawyer perspective where with limited resources (no law libraries, no researchers or partners with expertise) your job often requires you to research new areas of law and provide advice.” (A pro bono clearing house manager)

One mid-sized law firm pro bono coordinator questioned the extent to which firms can and should adapt their skills to meet the need given that firms' lawyers already contribute their many existing skills to meet existing demands.

**Strategic pro bono or access to justice?**

Some of the consulted pro bono coordinators expressed their firms' preference for “strategic pro bono” and law reform rather than individual case work, which they saw as the responsibility of legal aid. For example, family law is an area of great unmet legal need which is seen by many in the pro
The pro bono community as being “the government’s job” and therefore not appropriate for pro bono legal assistance.23 However, others emphasised the need to provide access to justice for individuals.

Many firms are keen to do law reform and are willing to invest significant resources in test cases because this can lead to systemic change. One pro bono coordinator said that their primary goal was to move the firm’s pro bono practice from being responsive to ad hoc case referrals to achieving systemic change by being more proactive and strategic about the pro bono work it undertakes (noting that the case referral model can also be more or less strategic, depending on how it is organised).

“If a pro bono project is limited to just casework, then the project is not right for me. No matter what kind of project it is - clinics, case referral, secondments etc - I need to be able to engage with the issues and I always have a systemic, holistic, law reform perspective.” (Mid-sized law firm pro bono coordinator)

“A focus on law reform avoids pro bono becoming a substitute for legal aid. Pro bono work which has a law reform element or at the least the potential for supporting systemic change goes beyond an individual client’s immediate problem.” (Mid-sized law firm pro bono coordinator)

“We get lots of requests for assistance to do work that is probably more appropriate for legal aid and it is a shame it isn’t taken on by them, but they have very strict criteria for funding reasons. All pro bono lawyers would probably agree that better access to legal aid would reduce their workload. Hence, we should all be campaigning for better legal aid to fund matters that are about access to justice, rather than the public interest…” (Mid-sized law firm pro bono coordinator)

“Doing clinic work can be very time consuming and it is sometimes difficult to see where it leads. People seeking assistance at clinics often have multiple problems so the resolution is not satisfactory for their situation. There needs to be a strategic goal for clinics so that they are doing more than resolving individual matters, for which there is a never-ending source of clients and problems.” (Mid-sized law firm pro bono coordinator)

However, there were also clear warnings from all sectors that the rights achieved through law reform are of little benefit if they cannot be asserted because people cannot obtain legal advice and representation. Access to legal aid and pro bono lawyers was seen as essential to ensuring that people can exercise the rights that have been won through a test case.

“A change in the law can mean that people will have better access to justice but it is important that the strategic litigation is not seen as an end in itself and the work is in planning for and supporting the work that is necessary to ensure that people can exercise/assert the rights that have been won through a favourable decision. This planning can be done in conjunction with Legal Aid and CLCs who are likely to be the first places clients will go to. If not planned, there is the capacity for a new large unmet legal need to overwhelm existing services. This is where pro bono resources are particularly useful.” (A pro bono clearing house manager)

23 The National Pro Bono Resource Centre’s forthcoming report on pro bono legal assistance in family law and family violence will discuss: what pro bono work is currently being done in family law/family violence; the reasons for pro bono service providers rejecting requests for assistance in family law/family violence; how pro bono assistance may be appropriate in meeting unmet legal need in these areas; and the limitations and opportunities of pro bono assistance in this area.
“Law reform that can take years to achieve (via a test case), can be ‘killed’ in a day (via legislation).” (Community legal centre solicitor)

“Clinic work has authenticity. It is this day to day work at the coalface which is the essence of pro bono. The reality on the ground is that people need help and if firms don’t offer this assistance, nobody else will.” (Large law firm pro bono coordinator)

“No win no fee arrangements are important (even if not strictly pro bono) because they provide access to justice. Much of our firm works on this basis, unlike in other firms. Our lawyers feel this is a contribution to our society and I agree with that.” (Mid-sized law firm pro bono coordinator)

No matter what drives the provision of pro bono legal assistance, having more information about the impact of pro bono projects and programs would help to inform decisions about where pro bono resources should be allocated. However there is currently little evaluation of the impact of pro bono programs/projects on addressing unmet legal need.

“Models to evaluate pro bono programs/projects are still being developed. PILCH is working on this. Some firms are interested in feedback about how their programs compare to their peers, but not many seek out this information from PILCH.” (A pro bono clearing house manager)
6 SIZE MATTERS

6.1 SIZE OF JURISDICTION

The size of a jurisdiction has an impact on the capacity to deliver pro bono legal services. Smaller jurisdictions have a smaller pool of legal professionals to draw on for pro bono legal assistance. For example, the Director of QPILCH, Tony Woodyatt, explained that it is difficult to obtain a secondee in Queensland as the firms are smaller and have less capacity than the bigger offices in Sydney and Melbourne. JusticeNet in South Australia has similarly found it challenging to develop and staff services such as clinics, but also points to the fact that it is a younger organisation than clearing houses in some other jurisdictions, and that expectations of pro bono legal service providers grow as organisations grow.

“CLCs are not as well resourced in Queensland as they are in NSW or Victoria so they need firms to do more frontline service delivery work, which firms here are reluctant to do. There are fewer pro bono resources in the smaller law firm offices in smaller jurisdictions.” (Community legal centre coordinator)

The risk of conflicts, real or perceived, is also greater in a smaller jurisdiction. For example, Hobart Community Legal Service (HCLS) found it difficult to obtain pro bono assistance for their clients in certain areas of law. The Manager of HCLS, Jane Hutchison, explained that “Industrial law is particularly difficult because there are only a couple of firms with the requisite level of expertise to enable them to provide mentoring/training assistance or advice/representation in complex cases, and they are usually acting for the few large employers in Tasmania so they always have a conflict (or fear having a future conflict).”

Smaller jurisdictions may also lack the pro bono infrastructure that can help to support and drive the provision of pro bono assistance. For example, Jane Hutchison explained that the historical absence of pro bono clearing houses or well established pro bono practices in Tasmania has meant that the development of pro bono culture and awareness of pro bono is not as strong as it is in larger jurisdictions, with a prevalent view being “why should we do it”, and leading to pro bono being confused with no-win-no-fee arrangements. Jane said that the establishment of the Law Society’s pro bono committee and clearing house two years ago has had a very significant positive impact on promoting an understanding of what pro bono means and the development of pro bono culture in the profession, particularly within the members of the Law Society. (See also section on Pro bono clearing houses and referral schemes, Chapter 9).

Many of the large national firms with organised pro bono practices may not have much of a presence or profile in smaller states and territories, and therefore the pro bono culture that has been developed by these firms, including the culture of competition that drives some pro bono work in large jurisdictions, may not be as significant a factor in smaller jurisdictions.

“There are no large or national firms with a presence in Tasmania, and the largest firm in Tasmania would be considered to be a small firm in larger jurisdictions.” (Community legal centre coordinator)

24 Lawyers at HCLS have been participating in training sessions delivered remotely by lawyers at DLA Piper in areas like employment law via Skype as part of a government funded pilot project using the National Broadband Network to increase access to justice. (See section on Technology-based services like video conferencing, Chapter 26.)
Having a dedicated coordination point like a public interest law clearing house may be particularly helpful in a smaller jurisdiction. For example, the small size of the jurisdiction in SA made it easier for JusticeNet to quickly develop relationships with firms, barristers and CLCs. Many pro bono relationships in South Australia rely on personal contacts between particular CLC staff and particular barristers or law firm staff. However, given that there can be a relatively high turnover of CLC staff, JusticeNet appears to have become a reliable channel of communication between different parts of the profession. Tim Graham explains that “a request for assistance will reliably reach the Bar in a timely manner if it is made via JusticeNet and is not reliant on having someone in a CLC who knows a particular barrister.”

South Australia is a small jurisdiction so it is difficult to find lawyers who will accept matters on a pro bono basis. Most would like to charge for their services. JusticeNet is a great model for a small market like SA because it has the ability to capture and enhance the willingness of private practitioners to participate in pro bono work.

(Community legal centre solicitor)

“Given the generous pro bono culture in WA, it would be relatively easy to set up a PILCH. We just need the resources - people to run it, who have the time to build and maintain relationships.” (Community legal centre principal solicitor)

While there is a pro bono clearing house and/or referral scheme in each jurisdiction, some are much better resourced than others (See section on Pro bono clearing houses and referral schemes, Chapter 9). In the absence of developed infrastructure, informal relationships can become even more crucial as the ability to obtain pro bono resources may depend more heavily on being able to make personal connections and appeal to individual lawyers' sense of justice. The Principal Solicitor at CASE for Refugees in Western Australia, Shayla Strapps, explained that while it would be helpful to have a PILCH, a potential disadvantage of having a clearing house making the referrals is that the project/CLC loses control of the relationship-building. “It is difficult to build a sense of ownership or emotional link to the work if you are only calling on someone once a year to assist with an isolated matter.”

“Relationship building is the key to success in all pro bono work, but particularly so in a small jurisdictions like ours (WA) where there is no clearing house or other formal referral pathways.” (Community legal centre principal solicitor)

South Australia is another example of a small jurisdiction with very few national firms. When JusticeNet conducted a review of its members two years ago, the motivation for firms to join seemed to be primarily about doing the right thing, followed by Corporate Social Responsibility and, to a smaller extent, keeping up with what other firms were doing in a smaller jurisdiction. A core of 15 mid- to large-sized (for Adelaide) firms became members of JusticeNet. JusticeNet’s Executive Director, Tim Graham, said “There isn’t the sense in SA that any firm feels ‘forced’ to join. The NPBRC Aspirational Target and publicity for firms are not as significant for Adelaide firms.” Similarly in Tasmania, Jane Hutchison observed that “Pro bono providers who have joined the Law Society’s pro bono list seem to have done so out of a personal sense of ‘doing the right thing’ and have made significant contributions, while some of the larger firms that were expected to join the list have not yet done so.” (See also section on Small firms, Chapter 11).

“More could be done in the future to publicise the successes of pro bono work, for example, having a pro bono award (similar to the Justice Awards in NSW). However ‘word of mouth’ is a very effective means of spreading the message in a small jurisdiction, and therefore forming relationships with pro bono providers is very important.” (Community legal centre coordinator)
6.2 Distance from Big Cities

In addition to the size of jurisdiction, the distance from a capital or major city also has an impact on the availability of pro bono resources. CLCs that are well positioned (that is, near the city and better resourced with personnel and the capacity to promote themselves) are often better placed to develop relationships with firms and are more likely to be successful in requesting resources than those in regional, rural and remote (RRR) areas. For example, solicitors at Caxton Legal Centre Inc explained that the Centre is well resourced and has comparatively easy access to pro bono resources compared to CLCs in other areas of Queensland.

“Finding pro bono lawyers who will travel to RRR areas or local lawyers who will do pro bono work is difficult … Without access to lawyers willing to do Legal Aid or pro bono work, representation in all courts is an issue.” (Community legal centre principal solicitor)

Many of those consulted expressed concern that CLCs with the greatest needs are missing out on partnership opportunities because they are in a RRR area and identified the need for firms to better understand the needs and difficulties they face.

“Many firms don’t understand the issues facing RRR CLCs. For example, we organised a seminar in a RRR area, taking three days to get there, deliver and get back. The course participants had driven 450 km to go to the training because there is nothing else available. The firm wanted to do it in a day, not understanding that there weren’t flights available to allow them to get there and back in a day.” (A pro bono clearing house manager)

“Firms like the idea of doing more pro bono work via online technology like Skype or podcasts. However they need to fully understand the loss of interaction and networking opportunities with a web-based seminar (and that a number of RRR organisations are unable to access adequate technology).” (A pro bono clearing house manager)

However, there were some success stories from RRR areas. The Bendigo Health Outreach Service, for example, has created targeted, structured and supported (rather than ad hoc) pro bono opportunities for smaller firms in regional areas and currently has 13 lawyers volunteering. (See case study on Bendigo Health Outreach Service at 19.5.3)

Another example is the Arts Law Centre of Australia’s partnership with the Copyright Agency and Gadens to provide legal services to Indigenous artists in remote Central Australian communities, so that they can prepare wills and manage how their property will be distributed after passing away. Other pro bono providers which have contributed to this work include DLA Piper, Minter Ellison and Telstra. “Artists in the Black” runs three to four trips per year of one to two weeks duration.

“While it is normally difficult to find lawyers/firms that are able/willing to provide resources for pro bono work in remote areas, Arts Law has found that its wills project is very popular. There is competition amongst lawyers to participate in this work, and those who do it come back with stories that promote it to their colleagues. For firms, 

25 An instance of the Artists in the Black wills project’s work involved four lawyers including two Arts Law lawyers and the DLA Phillips Fox (now DLA Piper) lawyers drafting wills for 22 artists in Derby, Western Australia, over a period of a week following recent deaths in the community and the realisation of many artists that it is important to have a will so that the artist can decide what is to happen to their property and possessions after they pass away. For more information see www.artslaw.com.au/art-law/entry/wills-pilot-project.
it ticks many boxes (Indigenous, Arts, lawyers want to do it). The current trip to the Anangu Pitjantjatjara Yankunytjatjara Lands is for two weeks and we have two lawyers from Gadens and one lawyer from the Copyright Agency. There is also a one week trip to the Kimberley planned for late September with one lawyer from Telstra.” (Robyn Ayres, Arts Law Centre of Australia)

While this resource provides a number of case studies demonstrating successful pro bono projects that have been undertaken in RRR areas, it is beyond the scope of this resource to tackle the entire issue of improving access to legal assistance in RRR areas. It is hoped that a separate resource will be developed on this topic in the future.

(See section on Outreach, Chapter 21.)

### 6.3 SIZE OF LAW FIRM (OR OFFICE)

"There are simply fewer pro bono resources in smaller offices." (Community legal centre coordinator)

The size of a firm can affect its willingness and capacity to contribute resources to pro bono work. For example, the Partner, Pro Bono and Community Support at Landers and Rogers, Jo Renkin, explained that for a mid-size firm, capacity (and sometimes budget) can create more limitations than for a larger firm. “Landers can take on only limited public interest litigation and is generally running with its existing pro bono workload and balancing capacity needs sometimes limits the taking on of much new work. This means that the strategy for addressing of unmet legal need is ‘a bit hit and miss’ as a good case might come along at a time when there are no resources to take it on.”

She also explained that gathering a group of lawyers to take part in clinics or training over a day or days can be challenging, given the human resource constraints, and that secondments may have to be for a shorter period than she would like them to be. “Secondments at Human Rights Law Centre (HRLC) are three months full time, with an extension for a further month in some circumstances when the firm is not too busy. Secondments to North Melbourne Legal Service (NMLS) are two days a week for three months. It would be better if secondments could run for longer and this is something that I would like to change.”

The Partner for Pro Bono Services and Corporate Responsibility at Gilbert + Tobin (G+T), Michelle Hannon, explained that due to its size, G+T has less capacity to provide lawyers on secondment as they are leanly staffed. “If secondments are in addition to an in-house pro bono practice, a firm needs to be of a certain size to have the capacity to provide a constant secondment and have the number of lawyers interested in doing the secondment, especially secondments in remote communities.”

For sole practitioners and small firms, financial and capacity constraints are even more significant (see section on Small firms, Chapter 11). Manny Conditsis, Senior Trial Advocate at Conditsis Lawyers, which is a small firm with seven to ten lawyers, explained that small firms may not be in a position to undertake any pro bono work unless their business is doing well and they do not need to focus all their energy on keeping the business afloat. (See section on Small firms, Chapter 11.)

“When we do pro bono we make a conscious decision to do work for free or to discount. It is involvement at a different level to a lawyer at a large firm who is being paid to do it. It is money coming out of the business, out of my kids' mouths.” (Small firm principal)
Special Counsel, Pro Bono and Community at King & Wood Mallesons, Jane Farnsworth, explained that while there are different drivers in different sized firms, there are also differences within firms with varying sizes of offices in different cities. “Two thirds of K&WM staff members are in the Sydney and Melbourne offices, and the other third are spread across the Canberra, Perth and Brisbane offices (the Canberra office has less than 100 people). A national program needs to have common features but needs to suit the size of the office and work with the culture in the specific office eg what might work in the Sydney office will not necessarily work in the Canberra office.”

Understanding that there can be different cultures in offices of the same firm can help those seeking pro bono assistance to be more strategic about pitching their requests for assistance. The Operations Manager at the Geraldton Resource Centre (GRC), Chris Gabelish, explained that the CLC’s highly useful and effective relationship with Clayton Utz started because GRC had a relationship with the National Pro Bono Partner (not the Perth Coordinator). “This has, over the years, developed into a good relationship with the Perth office. It is not the case that positive relationships always need to start locally.”

“A CLC may have more success with the national coordinator of a firm who might be more progressive than the coordinator in the local office.” (Community legal centre coordinator)

However, many of those consulted expressed the view that the culture of a firm and the strength of the relationship between a firm and its community partners have more of an impact on the amount and quality of pro bono assistance provided than the size and resource constraints of a firm. See sections on the Importance of relationships and communication (Chapter 3) and the Importance of developing a strong pro bono culture (Chapter 4).
Many of the projects learned about through the consultation process demonstrated a high level of innovation amongst pro bono service providers in finding new ways to build capacity to address ever-increasing legal needs and demand for legal assistance. Emerging models included “secondary consults” or “phone a friend” assistance,26 fellowships27 and holistic service delivery through collaborative initiatives like medical-legal partnerships.28 The Coordinator at Loddon Campaspe Community Legal Centre, Peter Noble, who undertook research into medical-legal partnerships in the United States, explained that the needs of people with a complex combination of both legal and non-legal needs would be better met with a collaborative approach that takes both into account. “Older people with health issues, limited mobility and limited financial capacity are particularly disadvantaged. Older patients often present with a convergence of health and legal issues that require a collaborative approach.”29

Technology is increasingly being seen as a way to increase access to justice, especially in regional, rural and remote areas, but also for client groups that are more comfortable with online forms of communication than they are with traditional face-to-face meetings.30

The Commonwealth government has indicated that it is looking for “new approaches to the provision of justice” and encourages “innovative service delivery” to address the legal problems that Australians face.

“One option my department is currently exploring is the co-location or integration of legal services with other essential services, like health or welfare services, which also have a part to play in improving access to justice... These models typify multi-disciplinary collaboration to address unmet legal need in a regional context. It is my intention that the idea of integrated services will be explored further.”31 (The Hon Mark Dreyfus QC MP, Attorney-General of Australia)

One idea that perhaps represents the greatest shift in thinking about the function of pro bono legal assistance is that pro bono resources could be applied proactively to prevent legal problems arising, using early intervention, advice and referral.

One community legal centre manager used the phrase “proactive pro bono”, where their strategy is to provide people with assistance “before people reach rock bottom.” For example, one large law firm pro bono coordinator said that the duty solicitor assistance their firm provided at the Downing Centre was criticised for not targeting the greatest needs, as many of the clients were young people

26 See section on Secondary consults, Chapter 25.
27 See section on Fellowships, Chapter 23.
28 See case study on Bendigo Health Outreach - medical-legal partnership in a rural context, 19.5.3.
30 See section on Technology-based services, Chapter 26.
with traffic violations. However, they explained that young people with traffic violations might lose their job and spiral into worse legal problems if they are not assisted to keep their licence.

The concept of proactive pro bono could extend to providing advice early on where a matter has no prospects to avoid the “referral merry-go-round”.

“Firms sometimes do not see the value in providing advice that there are no prospects. Often CLC and Legal Aid lawyers see clients who have been everywhere for assistance but can’t get off the referral merry-go-round because, although we know the matter has no prospects, our guidelines or the level of expertise required to be diligent in that advice prohibit us from giving that advice. Advice that there are no prospects often provides closure for a client and provides a greater benefit by getting the client out of the Legal aid/CLC system. QPILCH’s self-represented litigants scheme, for example, does a lot of merits assessment. Explaining to clients that their case has no merit is a valuable service.” (A pro bono clearing house manager)
The overwhelming message that came across from the broad range of stakeholders who were consulted for this resource was that the health and strength of the relationships between partners in any pro bono project was the most important factor in determining whether it was likely to be successful. See section on the Importance of Relationships (Chapter 3).

This section provides some practical tips on planning, developing and maintaining relationships with potential and existing pro bono partners. The Partners section of this toolkit (Part 3A) provides more specific information about different stakeholders who could potentially be pro bono partners. It aims to assist those seeking to partner with a particular stakeholder to understand:

- what drives them to be involved in pro bono work
- what resources and skills they have to contribute
- what their culture is
- how they work
- what their constraints are; and ultimately
- how to be more attractive to a potential partner from this stakeholder group.

8.1 PLANNING AT THE BEGINNING

Planning at the beginning: tips

- Plan networking opportunities to meet potential partners. This could involve attending conferences, training or meetings and being prepared to talk about what your organisation is doing.
- Identify the impact that the pro bono legal assistance will have on unmet legal need or on the capacity of a partner community organisation.
- Be clear about what each partner’s interests and constraints are early in the planning process, particularly conflicts of interest.
- Take positive steps to increase the level of understanding between partners of each organisation’s philosophy, goals and how they work to ensure they are a good fit and will work well together.
- Discuss and agree on the roles and responsibilities of the partners.
- Be realistic about the time it takes to coordinate a collaborative project.
- Where appropriate, formalise discussions about respective roles and responsibilities, for example, in a memorandum of understanding (MOU) covering both the abstract and practical issues including:
  - Where does the risk fall and who is responsible for doing the work?
Where community organisations partner with pro bono providers to deliver legal services to their clients, ensure that clients also understand the arrangement between the partner organisations. For example, who is their point of contact and who specifically is the other party in their solicitor-client agreement?

- Think about how the project’s success will be evaluated.

Careful planning at the beginning of the relationship-forming process can help to minimise problems and maximise the chances of finding a suitable partner organisation and maintaining a good working relationship with them.

“The planning process prior to the commencement of the project is vital to its success.” (Community legal centre solicitor)

Planning to network can increase opportunities to meet potential partners. This could involve planning to attend conferences, training or meetings and being prepared to talk about what your organisation is doing, then following up discussions with individuals from organisations who show interest in your work. The Sector Development Manager at the Federation of Community Legal Centres Victoria (FCLC), Claudia Fatone, explained that FCLC encourages CLCs to start small because it can be daunting to cold call firms for assistance, and organises events to help CLCs network.

“CLCs need training about how to approach firms and what kind of assistance firms can offer. I was involved with a CLC which was told that they could ask a firm to pay their rent, when this is not the kind of assistance that a firm is likely to provide.” (Community legal centre manager)

Most of the law firm pro bono coordinators consulted said that they were very open to being approached by CLCs and other community organisations about possible involvement in a pro bono assistance project or to provide pro bono assistance.

“There is no harm in asking a firm if they are interested in assisting or being involved in a project.” (Large law firm pro bono coordinator)

“CLCs need to invest time in visiting firms and getting to know pro bono coordinators.” (Community legal centre manager)

Given that pro bono is a limited resource, it is important for all potential partners to be able to identify the unmet legal need that will be addressed by any proposed pro bono project. Where a community organisation is seeking a pro bono partnership that can provide legal services to its clients, being able to identify the unmet legal need helps to build a relationship of trust with a pro bono provider that knows it can trust that community partner’s ability to assess the merits of the cases it refers.

“There is no point to the project if there are no clients or the claims are not worth pursuing. We had to think about whether the CLC would lose face with the firm if there were no clients to assist.” (Community legal centre solicitor)

It is important to ensure that there is a positive relationship between the partners from the beginning. Positive steps can be taken to increase the level of understanding between partner
organisations about their philosophy, goals and how they work to ensure they are a good fit and will work well together. One manager from a not-for-profit organisation explained how important it was for a law firm to take the time to understand the context of the work of the organisation before undertaking pro bono work for them (see section on Assistance to non-legal not-for-profit organisations, Chapter 28).

Several CLCs and clearing houses who regularly partner with law firms to deliver free legal services have developed resources such as brochures or web portals to explain what it is like to volunteer or do pro bono work with them.

“If the chemistry is not there, recognise the signs early and move on. Where there is compatibility, bottle it and nurture it.” (Community legal centre principal solicitor)

Many CLCs and clearing houses provide a formal induction process that explains the philosophy and the practical approach that results from it. For example, before commencing the Sexual Assault Communications Privilege Project (SACP) (see case study at 27.5.1), Women’s Legal Service NSW explained to the partner firms that it had a feminist approach to the project and would emphasise the needs of victims. It strongly advocated for the need to involve the Rape Crisis Centre in training law firm volunteers, especially since the firms’ lawyers would have direct contact with clients.

Law firms also need to be clear about what their interests and constraints are early in the planning process.

“There can sometimes be an assumption that the firm is well-resourced and therefore has unlimited capacity to provide administrative support when in reality firms have their own procedures and approval processes for requesting additional resources like paralegals.” (Large law firm pro bono coordinator)

One significant constraint may be conflicts of interest which prevent a pro bono provider from undertaking pro bono work that may have an impact on their duty to act in the best interests of their existing clients. While the risk of conflicts exists for all pro bono work and needs to be assessed on a case by case basis, setting up structures and having clear policies in place will make potential conflicts easier to identify and manage. The principal solicitor at Macarthur CLC, Prue Gregory, explained the agreement reached with their pro bono partner on a process for managing conflicts. “When an appointment is taken by one of the pro bono volunteers they phone the firm from the outreach site to check for conflict. If there is a conflict they give the person a brochure on the issue and refer them to three other solicitors.”

“We told PILCH not to send any matters involving major banks since they are likely to be clients.” (Mid-sized law firm pro bono coordinator)

Conflict issues can sometimes be addressed by obtaining the consent of other parties. For example, one firm asked the Department of Justice to approve their involvement in a pro bono matter against them, which was granted as they recognised the public interest value in having the matter resolved.

“Banks and utility companies are often happy for representation to be provided to clients who would otherwise find it difficult to articulate the issues and provide their consent for our firm to act.” (Large law firm pro bono coordinator)

32 The 106 CLCs that responded to the survey that the National Association of Community Legal Centres (NACLC) conducted in June 2012 invested 8,674 hours per year providing general induction and training to pro bono workers and volunteers. See National Association of Community Legal Centres, Working Collaboratively: Community Legal Centres and Pro Bono Partnerships (2012) at p 4, at www.naclc.org.au/resources/NACLC_PROBONO_web.pdf.
Discussion and agreement about the roles and responsibilities of the partners is important for both ensuring the quality of the service being delivered to clients (to ensure that all tasks are being covered) and the health of the relationship (to avoid disagreements about who is meant to be doing what). This might involve issues such as who is the lawyer on the record, who has the solicitor-client relationship with the client, what area each partner is responsible for, and what the partners hope to achieve from the arrangement.

In planning for the work it is important to be realistic about the time it takes to coordinate a collaborative project.

“In the future we will have a more realistic idea about the time/funding that should be allocated to coordination of a collaborative project of this nature which may involve phone calls, urgent placing of matters, organising meetings, arranging training, all on top of our usual casework load.” (Community legal centre solicitor)

Some project partners have clarified and formalised their discussions about their roles and responsibilities in the form of a memorandum of understanding (MOU), which can prevent disagreements and/or provide a basis for resolving any problems.

“There were some disagreements about substantive legal and legal policy issues that were discussed but not always resolved. In future it would be helpful to have a MOU that sets out what is expected of each partner and clearly delineates different roles eg casework and policy, and agreement on standard precedents, consent forms and evaluation process.” (Community legal centre solicitor)

One CLC solicitor suggested that these agreements should ideally cover both the abstract and practical issues, for example:

- Where does the risk fall and who is responsible for doing the work? (the answers to this question should be the same)
- Where does the electronic footprint fall? Whose computer is the document generated from?
- Who is responsible for doing the administrative work? Whose style guide should be followed for letters and advices? Whose email address should be used?

Other practical issues might include:

- Preparation of standard documents and processes.
- Setting up a file management system that can be easily handed over so that files can be transferred from lawyer to lawyer if necessary.
- Providing any necessary training; for example, Women’s Legal Service NSW suggested that it might be helpful to provide training and tips from the Attorney General’s Department in the law reform process for those unfamiliar with how it works (See case study on SACP at 27.5.1).
- Organising counselling support to be available (for example, via an Employee Assistance Program) to lawyers providing pro bono assistance who may be unfamiliar with the kind of clients and issues that arise in pro bono work.

Where community organisations partner with pro bono providers to deliver free legal services, it is also important to ensure that clients understand the arrangement between the partner organisations, including who is their point of contact and who their solicitor-client agreement is with.
When it is the CLC or not-for-profit organisation itself that is the client receiving legal assistance or advice directly from a pro bono provider with whom it has partnered, their roles and responsibilities may be **formalised in a client or costs agreement.**

**Methods of evaluating the success of pro bono projects** will often involve practical tasks at the beginning of a project to establish a baseline from which to compare outcomes. However, early planning for how a project will be evaluated later can also help to crystallise the shared mission and objectives of the project partners. While models to evaluate pro bono programs/projects are still being developed, it is clear that legal assistance providers will increasingly be required to demonstrate the impact of their projects to justify a continuation of support from the pro bono provider or from sources of funding (public and private). Evaluation also allows providers to reflect on their work and identify what can be improved in the future to better address unmet legal need.

> “Think about how the project’s success will be evaluated. Statistical outcomes are not the only criteria upon which CLCs should be judged. Providing legal services to vulnerable and disadvantaged people has value in itself.” (Community legal centre solicitor)

While careful planning may be an important factor in a pro bono project’s success, the health of the working relationship is paramount, and is even likely to carry a project through any deficiencies in planning.

> “Ultimately, planning cannot take every possibility into account, so there needs to be a relationship that can adapt to changes in circumstances.” (Large law firm pro bono coordinator)

For more information on planning, developing and maintaining a program, see [section 1 of the Australian Pro Bono Manual](#).

### 8.2 MAINTAINING THE RELATIONSHIP

> “It is difficult to build a sense of ownership or emotional link to the work if you are only calling on someone once a year to assist with an isolated matter.” (Community legal centre principal solicitor)

**Maintaining relationships: tips**

- Plan to communicate regularly and discuss what is working well, as well as what can be improved.
- Create opportunities for keeping in contact such as producing newsletters, organising events or even meeting up for coffee.
- Extra effort needs to be made to have regular contact where regional, rural and remote partners are involved.
- Communicate openly and honestly, especially when things are not going well.
- Have a succession plan in place to ensure that the project does not flounder if an individual

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33 See section on the Importance of relationships (Chapter 3).
Pro Bono Partnerships and Models: A Practical Guide to *What Works*

Like any other relationship, a pro bono partnership needs to be nurtured to survive and thrive. For example, the Principal Solicitor at CASE for Refugees, Shayla Strapps, explains that building and maintaining relationships is especially important for them, given that the CLC is in Western Australia where there are few resources available for coordination of pro bono referrals. She keeps pro bono barristers and lawyers from firms informed about what is going on to build a sense of ownership in the work they do for the project, including fundraising efforts, and invitations to events. She tries to catch up with barristers for coffee and lunch, and finds that they enjoy the opportunity to discuss areas of law and a client base that is outside their usual area of work. She suggests distributing a quarterly newsletter, especially where the pro bono work is not concentrated on a particular area of law, which can highlight positive outcomes that have resulted from referrals so they can be motivated by seeing the impact of their work. “Events are a good way to keep people informed and also for building relationships, providing opportunities to chat.”

“The investment of time and resources in building an outreach clinic needs to be followed by an ongoing investment in maintenance of the relationships and health of the host organisation.” (University pro bono coordinator)

Regular communication to discuss what is working well and what can be improved is an important part of maintaining an effective working relationship. One CLC coordinator warned against taking volunteers or volunteer opportunities for granted.

For example, the project partners involved in the National Children’s and Youth Law Centre (NCYLC) LawMail project (King & Wood Mallesons’ national and state Cyber Project coordinators, and Telstra and ASIC representatives) have regular catch-up meetings to discuss how the work is going and provide feedback. NCYLC also provides regular feedback on LawMail to the volunteers in the form of a quarterly report. (See case study at 26.5.1)

Distance can make it difficult to have catch-up meetings face-to-face, so extra effort needs to be made to have regular contact where regional, rural and remote partners are involved. For example, the Principal Solicitor at Macarthur CLC, Prue Gregory, makes a point of seeking out times to catch up with the Sydney-based pro bono coordinator from Minter Ellison in person. (See case study: Claymore Outreach Clinic at 21.5.1)

Many of those consulted emphasised the importance of honesty from both partners, especially when things are not going well.

“While CLCs are loathe to ruin a relationship with a firm that is providing staff resources, neither the firm nor the CLC is happy if problems are not effectively communicated.” (Community legal centre principal solicitor)

Succession planning is important for the pro bono provider and the host organisation receiving and/or coordinating the pro bono support to minimise the impact if an individual contact leaves the firm or community organisation. For pro bono providers who rely on having a host organisation to connect them to the need and clients, it is important to support the host organisation and if possible, build relationships with more than one staff member. For those receiving or coordinating pro bono assistance, it is vital to build support for the project amongst a wider pool than just the

- Build support for the project amongst a wider pool than just the pro bono coordinator to ensure that the pro bono support continues if that individual leaves the firm.
- Make sure pro bono providers have a positive experience so they feel good about helping.
individual pro bono contact to ensure that the pro bono support continues if that person leaves the firm.

“Partnerships that are dependent on individual personalities are vulnerable to floundering if a key person at either the CLC or the firm leaves.” (Community legal centre principal solicitor)

“If a key personality leaves an organisation, others may follow, and a less effective organisation is unlikely to attract clients. The strength of a host agency can make or break an outreach clinic, and can change in a relatively short space of time.” (University pro bono coordinator)

A relationship that is well maintained can lead to the expansion of the level and nature of the assistance and results of the partnership. The assistance can flow both ways. For example, an equal relationship between NCYLC and K&WM has been developed over time. NCYLC is now in a position to assist K&WM with its other pro bono projects by taking on or referring clients, or providing direct support. (See Case study at 26.5.1.)
PART 3A. UNDERSTANDING YOUR POTENTIAL PARTNER

If the health and strength of the relationships between partners to any pro bono project is the key determinant of whether a pro bono project is likely to be successful, then it is vital to fully understand your partners: what drives them to be involved in pro bono work; what resources and skills they have to contribute; what their culture is; how they work; what their constraints are; and ultimately, what they are looking for in a potential partner. (See section on the Importance of relationships and communication, Chapter 3.)

It is important for those seeking/brokering pro bono assistance to know how to pitch their requests for assistance, to maximise their chances of obtaining assistance.

“The reality is that we can only refer matters that are going to be picked up. We try to understand the interests and motivations of our members when trying to match matters with service providers, and ‘pitch’ matters accordingly.” (A pro bono clearing house manager)

For pro bono providers seeking to find suitable community partners and projects to become involved in and/or build a pro bono practice, it is equally important to know how to find, attract and assess these opportunities to connect with those in need.

“Community partners provide a link to the need: Once firms have identified areas of need that are a good fit for the culture of the firm, they need to find a way to connect with the need.” (Large law firm pro bono coordinator)

As discussed earlier, understanding the motivations and interests of potential partners for being involved in a pro bono project can facilitate the development of a project that will work for everyone involved, and bring together partners who are likely to be compatible.

Many of the examples and case studies throughout this resource involve the pro bono contributions of organised law firm pro bono practices. This is because many of the models have been developed with the involvement of large corporate law firms with structured pro bono programs, which have provided the resources and prestige to promote pro bono as a central professional goal and in many ways play a leadership role within the pro bono field. However, it is important to remember that a significant amount of pro bono legal work is done or driven outside of large firms, by individual volunteers, in-house counsel, government lawyers, and law students, as well as small and mid-sized firms. Each of these potential partners is covered in this section.

For more information on potential pro bono partners, see section 1.6 of the Australian Pro Bono Manual ‘Identifying needs and sources of work’.

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A pro bono clearing house or legal assistance referral scheme facilitates the efficient provision of pro bono legal advice by acting as an intermediary between people or organisations needing legal assistance and lawyers prepared and able to assist.

“By acting as a hub for the skills and expertise of the legal world, a pro bono clearing house provides NGOs, governments and/or individuals with an identifiable mechanism through which they can find legal support.”

A strong feature of pro bono in Australia is the existence of a pro bono clearing house and/or legal assistance referral scheme in every State and Territory. The first of these was developed in NSW in 1992, and the most recent was in Tasmania in 2010. Importantly, they provide a point of focus for pro bono activity in each jurisdiction.

The various clearing houses and schemes are markedly different in scale and size and they operate in different ways.

In Victoria and Queensland, referral schemes are managed by Public Interest Law Clearing Houses (PILCHs), organisations originally established by their law firm members that now have a broader membership, including universities, community legal centres, corporate and government legal departments. Members of a PILCH pay an annual membership fee, for a law firm the fee is based on the number of partners in the firm.

The largest of the clearing houses is PILCH Victoria. Following an agreement with PILCH NSW in November 2012, PILCH Victoria and PILCH NSW will become one integrated pro bono organisation from 1 July 2013. A membership-based PILCH also exists in Queensland (QPILCH) and South Australia (JusticeNet SA).

Apart from those managed by PILCHs, other pro bono referral schemes are mainly run by law societies or bar associations. Another example of a pro bono referral scheme in Australia is the Cancer Council Legal Referral Service that is managed by the Cancer Council in NSW.

Benefits of working with clearing houses and legal assistance referral schemes

For law firms, membership of a PILCH and/or a relationship with a referral scheme offers the opportunity to accept case referrals (see also section on Case referral, Chapter 19). Where the schemes provide direct legal services or runs clinics, it also offers the opportunity to be involved in this type of service delivery (see also section on Clinics, Chapter 20).

The clinics with which a firm’s lawyers can become involved through the PILCHs in Victoria, NSW and Queensland include the Homeless Persons’ Legal Clinics (see case study at 21.5.2), the Refugee Civil Law Clinic (Queensland), the Self Representation Service (in QCAT and Queensland State Courts) (see case study at 20.5.1), and the Seniors Rights Legal Clinic (Victoria). Ad hoc issue-based clinics are also

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36 Up-to-date contact details for each pro bono referral scheme and clearing house, and links to their websites, can be found on the National Pro Bono Resource Centre’s website at www.nationalprobono.org.au/page.asp?from=7&id=128.
established from time to time in response to particular legal needs which arise. For example, PILCH Victoria has used clinics to provide outreach to rural and regional areas (see section on Outreach, Chapter 21).

Membership of a PILCH offers additional opportunities, including involvement in research, policy and law reform work (see also section on Law reform, Chapter 27), specific pro bono projects and the ability to place secondees at a PILCH (see section on Secondments, Chapter 22).

Membership of PILCH Victoria and PILCH NSW also offers the benefit of involvement with PilchConnect, a specialist service that provides free and low-cost legal assistance to not-for-profit community organisations and advocates on their behalf (See case study on PilchConnect at 28.5.1). QPILCH assesses and refers not-for-profits through its Public Interest Referral Service. Further details of projects and benefits of membership can be found on each PILCH's website (see details under List of Schemes below).

For referral schemes that do not operate on a membership model, including the law society referral schemes managed by the PILCHs in Queensland and Victoria, firms may agree to be on a list of firms which are willing to be contacted to consider taking on a matter on a pro bono basis or may be able to contribute simply to the process of assessing requests for assistance. These referral schemes have been particularly helpful for small firms undertaking pro bono legal work (See section on Small firms, Chapter 11).

Pro bono referral schemes and clearing houses provide an important “triaging” service for the many requests made for pro bono legal assistance. They only seek to place requests for assistance with their members, or the firms and barristers that have agreed to consider referrals, once they have made the assessment that the case meets pro bono guidelines.

For a list of pro bono referral schemes and clearing houses please refer to the next page.
LIST OF SCHEMES

Australian Capital Territory
The ACT Pro Bono Clearing House (based at the Law Society of the ACT)
The Centre for Asia-Pacific Pro Bono (based at the Law Council of Australia)

New South Wales
The Public Interest Law Clearing House (NSW) Inc
Law Society of NSW Pro Bono Scheme
NSW Bar Association Legal Assistance Referral Scheme
Cancer Council Legal Referral Service

Northern Territory
The Northern Territory Pro Bono Clearing House (based at the Law Society of the Northern Territory)

Queensland
The Queensland Public Interest Law Clearing House Incorporated (QPILCH) (manages both the Queensland Bar and Queensland Law Society schemes, along with its Public Interest Scheme)

South Australia
JusticeNet SA

Tasmania
The Law Society of Tasmania Pro Bono Clearing House (based at the Law Society of the Tasmania)

Victoria
The Public Interest Law Clearing House (VIC) Inc (manages both the Victorian Bar Pro Bono Scheme and the Law Institute of Victoria Legal Assistance schemes, along with its Public Interest Referral Service)

Western Australia
Law Access Pro Bono Referral Scheme (based at the Law Society of Western Australia)
The Western Australian Bar Association

Contact details for each scheme and clearing house (and links to their websites) can be found on the ‘Pro Bono Legal Referral Schemes’ page on the National Pro Bono Resource Centre's website under ‘Finding Legal Help’.
This section focuses on what drives large law firms to become involved in pro bono partnerships and how to effectively partner with them. More information for lawyers from large law firms who are interested in developing their pro bono practice can be found in the section “I am in the early stages of developing a pro bono practice (or growing an existing practice)” at 2.1.

“Large law firms” refers to firms that are large enough to have structured pro bono practices, including both large and mid-sized firms, although different issues may arise depending on how large the firm actually is (see section on Size matters: Size of law firm or office at 6.3).

### 10.1 LARGE LAW FIRMS: AT A GLANCE

<table>
<thead>
<tr>
<th>Law firm pro bono programs need community partners to assist them with:</th>
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<tbody>
<tr>
<td>• Identification of unmet legal needs</td>
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<tr>
<td>• Access to clients</td>
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<tr>
<td>• Merits assessment</td>
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<td>• Risk minimisation</td>
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**What will help community organisations to attract law firm partners?**

- Invest time in visiting firms and getting to know pro bono coordinators.
- Present a clear strategy and plan for the pro bono work.
- Appeal to the interests and culture of the firm and its staff.
- Clearly articulate the long-term goals related to assisting a client with their immediate matter.
- Confine the scope and quantify the amount of legal work that is being requested.
- Demonstrate the necessary organisational ability and skills that the organisation can bring to the partnership with a track record of delivering services to a target client group.
- Provide any necessary training to pro bono providers.
- Provide a consistent contact point who will oversee administration and logistics, as well as supervise the provision of advice.
- Ensure that firms have a good experience with the partner organisation so they feel good about helping.

**What will help a pro bono coordinator to sell a project within a firm?**

- Highlight the internal benefits to the firm, especially the link with a corporate client's goals or visions.
- Structure projects to reduce risk to the firm, avoid conflicts and set clear expectations.
• Explain how the work can be differentiated from an area of need that the government or legal aid should be addressing.
• Where possible, organise projects rather than individual referrals so that the pro bono coordinator does not need to obtain sign off for every individual matter once an entire project is approved.

What attracts law firm staff to participate in pro bono work?
• Personal interest in social justice issues.
• Partner and management support, encouragement and leading by example.
• Client contact and feeling like they are making a real difference.
• Opportunities to improve their skills.
• Opportunities to do interesting work.
• Being able to work more autonomously and take responsibility for a matter from beginning to end.

There are various factors driving law firms to undertake pro bono work. Some of these are linked to the ethical and moral principles that underpin the view that lawyers in general should undertake pro bono work, namely the fundamental responsibility of lawyers to ensure equal access to justice given their privileged position as members of the profession that has the exclusive right to practice law, and the maintenance of the professionalism of the legal profession. There are many individual lawyers within firms that have a strong personal belief in the importance of social justice and access to justice and drive pro bono work within their firm.

However, there are also benefits to law firms from being involved in pro bono legal work that provide a business rationale for undertaking pro bono work and providing institutional law firm support for the work. These benefits are summarised in Esther Lardent’s article Making the Business Case for Pro Bono, and include: making the firm more attractive to high quality legal recruits who are increasingly attracted to firms that provide opportunities to undertake pro bono work; greater retention of valued employees, which also reduces recruitment costs; the development of professional skills and experience in a supervised environment; enhancing staff morale and loyalty; and providing unique opportunities to market the firm, enhance its corporate image and thereby generate new business. The inclusion of pro bono conditions by the Commonwealth and Victorian governments in their tender schemes for the purchase of legal services from the private profession has encouraged the growth of pro bono legal services in those jurisdictions.

In recent years, many of the larger law firms have increased their commitment to pro bono work and have expanded and formally structured their pro bono programs. Despite the significant structural changes that have taken place in the law firm sector over the past few years, large Australian law firms have continued to increase the amount of pro bono legal assistance they provide. In the 2011-2012 financial year, 11,460 FTE lawyers employed by firms with more than 50 lawyers undertook more than 343,058 hours of pro bono legal work, or an average of 29.9 hours per lawyer per annum.

The transition from ad hoc to structured pro bono practices in larger firms has provided benefits, not only to firms but also the recipients of pro bono assistance. While firms with a structured pro bono program may be better able to target those in need of pro bono assistance, many of them also rely heavily on their community partners who have direct daily contact with disadvantaged, marginalised and vulnerable people to help them to identify and assess the level of unmet legal needs.

Once a firm has identified the areas of need that they will focus on, a firm will again rely on community partners to provide access to clients from those target groups by referring suitable clients and matters. Firms also rely on community partners to perform a triage function and filter the matters so that only appropriate cases are referred after a full merits assessment has been done. Firms can minimise their risk, for example, by partnering with an organisation that can supervise the pro bono work of the law firm's lawyers working as secondees or staffing clinics.

“We really need CLCs because they know much more about the clients and the needs that we want to assist with. We can't do our pro bono work without them.” (Mid-sized law firm pro bono coordinator)

“Our firm is always open to new relationships and encourages requests from community organisations for assistance. There is no harm in asking a firm if they are interested in assisting or being involved in a project.” (Large law firm pro bono coordinator)

Law firm pro bono programs need community partners to assist them with:

- identification of unmet legal needs
- access to clients
- merits assessment
- risk minimisation.

In addition to partnering with community organisations to deliver pro bono legal services to the clients of those organisations, many firms also provide legal assistance to the community organisations themselves as a way of indirectly helping by boosting the capacity of those organisations. In many cases the legal needs of organisations are a good match with the expertise of

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large law firms (See section on Assistance to not-for-profit organisations, Chapter 28). The National Law Firm Pro Bono Survey: Australian firms with fifty or more lawyers found that large law firms actually did more work for organisations than for individuals.

What will help community organisations to attract law firm partners?

This section primarily refers to community organisations seeking a partnership with a firm to deliver pro bono legal services to its clients. (For more information about firms providing legal assistance to not-for-profit organisations, see the section on Assistance to non-legal not-for-profit organisations, Chapter 28.)

Having a strategy and plan for a proposed project demonstrates that it is likely to be well organised, and also makes it clear to the firm how its resources will be used and the impact it will have. A strategy and plan will include the mission or vision for the project, tasks and who is responsible for them, details of all the human, administrative, technology and other resources required, evaluation methods and measures.

“Immediate casework is more likely to be accepted if it has long term law reform goals beyond addressing the client’s immediate problem.” (Mid-sized law firm pro bono coordinator)

“It is often easier to sell a secondment within a firm if the secondment is linked to a specific project rather than general legal referral work, especially a law reform goal, for example a secondment aimed at producing a report on women and homelessness.” (A pro bono clearing house manager)

It is also important to promote the work in a way that will attract assistance, taking into account the interests and culture of the firm and its staff. The Principal Solicitor at CASE for Refugees, Shayla Strapps, explained that to attract more pro bono assistance to the Judicial Review for Asylum Seekers Project, the community legal centre highlights priority areas that link in with others’ areas of interest, for example, women and children.

“CLCs/PILCHs need to learn to market themselves to be more attractive to firms, to understand how firms see themselves and market themselves and fit their referrals into that model/understanding, for example, PALS had a paw print logo and the acronym made it seem more to do with companion animals but the focus is on systemic cruelty. Now they only refer to it as ‘Pro bono Animal Law Service’ and the discussion is on the consumer law issues (eg free range eggs) rather than animal rights or welfare issues.” (A pro bono clearing house manager)

“CLCs need to identify areas of their work that are ‘sexy’ so they can promote legal clinics/projects that are attractive to firms.” (Community legal centre manager)

“Social security law, for example, may not immediately seem like sexy work, but there are ways to make it more appealing to firms. It involves administrative law skills. Learning to run an appeal in the AAT provides lawyers with the skills to run a matter in the Federal Court.” (Community legal centre principal solicitor)

“There is a lot of good will out there. We just need to learn how to harness it by marketing our work in a way that appeals to the interests of firms and barristers and expands the pool of people we have to draw on for help.” (Community legal centre principal solicitor)
Pro bono work that is confined in scope with discrete tasks, especially where the amount of legal work can be quantified, can make it easier from a firm’s perspective to see how the pro bono work can fit in with its commercial operation where fee-paying clients are normally billed in units of time. This might involve an estimate of how many hours of work is required per matter, how many matters might arise, and what the limits of the expected assistance might be.

Firms are looking to partner with organisations that they feel confident will be able to bring the necessary organisational abilities and skills to a project; organisations that can demonstrate that they have successfully delivered training for lawyers, managed risks and managed clients.

“Law firms are looking for CLCs that are staffed and supervised with talented lawyers, well run, and organised. This is because they want to ensure that, as much as possible, any firm resources that are invested in a partnership with a CLC are used to provide pro bono legal services to clients rather than on the administration of a pro bono project that is poorly managed. Also, the benefits to firms of increasing staff retention and skill development through their involvement in pro bono work can only be realised where the CLC is in a position to provide quality training and supervision to pro bono lawyers.” (Mid-sized law firm pro bono coordinator)

“Well established CLCs/community organisations are easier to ‘sell’ within the firm because they have a track record of delivering services to target client group.” (Mid-sized law firm pro bono coordinator)

“When we offer training and support to the firms, they are generally interested in being involved and see the benefits to their junior lawyers of developing skills in litigation.” (Community legal centre manager)

“It is frustrating when CLCs are not in a position to take advantage of opportunities to work with firms when they arise, due to lack of capacity, turnover or turmoil within the CLC.” (Community legal centre manager)

“CLCs need to update their business practices so that lawyers from firms feel like they are working with equals rather than ‘dinosaurs’. Very simple tasks such as publications, websites, information distribution and record keeping can have a big impact on the image of a centre.” (Community legal centre manager)

Providing a consistent contact point who will oversee the administration and logistics of collaborative pro bono projects, is as important as providing someone to supervise the provision of advice. This is an important part of generally ensuring that firms have a good experience with the partner organisation so they feel good about helping and continue providing assistance.

“CLCs need to appoint a contact point within the CLC to manage all referrals rather than having individual CLC lawyers contacting firms.” (Community legal centre manager)

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**What will help community organisations to attract law firm partners?**

- Invest time in visiting firms and getting to know pro bono coordinators.
- Present a clear strategy and plan for the pro bono work.
- Appeal to the interests and culture of the firm and its staff.
• Clearly articulate the long-term goals related to assisting a client with their immediate matter.
• Confine the scope and quantify the amount of legal work that is being requested.
• Demonstrate the necessary organisational ability and skills that the organisation can bring to the partnership with a track record of delivering services to a target client group.
• Provide any necessary training to pro bono providers.
• Provide a consistent contact point who will oversee administration and logistics, as well as supervise the provision of advice.
• Ensure that firms have a good experience with the partner organisation so they feel good about helping.

Helping the firm’s pro bono coordinator to sell a project within the firm

Pro bono coordinators within law firms function as a contact point for external agencies referring work. Their role typically involves some casework, as well as administrative tasks such as screening pro bono cases and allocating, coordinating and supervising pro bono work throughout the firm. They also publicise opportunities for the firm’s lawyers and other staff to be formally involved in a range of pro bono activities which may include all of the models covered in this toolkit.

Some firms, especially the larger ones, have full-time or part-time pro bono coordinators. They may additionally employ, or have on rotated placements, lawyers who undertake pro bono work on a full-time basis on behalf of the firm. There are now at least 35 firms with specifically nominated pro bono contacts or coordinators. At least 12 of these are full-time positions and most national firms have a contact person in each State or Territory office. Smaller firms are unlikely to have the resources to have a dedicated coordination point for their pro bono work, but still have a person designated with the responsibility for oversight of the firm’s pro bono work.

The presence and support of a pro bono coordinator or “specialist” pro bono lawyer may make it easier for other lawyers to do pro bono work, as the pro bono specialist can seek out matters that fit with the existing interests of the firm’s lawyers. They can also train others in the firm and develop resources relevant to pro bono practice. Ideally, the employment of a specialist pro bono lawyer is accompanied by a policy making it clear that the responsibility for pro bono is equally shared and fostered broadly within the firm.

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However in some cases the reality may be that the pro bono coordinator is the strongest advocate, or perhaps one of the only advocates, for pro bono within a firm that may not have a strong pro bono culture. They may often be in the difficult position of trying to advocate for more of the firm’s resources to be allocated to pro bono work, some of which might involve unsympathetic client groups or politically contentious subjects. They do this within the constraints of a law firm which, even if it is very supportive of the existence of a pro bono program, may still be constrained by a conservative culture or commercial interests. Therefore it is important to assist pro bono coordinators by making it as easy as possible for them to sell an idea within their firm.

“CLCs are often frustrated with the time it takes a firm to make a decision about a matter (and it’s often a wait and then a no) and the inability to speak directly to the decision maker (ie the partner). They don’t understand the battle that pro bono coordinators often have in their firms to get the firm to take on the matter. They are sometimes the lone voice advocating for pro bono. They need to be provided with support and a researched referral so that they have all the information to argue the matter to the relevant partner.” (A pro bono clearing house manager)

It is helpful to carefully structure the project to reduce risk, avoid conflicts and set clear expectations. In addition to developing a clearly defined and confined project/partnership that meets some established unmet legal need, it is helpful to highlight the benefits that the project will bring to the firm, and to present these benefits in business terms. These internal benefits could include skilling up the firm's lawyers or linking in with a corporate client's goals or visions.

“Involving clients in the pro bono work of the firm further embeds the pro bono culture as it demonstrates how pro bono can be a ‘touch point’ for other relationships. Two years ago, K&WM asked two of its clients, Telstra and ASIC, to join the project as it was a good fit for in-house lawyers.” (Jane Farnsworth, King & Wood Mallesons)

“To convince my firm’s board members that our pro bono should be done at a higher level, I needed to make the case for pro bono on their terms, which are ‘business terms’. This included pointing out that our corporate clients had growing in-house pro bono programs and that we needed to keep ahead of them. A culture of competition drives a lot of pro bono work within firms.” (Mid-sized firm pro bono coordinator)

Given the strong view that pro bono should not be a substitute for properly funded legal aid services, it is helpful to explain how the proposed pro bono work can be differentiated from legal aid work.

“If we were involved in a project that involved work that should ideally sit with government/legal aid we would need to set very clear boundaries and time frames. For instance, you could undertake the pro bono work for a discrete time period with the aim of developing a body of work/submissions to be given to government capturing the statistics and data around the area of unmet need.” (Mid-sized law firm pro bono coordinator)

Some pro bono coordinators, especially those who were not partners, said that they prefer projects rather than individual referrals because they do not have to obtain a partner's sign off on each matter within a project once an entire project is approved.

“Some pro bono coordinators struggle to obtain approval from partners in the firm to take on matters/projects that they would like to do. Where pro bono is
coordinated by a partner rather than a coordinator, the partner often has more power to decide they will take on cases.” (A pro bono clearing house manager)

What will help a pro bono coordinator to sell a project within a firm?

- Highlight the internal benefits to the firm, especially the link with a corporate client’s goals or visions.
- Structure projects to reduce risk to the firm, avoid conflicts and set clear expectations.
- Explain how the work can be differentiated from an area of need that the government or legal aid should be addressing.
- Where possible, organise projects rather than individual referrals so that the pro bono coordinator does not need to obtain sign off for every individual matter once an entire project is approved.

What attracts law firm staff to participate in pro bono work?

Like the firms they work within, the staff of law firms who choose to become involved in pro bono work may do so for a variety of reasons. Many see it as a professional development opportunity, providing a chance to develop their skills by doing interesting work, as well as finding it satisfying to be able to work autonomously and take responsibility for a matter from beginning to end. Some pro bono work provides lawyers with much more direct client contact than their usual work and a feeling that they are making a real difference to a person’s life.

“Overall my experience assisting at the CLC’s advice service was hugely rewarding, being an opportunity to represent my firm in a broader community context, a way of applying my professional skills to make a difference to an individual’s life (financially, practically and socially), a way of helping those with few alternative options, an opportunity as a lawyer to expand my legal and general knowledge, an opportunity as a lawyer to experience a less corporate culture, and an insight into the lives of people who need this kind of assistance.” (Mid-sized law firm solicitor)

It is unlikely that a lawyer will volunteer to undertake pro bono work unless they have a personal commitment to social justice and access to justice. A distinction is often drawn between those who undertake pro bono within the pro bono program of a large firm (who are paid by the firm for the time they spend undertaking pro bono work) and individual volunteers who participate in pro bono legal work in their own time without being paid (see section on Individual volunteers, Chapter 17). However, while the majority of firms recognise pro bono work with full billable credits, there are also lawyers undertaking pro bono work within law firm pro bono practices with little fee relief or recognition for the pro bono work they do.45

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“Pro bono hours do not count towards billable targets and are discounted by 25% in the timesheet system. It can be seen as one of the many non-billable demands on lawyers. We wouldn’t do it unless we personally believed in it.” (Mid-sized law firm pro bono coordinator)

Law firm staff are more likely to participate in pro bono when there is partner and management support for the pro bono program and it is well publicised within the firm.

“Lawyers are more likely to put their hand up to do pro bono work if their supervising partner has been involved in pro bono work themselves.” (Large law firm pro bono coordinator)

“We need management ‘comms’ about the benefits of pro bono work and encouraging lawyers to do it - what we are doing and why - as well as testimonials from lawyers who have done it.” (Mid-sized law firm pro bono coordinator)

“Firms which say that there is no interest in pro bono work from their staff are not promoting it effectively. If lawyers really understood what the work involves, it is highly unlikely they would not be interested in it.” (Community legal centre coordinator)

“I could feel myself getting restless and I wanted to dedicate some time to giving something back, but I didn’t want to have to leave the firm to do it. By doing a pro-bono secondment that I know is supported by my firm, I have been able to get the change of scenery I wanted, do worthwhile legal work, and know that at the end of it my old job will still be there.” (Large law firm solicitor)

**What attracts law firm staff to participate in pro bono work?**

- Personal interest in social justice issues
- Partner and management support, encouragement and leading by example
- Client contact and feeling like they are making a real difference
- Opportunities to improve their skills
- Opportunities to do interesting work
- Being able to work more autonomously and take responsibility for a matter from beginning to end.

For more information on the motivations for law firms to do pro bono work, see *section 1.4 of the Australian Pro Bono Manual*.

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11 SMALL FIRMS

This section focuses on what drives small firms to undertake pro bono legal work and how to encourage small firm pro bono. More information for lawyers from small firms who are interested in doing pro bono work can be found in the section “I am a small firm” (2.2).

Small firms and sole practitioners make a significant contribution to pro bono, with many individual practitioners and smaller firms traditionally undertaking pro bono work as part of their daily practice and many individual lawyers from small firms volunteering at community legal centres. Some undertake pro bono matters that are referred to them through pro bono referral schemes such as the Law Institute of Victoria Legal Assistance Scheme (LIVLAS) or the New South Wales Law Society’s Pro Bono Scheme. (See section on Pro bono clearing houses and referral schemes, Chapter 9.)

For example, Conditsis Lawyers is a small firm of around 7-10 lawyers based in Gosford on the NSW Central Coast, providing legal services in a wide range of areas including criminal law, conveyancing, family law, local government and planning, general litigation and wills and probate. The Director of Conditsis Lawyers, Manny Conditsis, is a NSW Law Society accredited specialist in criminal law and one of the very few solicitor advocates who appear in murder trials in the Supreme Court and appeals in the Court of Appeal and the High Court. He and several other lawyers at the firm undertake pro bono work from time to time, some of which is fairly substantial.

Manny identifies several reasons why lawyers in small firms undertake pro bono, that need to be taken into account if aiming to increase the pro bono participation of small firm lawyers:

- The practitioner is doing well and wants to give back.
- The business is going through a quiet patch and pro bono gives them something positive to do (which maintains skills and may bring in business through positive publicity/word of mouth).
- Doing pro bono helps to train young lawyers in “irregular” areas of work.
- There are marketing/PR benefits to the firm of becoming better known in the jurisdiction and the community, and getting to know other practitioners who practice in a particular area.

11.1 SMALL FIRM PRO BONO: AT A GLANCE

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<th>Benefits</th>
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<td>Lawyers who undertake pro bono work in small firms are likely to be doing it for very personal reasons and to be very committed to it.</td>
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<tr>
<td>Small firm lawyers are likely to have expertise in areas of high unmet legal need that large firms do not normally have such as family and criminal law.</td>
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<td>Small firms are part of the community and involved in local issues so they can identify and respond to needs at this level.</td>
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<th>Challenges/limitations</th>
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<td>The capacity of small firms to take on pro bono work is much more limited than that of larger firms.</td>
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• The business case for pro bono that may be very compelling for large firms does not necessarily operate in the same way and generate business for small firms.

• Small firms are exposed to the same level of risk as larger firms doing pro bono work but are less able to absorb risk.

• Small firms have fewer resources with which to perform a means and merits assessment, especially when they receive a large volume of pro bono requests.

• Small firms have limited access to networks that might assist those who wish to take on pro bono matters where they do not have the expertise to run matters on their own.

• The competitive and adversarial culture amongst small firms makes it challenging to obtain assistance in areas where the firm does not have expertise, to take a holistic approach to clients' problems, or refer out discrete parts of a client's issue.

• There may be little awareness of the existence of pro bono opportunities beyond the requests that a small firm receives directly to provide advice and representation in-house.

**Features of effective small firm pro bono**

• Appeal to individual lawyers' personal sense of social justice and build a culture within the firm to assist the community.

• Focus on firms that are doing well financially and have the capacity to undertake pro bono work.

• Identify any commercial benefit for the firm, such as the possibility of pro bono clients becoming fee paying clients in the future and referring the firm to others.

• Provide quality referrals appropriate for small firms, for example, via a Pro Bono Referral Scheme that can effectively screen requests for pro bono assistance with input from the firm on the amount and types of matters they will take on given the firm's capacity and areas of expertise, and feedback about inappropriate referrals.

• Encourage small firm lawyers to undertake pro bono projects that are contained to manageable amounts of time and resources, such as volunteering at CLCs and community legal education.

• Manage pro bono client expectations carefully, highlighting the resource constraints of a small firm.

• Encourage involvement by senior practitioners who are less likely to need assistance to undertake a pro bono matter on their own.

• Create or link up with local pro bono networks or referral points.

• Promote pro bono opportunities for small firm lawyers outside of the traditional in-firm case referral model, perhaps by joining an established pro bono project.

• Partner with larger firms which can be on hand to provide mentoring and support in areas that small firm lawyers may be unfamiliar with.
Benefits

Lawyers who undertake pro bono work in small firms are likely to be doing it for very personal reasons, and to be very committed to it. In contrast to many pro bono lawyers in large firms, lawyers in small firms are not being paid for the pro bono work they do.

“When we do pro bono we make a conscious decision to do work for free or to discount. It is involvement at a different level to a lawyer at a large firm who is being paid to do it. It is money coming out of the business, out of my kids' mouths. My wife has to be happy with it.” (Small firm principal)

“My experience of trying to network with pro bono lawyers and pro bono coordinators from large firms was that most of them could not really relate to what my firm was doing as a small firm. I felt like the pig with the ham, while the large firm pro bono coordinators were chickens with eggs. In a bacon-and-egg breakfast, the chicken is involved but the pig has to be totally committed!” (Small firm principal)

“Our firm has never applied for disbursement assistance, and generally covers disbursement costs.” (Small firm principal)

When pro bono work is being done at a small firm it is very likely that the work will be within the core skills and experience of the lawyer undertaking the work. Small firm lawyers are likely to have expertise in areas of high unmet legal need that large firms do not normally have, such as family and criminal law.

“Small firm lawyers have expertise in the areas of law that impact on ordinary people's lives.” (Small firm principal)

Small firms are part of the community and involved in local issues. They can identify and respond to needs at this level. For example, the Solicitor Director at Phang Legal, Ern Phang, was involved in his local community’s response to recent violence, delivering presentations with the police and other services on law and justice issues. (See case study in the section on Community legal education at 29.1.1)

Challenges/limitations

The capacity of small firms to take on pro bono work is much more limited than that of larger firms, and small firms that are not doing well financially may need to focus all their energy on the survival of their business.

“It can be financially difficult and a drain on the resources of the firm. Small firms are not in a position to take on a lot of pro bono as they cannot afford it commercially.” (Small firm principal)

“Small firms need to keep the dollars rolling in and a week or two with nothing coming in makes it very difficult.” (Small firm principal)

There are aspects of the business case for pro bono that may be compelling for some large firms (eg providing unique opportunities to market the firm, enhance its corporate image and thereby generate new business (see section on large firms, Chapter 10)) that do not necessarily operate in the same way and generate business for small firms. For example, Ern Phang explained that receiving a Law and Justice Foundation Justice Award in 2010 had a mixed effect for his firm, Phang Legal, as a business. “The firm was inundated with calls from people wanting free legal services as the Award gave people in the community the impression that the firm did a lot of free legal work,
when in reality pro bono is only a small part of the work of the firm. While it did contribute to some increase in brand awareness, it really did not lead to any significant boost in fee paying business for the firm.”

“If individual lawyers in a small firm do not personally prioritise community service values, there is little else to motivate them to undertake pro bono. While I promote the culture and encourage others to not just be committed but apply themselves, it’s not and never will be 100%.” (Small firm principal)

While small firms are less able to absorb risks than larger firms, the risks to the firm remain the same when they are assisting pro bono clients, even when the work is being done completely free of charge. The Principal at King Legal, Greta King, explained that in her experience pro bono clients are generally much more demanding than paying clients. “I try to take quick matters rather than a full conflict but a recent case involving a personal AVO took two full days in court and many phone calls. Pro bono clients call at all hours.”

“Pro bono clients can make many complaints to the law society and this can lead to unwarranted claims on the firm’s insurance, which leads to an increase in insurance premiums. Larger firms can absorb the risk and are also less likely to be undertaking pro bono work for individuals in the way that small firms do because they don’t have expertise in those areas of law eg, family law.” (Small firm principal)

“The risk of conflicts can be particularly problematic for small firms, with many having no way to manage conflicts that may arise when their lawyers are providing advice at a CLC and outside the firm’s internal conflict checking processes. If we give up time to volunteer at the CLC, but in doing so end up conflicting ourselves out of paid work we ‘burn the candle from both ends’. While it would theoretically be less risky for our lawyers to volunteer at a CLC outside the local area, this would also be less convenient and involve a greater time commitment than the business can afford. (Conflicts may not be such a problem for other small firms, especially for sole practitioners or where the business owner is personally involved in the CLC work.)” (Small firm principal)

Small firms have fewer resources with which to perform a means and merits assessment, especially when they receive a large volume of pro bono requests. Ern Phang explained that many people who request pro bono assistance from his firm have the resources to pay for legal services, but do not want to pay, so it is essential that an effective means and merits assessment is made.

For small firm practitioners who are not very experienced, it may be more difficult to undertake pro bono than for a senior practitioner because they might not have the expertise to run a matter on their own and may be reluctant to involve other practitioners as it would mean asking another practitioner to give up their time for free. If they need to brief counsel, it may be difficult to find a barrister willing to act pro bono. (See section on Barristers, Chapter 14.)

“There is a very competitive and adversarial culture amongst small firms which means there are very few lawyers to brainstorm with, so small firms will generally only take on matters which are a match with their core expertise so they can do it on their own. They also do not want to put another practitioner in the position of losing money by taking on a pro bono matter. Small firm pro bono culture is different from large firm pro bono culture.” (Small firm principal)

“Pro bono coordinators/lawyers at large firms do not have the same level of personal investment in the firm that small firm lawyers have, and this makes it easier for them to collaborate. The collaborative pro bono culture that exists amongst the pro bono
coordinators/lawyers of large firms does not exist between the lawyers of small firms that have to compete against each other to survive. For example, they are unlikely to share information on what kind of matters they are doing or marketing plans. This makes it challenging to take a holistic approach to clients’ problems and refer out discrete parts of their issue.” (Small firm principal)

The unavailability of professional networks relevant to the pro bono work of small firms has impacts beyond making it difficult to undertake pro bono work in areas where they lack expertise. They may also be unaware of the existence of pro bono opportunities beyond the requests their firm receives directly to provide advice and representation in-house. (See section on the Importance of relationships, Chapter 3.)

“There would be much more interest from the legal profession in the Law Society Pro Bono scheme if it were better resourced to make quality referrals and to promote its existence.” (Small firm principal)

“PILCH has had problems attracting and retaining small firms as members as their programs seem to be designed to support the pro bono work of large firms. When it came to renewal it was deemed to have no or little benefit and so we didn't renew.” (Small firm principal)

**Features of effective small firm pro bono**

To encourage an increase in the pro bono participation of small firms it is important to appeal to individual lawyers' personal sense of social justice and build a culture within the firm to assist the community, given that this motivation is the primary driver for their lawyers to undertake pro bono (see section on the Importance of developing a strong pro bono culture, Chapter 4). However, it is also important to target firms that have the capacity to take on unpaid work.

“Focus on firms that are doing well. Those who are not doing well are not likely to have any capacity to do pro bono.” (Small firm principal)

While the business case for pro bono may not be the same as it is for large firms, small firms need to see some commercial benefit in it for them as well, such as advertising for the firm. For example, Greta King explained that many of King Legal’s pro bono clients are converted into paying clients and refer the firm to others.

Given that small firms may not have the resources to conduct a means and merits assessment when they receive a large volume of individual pro bono requests, it is vital for them to rely on a referral agency to do the screening for them. Ern Phang explained that he filters all pro bono requests that his firm receives through the NSW Law Society's Pro Bono Scheme, referring all potential pro bono clients to the Scheme for assessment, even if the firm intends to provide assistance. (See section on Case referral through pro bono referral schemes at 19.6.)

The effectiveness of the process for screening matters is a key factor in facilitating small firm pro bono. By developing a relationship with a pro bono referral scheme, firms can provide input on the amount and types of matters they will take on with the aim of receiving more appropriate referrals that fall within the firm’s capacity and areas of expertise.

“We have avoided ‘scope creep’ by being very clear when defining what pro bono assistance the firm will provide and how it will be provided (clients may be asked to cover some expenses but charged at a legal aid rate or lower).” (Small firm principal)
Being honest with a referring agency about pro bono matters that were referred but were not appropriate for the firm can also help the referral agency to make better targeted referrals. Greta King explained that she receives referrals from The National Child Protection Agency, barristers that know her, and other “word of mouth” referrals, in addition to the NSW Law Society Pro Bono Scheme. “I will flick back a case to the referring agency if I think that the client’s expectations cannot be reasonably managed. Larger firms can absorb risks in a way that small firms cannot afford to.”

“The nature of pro bono and the under-resourcing of many schemes (which may be staffed by volunteers or students) means that some of the referrals that the firm receives from the Scheme are found to be unsuitable when the firm conducts its own assessment.” (Small firm principal)

“The quality of pro bono cases is always quite poor because they are the cases that nobody else wants. The files are the thickest. The clients call the most. They have already been to a couple of other firms and run out of funds. However, this doesn’t mean they don’t have a good case.” (Small firm principal)

Small firms are more likely to be able to sustain pro bono as a part of their practice if it is contained to manageable amounts of time and resources. Volunteering at CLCs has provided a way for many small firm lawyers to undertake pro bono work that is limited to a commitment of a particular amount of time. (See also section on Individual volunteers, Chapter 17.)

“Another benefit of running cases with/through the Law Society Pro Bono Scheme is that it fits within the normal 9-5pm office, in contrast with CLC volunteering or other pro bono work that might involve working ‘outside of work’.”

Those consulted from small firms agreed that contributing to community legal education (CLE) may be a good place for small firms to start doing pro bono work, because it allows the firm to control the resources that they commit to pro bono, there is little risk of conflicts, and because it can help a larger number of people at one time than one on one legal advice (see section on Community legal education, Chapter 29). Ern Phang said that he has encouraged his staff and others to contact local community groups to see if the firm can help. For example, lawyers from Phang Legal have delivered CLE presentations on wills and estates at the Granville Men’s Shed, a Chinese-speaking audience at Auburn Library, and are in discussions with Anglicare about doing more presentations. (See also the case study on Phang Legal and Harris Park Community Centre in the section on Community legal education at 29.1.1)

Given their resource constraints, there is an even greater need for small firms to manage pro bono client expectations.

“The firm needs to ensure clients understand that they are not getting a QC on their case. Client/file management is the biggest challenge for small firms doing pro bono. Pro bono files are the thickest, and the clients call whenever they feel like it.” (Small firm principal)

While there may be more time demands on more senior practitioners, it is also easier for them to take on pro bono matters. For example, Manny Conditsis explained that as an experienced trial advocate he does not have to involve another practitioner to run a matter in court, meaning there is one less obstacle for him to overcome.

Less experienced lawyers in smaller firms who may be interested in commencing or increasing their pro bono activities, and may feel unable to do so due to capacity issues and lack of expertise, could consider partnering with large firms that can facilitate their involvement by being on hand to provide mentoring and support in areas with which they may be unfamiliar.

Earlier research into small firm pro bono in Western Sydney and the Centre’s survey in Queensland indicated that some smaller firms tended to prefer autonomy and resisted structured pro bono, including participation in external pro bono schemes.\(^48\) However, given that many smaller firms also seem to have a strong attachment to, and involvement in, their local communities, a way to appeal to smaller suburban or RRR firms may be via local pro bono networks\(^49\) or referral points.\(^50\)

Promotion of pro bono opportunities for small firm lawyers outside of the traditional in-firm case referral model could certainly be improved to provide small firms with more options for becoming involved in pro bono. Manny Conditis said he was not aware of the clinics that larger firms are involved in, and had not really thought about the possibility of having his lawyers volunteering at CLCs, but would be open to the idea and could recommend several others with small firms who might also be interested.

“Promote pro bono opportunities with face to face contact and using contact networks eg, have someone speak at regional and country meetings of individual law societies, or call principals of small firms and seek face-to-face time. Point out the benefits of engaging young lawyers and the PR/marketing spin offs. It is too easy to ignore emails and small advertisements in magazines.” (Small firm principal)

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\(^50\) See, for example, case study on Bendigo Health Outreach Service (19.5.3).
12 COMMUNITY LEGAL CENTRES

This section focuses on what drives community legal centres to become involved in pro bono partnerships and how to effectively partner with them. More information for lawyers from community legal centres who are interested in partnering with pro bono providers to obtain assistance for their clients or their centre can be found in the section “I am a community legal centre or not-for-profit organisation” (2.3).

12.1 COMMUNITY LEGAL CENTRES: AT A GLANCE

<table>
<thead>
<tr>
<th>What makes pro bono providers attractive to CLCs?</th>
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<tbody>
<tr>
<td>• They view and respect the CLC as an equal partner with valuable skills and experience, rather than “treating pro bono assistance as a gift” to CLCs.</td>
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<tr>
<td>• They are open, honest and clear about what their interests are for being involved in the project.</td>
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<td>• They understand and prioritise the needs and interests of clients.</td>
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<td>• They trust the CLC’s assessment of whether a matter is in the public interest.</td>
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<td>• They are interested in capacity-building for the CLC as well as high-profile cases that will raise the firm’s profile.</td>
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<td>• They provide high quality personnel to a pro bono project, whose skills/preferences are a match for the model/task.</td>
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Community Legal Centres (CLC) are independent, not-for-profit community-based organisations that exist to provide free legal services to the community, with a focus on economically and socially disadvantaged people who have the least access to justice.

Given that working at a CLC is likely to pay substantially less than other law-related careers, it is highly likely that the primary motivation of lawyers who choose to work in a CLC is a passionate personal interest in social justice. CLCs are keen to partner with pro bono providers primarily so that they can improve access to justice for their clients.51

“For CLCs, the service provided to clients is the number one priority. The development of the relationship with the firm is an incidental benefit, so the CLC would not enter into a partnership with a firm unless it could see how the project was going to improve services for clients.” (Community legal centre solicitor)

These pro bono providers may be lawyers who volunteer at a CLC on an individual basis. CLCs attract, train, utilise and retain a large number of high quality volunteers, a majority of whom are

51 According to Claudia Fatone, Sector Development Manager at the Federation of Community Legal Centres Victoria, around 40% of Victorian CLCs now have some form of partnership with one or more firms.
lawyers and law students (see sections on Individual volunteers, Chapter 17, and Law students, Chapter 18). Lawyers and law firms may also assist CLCs by making a commitment to allocating their resources to assist the CLC in a more formal partnership arrangement. The assistance given to CLCs by pro bono providers may involve delivering legal services to clients directly, participating in community legal education and law reform advocacy. Pro bono providers may also help to build the capacity of a CLC by providing advice to the Centre or advising the Centre's lawyers.

“It is positive when firms are interested in capacity building for the CLC as well as high profile cases that will raise the firm's profile. Relationships are built between CLCs and firms by undertaking day-to-day work together.” (Community legal centre coordinator)

CLCs value partnerships with pro bono providers who share their interests in promoting social justice and improving access to justice, and in the context of providing pro bono assistance, can prioritise these interests over their usual commercial or business interests.

“CLCs are part of the community, not-for-profit, and their primary goal is meeting the legal needs of their clients. Law firms represent commercial interests and companies that may exploit the people who are the clients of CLCs.” (Community legal centre solicitor)

“Lawyers who come with existing experience and beliefs that do not match with the CLC's may not be suitable. I have had experience with employer firms where business interests are prioritised over the interests of justice.” (Community legal centre solicitor)

“CLCs/Legal Aid focus on client face-to-face service delivery and their clients are always marginalised and disadvantaged, but firms can be more focused on winning the case and what's in it for them (interesting work, skills development, giving something back). In one instance, on the threat of a court challenge that had the potential to overturn a landmark decision, the government department conceded before the matter was heard in court. There was a lot of discussion from the legal team about the loss of the opportunity to overturn the decision but it took about a week for the team to contact the client and advise that individual she had obtained a successful outcome.” (A pro bono clearing house manager)

Recognising and addressing cultural differences between CLCs and law firms can help them to work well together. For example, the Principal Solicitor at Macarthur CLC, Prue Gregory, has observed that there can be different perceptions due to the different cultures of CLCs and “big city firms”: “There could be a perception from within the CLC that the firm might treat clients in a condescending way because the clients are not ‘paying clients’, not returning calls or following through with undertakings to take action.” Although she stresses that this has not been the experience at Macarthur.

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53 Of the 106 CLCs that responded to the NACLC Survey conducted in June 2012, 56,939 hours were contributed in one year by pro bono partnerships, 82.6% benefiting from lawyers providing direct services to clients, 69.8% from lawyers providing advice to the centre, and 54.7% from specialist lawyers advising centre lawyers. See National Association of Community Legal Centres, Working Collaboratively: Community Legal Centres and Volunteers (2012) p 1, at www.naclc.org.au/resources/NACLC_VOLUNTEERS_web.pdf.
“Different approaches of firms and CLCs are reflected in the work of the pro bono lawyers that staff the duty service. It can be tricky to manage the differences and the CLC needs to be careful to communicate about their philosophy eg, the time they give to either party is different when there are no billables, safety of the family is paramount.” (Community legal centre principal solicitor)

“Firm culture doesn’t encourage lawyers to say ‘no’ to clients, preferring to be obtuse rather than be honest about saying no - it doesn’t have any prospects. We have noticed that secondees from firms have trouble with stopping themselves constantly saying yes to clients.” (A pro bono clearing house manager)

“No pro bono coordinators are sometimes reluctant to say that a matter has not actually progressed.” (Community legal centre manager)

“Many CLCs have voiced concerns about corporate lawyers not meeting the needs of the clients (… explaining why something can/cannot be done, using plain English, especially in letters of engagement etc, giving non-legal alternatives, referring to counselling services, spending time doing non-legal work eg, filling out forms, listening to the client’s story and concerns, etc).” (A pro bono clearing house manager)

Many CLCs have taken positive steps to manage the cultural difference by providing firms and their volunteer lawyers with information about how the CLC works before partnering with them or during the induction process for law firm staff participating in collaborative projects. They provide information to lawyers and firms that are seeking partnerships with them about the underlying philosophy of CLCs and how this impacts on the way they work. They invest significant resources into training and skilling their volunteers and pro bono partners to ensure they are well-prepared to provide relevant high-quality legal assistance that is culturally appropriate (for example, see case study on North Australian Aboriginal Justice Agency and Ashurst at 22.5.1).

“We communicate with firms and volunteer solicitors before partnering with them about what it will be like to volunteer and what the philosophy of the CLC is. We are preparing a brochure that will tell firms what the CLC does and what volunteering involves. We provide volunteer solicitors with a proper induction and continuous communication to ensure that they understand and reflect the philosophy and approach of the CLC. Firms/volunteers are not attractive to CLCs unless they understand where clients are coming from.” (Community legal centre principal solicitor)

It would also be extremely helpful, especially for CLC staff that do not have experience in a large firm environment, for firms to provide CLCs with a realistic picture of the motivations of the firm for doing pro bono, their approach to pro bono work, and the constraints that law firm pro bono coordinators and lawyers work within.

“Relationships of trust are essential. There are barriers to overcome between pro bono providers and CLCs. Relationships of trust are needed. Open communication is essential.” (Mid-sized law firm pro bono coordinator)

“Firms do not seem to tell us the real reasons why they are refusing a referral. We would prefer firms to be honest about their reasons so we can better target referrals in the future. If you are busy, say you have no capacity rather than it doesn’t fit your guidelines.” (A pro bono clearing house manager)
“Is the firm doing it to improve staff retention, to be involved in law reform, to keep up with the other firms’ pro bono numbers?” (Community legal centre solicitor)

As a result of their day-to-day exposure to the clients and issues facing their clients, CLC lawyers develop specialised skills in particular areas of law and practice, which lawyers who have not had this kind of exposure may not have developed. CLCs seek an equal partnership with pro bono providers who can both complement, but also recognise, the value of the CLC lawyers’ skills and experience, and where necessary, develop some of these skills.

“CLCs find it challenging when firms treat pro bono assistance as a gift to CLCs rather than an opportunity for an equal partnership.” (Community legal centre coordinator)

“There needs to be an equal relationship. CLCs need to be recognised by firms as doing more than just bringing in the pro bono work. People working in CLCs have developed skills that other lawyers do not have - dealing with disadvantaged and difficult clients - but some are also very skilled technical lawyers.” (Community legal centre solicitor)

“Corporate firms are not always fully aware of the additional skills that CLC/Legal Aid lawyers have developed when dealing with clients who are seriously distressed, traumatised, mentally ill, and experiencing multiple forms of disadvantage, and that these are skills that are required when working with these clients. Often it is only after you have dealt with a client who is distressed and threatening to harm themselves that you realise you are entirely unprepared for that side of it.” (A pro bono clearing house manager)

“We value a relationship of trust between the firm and the CLC where the firms will trust the CLC’s assessment of whether a matter is in the public interest.” (Community legal centre coordinator)

Part of respecting the CLC and not “treating pro bono like a gift”, is providing high quality, committed personnel whose skills and preferences are a match for the model and tasks involved in the project. The senior solicitor coordinating Redfern Legal Centre’s unfair dismissal project with Clayton Utz said that “the firm provided an excellent team of secondees who are smart, committed and reliable.” (See case study on RLC Unfair Dismissal project at 22.5.3)

There have been many successful pro bono partnerships between CLCs and law firms, with many of the lawyers undertaking pro bono work within firms possessing the same level of commitment and personal belief in social justice as CLC lawyers do. Many vulnerable and disadvantaged people who are the clients of CLCs stand to gain from the legal assistance resources that flow from effective partnerships.

“Some CLCs can be over-protective of their territory, seeing themselves as the only carriers of social justice. Working towards positive relationships can yield real benefits for clients.” (Community legal centre manager)

There are peak bodies of CLCs in each state and territory which may be able to provide assistance to pro bono providers and CLCs which are interested in pro bono partnerships.54

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54 For the contact details of the CLC association in each state and territory, see the National Association of Community Legal Centres website at www.naclc.org.au/cb_pages/state_associations.php.
13 NON-LEGAL NOT-FOR-PROFIT ORGANISATIONS AND CHARITIES

This section focuses on what drives not-for-profit organisations to become involved in pro bono partnerships and how to effectively partner with them. More information for not-for-profit organisations which are interested in partnering with pro bono providers to obtain pro bono assistance can be found in the sections “Assistance to non-legal not-for-profit organisations and charities” (Chapter 28) and “I am a community legal centre or not-for-profit organisation” (2.3).

13.1 NOT-FOR-PROFIT ORGANISATIONS: AT A GLANCE

What will help to connect pro bono providers to NFPs they can help?

- Identify and leverage existing relationships with the board or staff of NFPs.
- Provide information about the profile of NFPs they are interested in assisting.
- Develop a process for assessing whether to provide an NFP with pro bono assistance.
- Provide case studies illustrating legal issues and risks to help NFPs understand and identify legal issues.
- Take the time to fully understand the work and position of the NFP.

A not-for-profit organisation (NFP) is one that does not operate for the profit, personal gain or other benefit of particular people. Australian charities and other NFPs have a strong history of helping vulnerable and disadvantaged people in Australia, providing the majority of social services in Australia up until the Second World War. These were mainly religious institutions that worked towards relieving poverty and suffering. The NFP sector in Australia is now large and diverse, covering activities and services including health, social services, education, sport and recreation, arts and culture, the environment, animal welfare, and human rights, in addition to religious practices.

NFPs seek pro bono partners that support the work of these organisations, allowing them to use their resources to assist those in need rather than paying for legal services. Law firms, especially large corporate firms, do as much if not more pro bono work for NFPs than they do for individuals. NFPs seek advice from pro bono providers on areas such as governance, deductible gift recipient (DGR) applications, commercial agreements and incorporations. They may also benefit from training delivered to them by pro bono providers on the legal issues affecting their organisation's work.

However, the number and diverse range of NFPs makes it challenging for pro bono providers to decide which ones they should assist. In 2010, the Productivity Commission estimated there were roughly 600,000 NFPs in Australia, with around 56,000 endorsed by the ATO to receive charity tax concessions. Of those endorsed by the ATO, nearly half (43%) have social and community welfare as their main purpose, with religious charities making up about 22% of these. Around 1,700 new charities apply for registration each year.58

The difficulty in making these assessments may be exacerbated by the fact that non-legal NFPs are also unfamiliar with the law. They may not recognise that a problem is a legal issue, and therefore may not seek assistance or articulate the problem as a legal one.

"... a significant barrier to accessing pro bono legal assistance for non-legal not-for-profit organisations is lack of awareness about what is a legal issue." (Not-for-profit organisation manager)

Some relationships between pro bono providers and NFPs develop from the professional/personal connections of the pro bono provider and the staff or board of the NFP. Pro bono providers and brokers can help NFPs by providing information about what is a legal issue and material that will help them to fully assess and understand the situation of the NFP.

"A NFP may be ambitious in its overall goals and strategies and therefore trying to do things quickly, which exposes them to risk. Non-legal NFPs do not necessarily identify legal issues eg, they do not understand risks and do not protect themselves with contracts. It is helpful to provide case scenarios to explain what can go wrong." (Not-for-profit organisation manager)

It would also be helpful if best practice guidelines were developed to guide their decision-making about which organisations they should assist, having regard to the mission, management and financial resources of a NFP.59 This will in turn assist NFPs to understand where they are more likely to obtain assistance.

"NFPs can be further broken down into those which deliver services directly to those in need (eg, Salvos) and those which empower others to provide services to those in need (eg, Engineers Beyond Borders) or public interest causes. We are more likely to support those in the public benevolent institution space, less so for something like the arts." (Large law firm pro bono coordinator)

See also section on Assistance to non-legal not-for-profit organisations and charities (Chapter 28).

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This section focuses on what drives barristers to undertake pro bono legal work, how to encourage their assistance and work well with them. More information for barristers who are interested in doing pro bono work can be found in the section “I am an individual lawyer or barrister looking for opportunities to get involved” (2.6).

“The best way to pitch a matter to a barrister is to appeal to their sense of professional interest in a complex, untested area of law.” (Barrister)

Barristers provide a significant amount of pro bono assistance. While it may be reasonable to assume that the vast majority of their pro bono work involves representation and advice, and accepting case referrals to act as counsel running matters in court, their pro bono activities may also include being involved in a pro bono duty lawyer scheme, settling a submission to a court or inquiry,60 presenting training courses, or providing mentoring support to CLC solicitors. For example, the principal solicitor at the Public Interest Advocacy Centre (PIAC), Alexis Goodstone, said that PIAC often uses barristers to provide advice over the phone on particular questions of law.

Most barristers were seen to be motivated by a sense of professional responsibility, and a personal interest in public interest, social justice and human rights issues. This motivation is easy to isolate from other possible motivations because barristers are not being paid by a firm to do pro bono work. Therefore successfully pitching pro bono work to barristers might involve highlighting the opportunity to make a difference by applying their skills to an interesting, complex, untested area of law.

“Many lawyers also have a genuine belief in the law as a vehicle for social change. These lawyers push the boundaries of the law where there are principles of justice involved or law reform needed...A frequently cited example of this, that has lost none of its resonance with the passage of time, is the Mabo Case...I think there could be few better examples of the way in which barristers can, through engaging in pro bono work, exercise their skills and knowledge not only for personal benefit, but for the benefit of the community in which we live.”61 (The Hon Mark Dreyfus QC MP, Attorney-General of Australia)

The Manager of the NSW Bar Association’s Legal Assistance Referral Scheme, Heather Sare, explained that while a complex and interesting matter is an “obvious drawcard” for engaging a barrister’s assistance, “there have been many instances of barristers agreeing to help in more straight-forward matters because of their overriding sense of professional responsibility and a willingness to attempt to make a difference in the lives of people facing difficult circumstances.”

Most of those consulted who expressed views about the contribution of barristers agreed that barristers make an important contribution to pro bono work, with some individual barristers making an extraordinary personal contribution.

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“Barristers are self-employed and so, in doing work on a pro bono basis, bear the opportunity and associated costs personally, unlike a law firm lawyer who continues to be paid by their firm.”62

14.1 WORKING WITH BARRISTERS: AT A GLANCE

**Benefits**

- The high quality of pro bono legal work contributed by barristers reflects the fact that they are generally motivated by a deep personal interest and commitment to social justice, as they are not paid to do it.
- Significant contributions are also made by barristers who are more junior and partially motivated by a desire to gain experience.

**Challenges**

- Finding a barrister who is willing to act pro bono in a particular matter.
- Assessing the skills of a barrister that is unknown to the organisation seeking assistance, especially junior barristers who are trying to build their experience, to ensure they will be able to help rather than drain on resources.
- Managing barristers and deciding whether to instruct or brief them to do a matter uninstructed.
- Finding resources to support the work of barristers.
- The impact of costs awards on the client that is represented on a pro bono basis.

**Features that make it effective**

- Providing avenues for building relationships with barristers that facilitate the provision of assistance.
- Appeal to barristers’ sense of professional interest in an untested area of law.
- Make requests for assistance in a way that allows the barrister to consider it out of court hours (e.g. by email).
- Have a system in place to assess whether a barrister has sufficient experience to run the matter (e.g. a simple questionnaire asking how long they have been admitted, their areas of expertise and what resources they have behind them).
- Where a barrister is not appropriately skilled or experienced for the matter, waiting for an appropriately skilled barrister or pairing an inexperienced barrister with a senior barrister.

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Benefits

One of the key benefits identified by those consulted, of having barristers undertaking pro bono on their own time and without being paid, is that the barristers who volunteer are generally motivated by a deep personal interest and commitment to social justice, and contribute pro bono assistance of a very high quality. For example, the principal solicitor at Womens' Legal Services NSW (WLS), Janet Loughman, said that while barristers have a less concentrated involvement than law firms do with WLS, they contribute greatly and do so without being paid by a firm. “Some individual barristers make an outstanding contribution. The barristers that WLS have currently engaged on a pro bono basis in a very complex matter are highly skilled and responsive.”

“Barristers come face to face with social justice, public interest and human rights issues. Those who become involved in pro bono work seem to do so out of a personal interest and commitment to social justice.” (Community legal centre solicitor)

Individual barristers who work for themselves have more flexibility to take on pro bono work whenever they want to, as they can autonomously make the decision to undertake pro bono work. Pro bono coordinators or other lawyers wanting to undertake pro bono work within a law firm may be required to check with the relevant practice group, their supervising partner, or others in the firm.

Even if some barristers who are more junior may be primarily motivated by a desire to gain experience, the recipients of their assistance still stand to benefit from their pro bono contributions.

“When I worked at West Heidelberg Community Legal Service in the early 1980s, the Service relied heavily on young barristers who were eager to build up experience with a few pro bono cases. That worked well, especially when the Service was struggling for funding.” (Community legal centre solicitor)

Challenges

Some of those consulted, especially from small firms, reported having difficulty finding a barrister to act on a pro bono basis, and that in some cases it deterred them from taking on matters where they would need to brief counsel (see also section on Small firms, Chapter 11).

“Small firms will generally only take on matters which are a match with their core expertise so they can do it on their own. They also do not want to put another practitioner in the position of losing money by taking on a pro bono matter.” (Small firm principal)

One consulted Senior Counsel explained that some barristers, especially junior barristers, sometimes seek pro bono work primarily because they are trying to build their experience or do not otherwise have much work. This may make it difficult to assess the skills of a barrister that is unknown to the organisation seeking assistance. Many of the CLCs consulted said that they would prefer to use a barrister that they have an existing relationship with rather than being referred to someone new.

“It can be challenging to assess whether the barrister has sufficient experience to run the matter so they are a help rather than a hindrance. Junior barristers sometimes seek pro bono work when they are trying to build their experience or do not otherwise have much work.” (Barrister)

“It is important for CLCs to work out how to find a barrister with the relevant skills set required for the case and the time to devote to doing a good job. CLCs need experience with how to manage barristers and decide whether to instruct or brief
them to do a matter uninstructed. Junior barristers who want some casework experience or to move into a new area, and have not yet developed the necessary skills to do the work, can be a drain on CLC resources.” (Community legal centre solicitor)

Given that litigation can run for many months, most individual barristers would be unable to manage the workload if they did not have a team of people to assist.

“It is crucial for firms to do more than send a client with papers. They need to support the action with litigation solicitors.” (Barrister)

The way that costs are awarded potentially disadvantages clients who are represented on a pro bono basis. Fiona McLeod SC said that she regards pro bono assistance as meaning there is no fee on the back sheet and does not operate on a no win/no fee basis. She believes that it is best if potential conflict is avoided by ensuring that she has no financial interest in the outcome. However, she does see the potential for the pro bono client to be disadvantaged if the other party finds out that they are being represented on a pro bono basis and knows that they will not have to pay significant costs. “Donating an award of costs may be a good way to avoid the conflict issue while not putting the person being represented on a pro bono basis at a disadvantage.”

Features that make it effective

It is important to provide avenues for building relationships with barristers as these relationships facilitate the provision of assistance (See also section on Tips for planning and maintaining relationships, Chapter 8). For example, the Solicitor Director at Phang Legal, Ern Phang, explained that he has developed a relationship with a barrister who provides counsel at a reduced rate where needed.

Some of those consulted said they preferred pro bono work arising from established relationships more than via formal referral pathways. For example, the Principal Solicitor at North Melbourne Legal Service (NMLS), Emily Clark, said that the CLC has a pool of well-known and trusted barristers. “Some have been volunteers at the CLC, either as barristers or solicitors that went to the bar. Others are known through broader networks. NMLS has had great success with its familiar pool of barristers and prefers to brief barristers whose work NMLS is familiar with.”

“If engaging a barrister who is unknown to the CLC, we will send a solicitor to instruct.” (Community legal centre solicitor)

The Principal Solicitor at CASE for Refugees, Shayla Strapps, who manages the Judicial Review for Asylum Seekers Project, found that having in-house solicitors instructing barristers, rather than referring the matter to a pro bono solicitor, made it much easier to harness the good will of the Bar Association because they are able to build a relationship over time by working together on different matters or in relation to particular issues.

“If they have a pre-existing relationship with a CLC, barristers prefer to receive requests for assistance directly from that CLC rather than from a clearing house. However, they would prefer to receive a request from a clearing house, than from a

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Fiona McLeod agreed with the suggestion that the best way to pitch a matter to a barrister is to appeal to their sense of professional interest in an untested area of law.

Dan O’Gorman SC said that he prefers to be approached with an email outlining the matter and the assistance being sought. “Barristers need time to consider such a request out of court hours. Those seeking assistance need to understand that it may take a couple of days for a barrister to respond or could ask the barrister when would be an appropriate time to call.” It may also be helpful to create a written record of any advice provided verbally by pro bono counsel, by writing up notes for them to settle. Barristers are often willing to consider a pro bono matter in conference and provide verbal advice about the merits or identify further evidence that needs to be gathered, but it can be more difficult to obtain written advice.

Having a system in place to assess whether a barrister has sufficient experience to run the matter is necessary to avoid a mismatch of skills, especially if they are not a QC or SC. Dan O’Gorman suggests that “this could be a simple questionnaire asking how long they have been admitted, their areas of experience and what resources they have behind them (for example, whether they have access to someone who can help a less experienced barrister).”

“CLCs should wait for an appropriately skilled barrister and are entitled to say ‘thanks, but no thanks’ to an inexperienced barrister.” (Barrister)

It was also suggested that to overcome issues related to having inexperienced barristers doing pro bono work, a senior person (potentially with no experience in the field) could be paired up with a junior person who has subject area knowledge. Fiona McLeod SC said “this is a great way to build capacity for both barristers and ensures that there is a bigger pool of people with a mix of skills and experience to draw on” and provided the example of the Victorian Bar’s Climate Change and Environmental Law Panel. The Panel was established in early 2010 to promote the understanding of climate change and environmental law, and represents and advises litigants on a pro bono basis in matters of public interest arising out of a concern for the environment and the impact of climate change. “Junior lawyers who may have experience in environmental planning and understand the ‘ins and outs’ of running a matter in VCAT can be led by a silk with experience in strategy and what to focus on.”

“You could have inexperienced barristers assisting more experienced barristers who provide guidance about what needs to be done eg, what to research. A CLC, for example, could offer to involve a junior barrister when they find a more experienced barrister. After one or two similar cases they will have developed the skills to run a matter on their own, which is a ‘win-win’ for everyone involved.” (Barrister)

Fiona McLeod suggested that the same pairing idea could work in law firms. “However the junior person cannot be too junior. They need to be able to work independently to some extent and have their work directed and checked by senior counsel or a partner at a firm playing a proper supervisory role.”

Assistance with any of the issues discussed in this section may be sought from the referral schemes of bar associations.

“A number of bar associations have their own legal assistance schemes, which can assist in the identification and briefing of barristers with the relevant skills and experience.” (Heather Sare, Manager, Legal Assistance Referral Scheme, New South Wales Bar Association)
The Bar Associations of New South Wales, Queensland and Victoria have formal pro bono referral schemes. In Queensland\textsuperscript{64} and Victoria\textsuperscript{65} these Schemes are managed by each state's PILCH, while in New South Wales\textsuperscript{66} the Bar Association manages the Scheme directly. The Western Australian Bar Association\textsuperscript{67} does not have a formal Scheme but will make inquiries of its members if an appropriate request is made. In other states and territories the local Bar Association is the best place to try.

A comprehensive list of referral schemes and clearing houses (and links to their websites) can be found on the 'Pro Bono Legal Referral Schemes' page on the National Pro Bono Resource Centre's website under 'Finding Legal Help'.

\textsuperscript{67} www.wabar.asn.au/?rt=article/33&m=121&p=20.
This section focuses on what drives in-house/corporate lawyers to undertake pro bono legal work and how to encourage their involvement. More information for in-house/corporate lawyers who are interested in doing pro bono work can be found in the section “I am an in-house/corporate lawyer” (2.4).

Like lawyers working in law firms, there is a variety of different factors motivating in-house lawyers to undertake pro bono work. These include the ethical obligation to provide service that is at the core of every lawyer’s professional identity and a strong personal belief in the importance of social justice and access to justice.

“In-house lawyers undertake pro bono for the same reasons that lawyers in firms do, primarily because they want to give back. They are fairly well remunerated for their work, and want to contribute to the community. Many study law with the idea that they will save the world, but don’t exactly end up doing that when they work in the corporate sector. Doing pro bono is a way to reconnect with those law school aspirations!” (In-house counsel)

However, as Esther Lardent explains in her article, The Business Case for In-house Pro Bono, “while the business case for pro bono service at in-house legal departments is different from that at major firms, it is equally clear and compelling.” She explains that “properly structured, implemented, and aligned pro bono programs can, in fact, enhance critical aspects of the operations of companies and their legal departments.” These benefits include positive impacts on recruitment and retention of staff, enhanced corporate social responsibility/corporate citizenship, opportunities for professional development, better integration with the company and the community, improved teamwork and morale, improved inside/outside counsel relationships, and improved company reputation.

“One of the benefits of in-house pro bono is that it can leverage and deepen corporate relationships.” (Jane Witter, Supervising Counsel, Telstra Wholesale Legal)

In recent years, pro bono projects have experienced a major surge in popularity among in-house legal teams in Australia, following a trend that has emerged from the United States where the number of in-house pro bono legal projects has substantially increased over the past eight years. For example, Telstra provides organised opportunities for its legal team to undertake pro bono, including the Cyber Project with the National Children’s and Youth Law Centre, the Artists in the Black project with the Arts Law Centre of Australia and participating in the Salvos Legal In-house Pro Bono Desk.

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68 Lardent E, The Business Case for In-house Pro Bono (Pro Bono Institute, 2006) p 1, at www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/06_1_preventing_runaway_arbitration.authcheckdam.pdf.

69 Lardent E, The Business Case for In-house Pro Bono (Pro Bono Institute, 2006) p 1, at www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/06_1_preventing_runaway_arbitration.authcheckdam.pdf.

70 Lardent E, The Business Case for In-house Pro Bono (Pro Bono Institute, 2006) at www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/06_1_preventing_runaway_arbitration.authcheckdam.pdf.

However, informal sources estimate that while in-house lawyers (including corporate lawyers) make up as much as 25-30% of the Australian legal profession, they currently contribute a relatively small part of the pro bono legal movement.\(^{72}\)

Some of the practical barriers that made it difficult for in-house lawyers in Australia to be involved in pro bono have recently been overcome through law reform. For example, recent changes to professional indemnity insurance and practising certificate requirements mean that many in-house lawyers who were previously unable to undertake pro bono legal work, due to a lack of professional indemnity insurance and resultant restrictions placed on those classes of practicing certificates, can now provide pro bono services to the community. Previously in-house lawyers were limited to volunteering at CLCs where their work could be supervised by the CLC’s principal solicitor and covered by the professional indemnity insurance held by the Centre or in the few instances where professional indemnity insurance was obtained for them and paid for by their employer.

Lawyers working in-house or in government roles can now obtain professional indemnity insurance for pro bono work free of charge through the insurance scheme of the National Pro Bono Resource Centre (NPBRC). The National Pro Bono Professional Indemnity Insurance Policy\(^{73}\) is underwritten by LawCover and is held by the NPBRC. The policy is only applicable for in-house and government lawyers seeking to undertake pro bono work. Changes to practising certificate regimes are also being made, but the position still varies from state to state.\(^{74}\)

“CLCs are looking for ways to encourage corporate lawyers to do pro bono work and tap into the resources of corporate organisations, especially now that legislation in Victoria has removed a barrier to in-house corporate lawyers doing pro bono work.”

(Community legal centre manager)

### 15.1 IN-HOUSE/CORPORATE PRO BONO: AT A GLANCE

**Benefits**

- There is a real opportunity to grow the capacity of pro bono with the removal of barriers to the participation of in-house lawyers.
- From the perspective of in-house/corporate lawyers, it is an opportunity to expand skills and experience while doing interesting work and giving back to the community.
- The existing skills and experience of corporate lawyers is a match with the needs of many not-for-profit organisations.
- From the perspective of law firms, involving corporate clients in pro bono projects can be a...

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good way to strengthen their relationship with those clients.

**Challenges**

- The pro bono culture of in-house legal teams is not as well-developed as it is in many law firms.
- In-house teams have smaller groups of lawyers than large firms.
- There may be less capacity for in-house lawyers to undertake additional work, which can also make it more difficult for them to find suitable pro bono opportunities.
- Appropriate training may need to be provided for in-house lawyers to undertake pro bono work involving areas of law with which they are not familiar.
- Conflicts and corporate reputation issues need to be carefully considered and managed.

**What has worked well**

- Finding pro bono work that can be contained to a relatively small and manageable time commitment.
- Offering a variety of different types of pro bono work that meets the needs of in-house counsel.
- Having in-house/corporate lawyers partnering and participating in the pro bono projects of large law firms.
- Management support for the pro bono work undertaken by in-house lawyers.
- Aligning pro bono work with corporate interests and programs.
- Law firms encouraging their corporate clients to undertake pro bono work.
- Publicising pro bono opportunities and the benefits of being involved to corporate lawyers.
- Setting up a Pro Bono Committee to drive, manage and champion a corporate pro bono program.

**Benefits**

There is a real opportunity to grow the capacity of pro bono with the removal of barriers to the participation of in-house lawyers, especially given the match of the skills and experience of corporate lawyers with the needs of many not-for-profit organisations. For example, one pro bono clearing house manager said that there had been an increase in interest from large corporations like Westpac, whose in-house lawyers are interested in doing pro bono telephone advice for NFPs and have the right skills to match the need.  

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From the perspective of law firms, involving their corporate clients in pro bono projects can be a good way to strengthen their relationship with those clients.76

“Involving clients in the pro bono work of the firm further embeds the pro bono culture as it demonstrates how pro bono can be a ‘touch point’ for other relationships.” (Large law firm pro bono coordinator)

Challenges

The pro bono culture of in-house legal teams is not as well developed as it is in many law firms where pro bono is well promoted and recognised, and almost “expected.” In-house teams also have smaller groups of lawyers than large firms.

“Having come from a large law firm with a developed pro bono practice, it was frustrating to join an in-house legal department that did not provide structured opportunities to do pro bono work.” (In-house counsel)

“In-house lawyers don’t have the same ‘compulsory’ pro bono targets that large law firm lawyers have driving them to do pro bono, so they need to be personally interested in it.” (In-house counsel)

“There are always lawyers ready to put their hand up to volunteer. The challenge is managing the resources.” (In-house counsel)

Fiona Robson (Legal Counsel, Telstra M&A, Legal Services) explained that many lawyers choose to work in-house for a better work-life balance than they would get in a large firm, so there may be less capacity for them to undertake additional work. She provided information that Telstra submitted to the Queensland Law Society as part of a nomination for its Equity and Diversity Award in November 2012 which revealed that 67% of Telstra Legal is female (compared with 30% Telstra overall) and a significant number (23%) of Telstra lawyers work part-time (particularly if they have young children).

Having more limited capacity for taking on extra work can make it more difficult for in-house lawyers to find suitable opportunities.

“A lot of volunteer organisations are looking for full-time secondments, which is a big commitment for an in-house team. For example, Salvos Legal Help Desk is keen for lawyers to meet the National Pro Bono Aspirational Target of 35 pro bono hours (per lawyer per year) by spending a week on the Desk; however, obtaining approval from senior management to be away from work for an entire week is not easy. A large law firm can send someone if they are not too busy for a period and this will be apparent by their lack of billable hours, but in a corporate environment, lawyers are expected to be busy all the time and nobody would ever want to say that they are not busy.” (In-house counsel)

While there may be a strong match between the skills of in-house lawyers and the needs of not-for-profit organisations, there may be other pro bono projects which require lawyers to undertake pro

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There may also be areas of pro bono work that could give rise to conflicts of interest. Jane Witter explained that conflicts and corporate reputation issues need to be carefully considered and managed. “There are some areas of pro bono work which ‘corporates’ may be less likely to actively pursue, due to perceived reputation issues, for example, work involving prisoners or refugees.”

What has worked well

Given that the capacity of in-house legal teams to undertake additional work may be limited, they are more likely to be able to participate in pro bono work that can be contained to a relatively small and manageable time commitment. Individual in-house lawyers, for example, may be able to volunteer at a CLC’s evening advice session (see section on Individual volunteers, Chapter 17).

“Offer a variety of different types of pro bono work that meets the needs of in-house counsel. These might include one-off opportunities as well as the opportunity to contribute in an ongoing way.” (In-house counsel)

Where in-house legal teams are considering or involved in more structured pro bono programs (in partnership with a law firm, for example) careful planning can avoid problems arising. The issues to be considered could include recruiting appropriate in-house lawyers who are motivated to participate in pro bono, having a dedicated contact point to coordinate the pro bono work and manage the relationship with the law firm, managing conflicts of interest, and providing training and support for the in-house lawyers involved in pro bono. (See section on Tips for planning and maintaining relationships, Chapter 8.)

“Having a partnership with a large law firm can make it easier for in-house lawyers to undertake pro bono as they have someone to ask when they have a question, for example, about disability. Lawyers in law firms have broader access to specialists who they can turn to when they have questions.” (Tony Serone, former General Counsel at IBM Australia/New Zealand)

As with law firms, management support for the pro bono work undertaken by in-house lawyers is vital to its success. For example, Tony Serone explained that the global push for IBM law departments to make contributions to the community has made it easier to develop a pro bono program (see case study at 15.2.2). Similarly, Fiona Robson explained that having the support of Telstra’s Group General Counsel, Carmel Mulhern, for pro bono work to be undertaken within work hours has a strong impact on the growth of its pro bono program (see case study at 15.2.1).

“Setting up a Pro Bono Committee of interested lawyers to drive, manage and champion the pro bono program is a great idea, but such a Committee needs to have senior legal management involvement to ensure effective penetration.” (In-house counsel)

Aligning pro bono work with corporate interests and programs can help to encourage support for it. Jane Witter provided the example of Telstra’s participation with the Arts Law Centre of Australia’s “Artists in the Black” project, explaining that it dovetails with their sponsorship of the National Aboriginal and Torres Strait Islander Art Award (NATSIAA).

Law firms with pro bono practices can help to further expand the amount of pro bono work undertaken by in-house lawyers by encouraging their corporate clients to undertake pro bono work, and promoting opportunities.
“Many large companies, like Telstra, are initiating pro bono programs now and this gives CLCs an opportunity to present to those companies’ pro bono coordinators or legal teams about the benefits of volunteering. Corporate lawyers are busy people who perhaps don’t always have enough time to proactively investigate pro bono opportunities. However, if someone can come along and explain to them how easy it can be to make a small but important pro bono contribution by volunteering regularly at a CLC, I am sure that more people would sign up.” (Fiona Robson, Telstra M&A, Legal Services)

15.2 CASE STUDIES

15.2.1 Case study: Telstra, King & Wood Mallesons and the National Children’s and Youth Law Centre

In 2007, Fiona Robson (Legal Counsel, Telstra M&A, Legal Services) along with one of her colleagues, was keen to set up a pro bono program within Telstra and approached law firms on their panel, namely Ashurst and King & Wood Mallesons (K&WM) to discuss what would be involved. They realised that it would be difficult for Telstra to run a pro bono program on its own since its in-house team was not administratively resourced to deliver pro bono programs and manage the relationships with community partners. They decided that it would be more realistic to “piggy-back” off one of the law firms' programs, giving Telstra's lawyers the opportunity to participate in pro bono work, with limited administrative impact on Telstra. They would not need a dedicated pro bono coordinator to manage relationships with the organisations they were helping.

In 2008, they also joined Ashurst’s LEAPS (Lawyers Assisting Promising Students) project, which involved mentoring students in disadvantaged schools at risk of disengaging from school or family. Telstra now runs its own LEAPS project - separate from Ashurst. K&WM offered a few options for projects but the Cyberlaw Volunteer Project with the National Children’s and Youth Law Centre (NCYLC) suited Telstra the best.

NCYLC offers online legal advice to children and young people through their Lawstuff website and LawMail. Telstra legal employees participate as cyber-volunteer lawyers who update and maintain the Lawstuff website, and read and respond to LawMails. They volunteer two hours each month either from their desk or in the office at the nearest K&WM office. (For more information about the NCYLC LawMail, Lawstuff and CourtStuff projects see the full case study at 26.5.1)

“The NCYLC Cyberlaw Project is the perfect pro bono program for an in-house legal department.” (Fiona Robson, Telstra M&A, Legal Services)

The Cyberlaw Volunteer project has worked well for Telstra for the following reasons:

- **The time commitment** of around two hours a month is relatively small and manageable for all lawyers - particularly those working part-time.

- **The work can be done via the internet.** NCYLC and K&WM like volunteers to do their first five sessions onsite in their training room so they have face-to-face support while they are becoming familiar with the work, but after that, the work can be done remotely. “The flexibility of being able to work remotely and not having to travel to the K&WM offices makes a big difference to my ability to do the work. I can even take a meeting in the middle of a session if I have to.”
• **The work is very interesting and important.** It involves issues ranging from children wanting tattoos to advice on bullying or police harassment. The volunteers are exposed to new areas of law, which expands their skills and experience, and they find it rewarding and enjoyable.

• **Conflicts of interest are addressed upfront with a policy** explicitly agreed on before commencing work. “The Telstra lawyers don’t take on any matters that could potentially involve telecommunications companies (for example, a young person disputing their mobile phone bill) but they may give information or assistance to another lawyer handling that query - eg about the process of complaining to the Telecommunications Industry Ombudsman.”

• **There is great support from NCYLC** who provide guidance, pro forma advice, and “Lawstuff” resources that assist the volunteers when they are drafting responses. There is a quarterly meeting with the project partners to discuss how the project is going. NCYLC provide excellent feedback, including the results from a children’s survey with positive feedback on the impact the advice has had on them.

• The project is national so Telstra employees in every jurisdiction can become involved.

• **Telstra’s Group General Counsel, Carmel Mulhern, is very supportive of the program** and has endorsed the work being done within work hours. Ms Mulhern also enthusiastically supported the creation of the new Telstra Pro Bono Committee that was set up in 2012 which is actively looking for new pro bono opportunities. However, there are still a number of issues that need to be worked through in terms of cost and resourcing before senior management within Telstra can be comfortable with endorsing all aspects of the pro bono program.

### 15.2.2 Case study: IBM Australia/New Zealand and Ashurst

A relationship between the legal department at IBM and Ashurst developed in 2010, led by Tony Serone (formerly General Counsel at IBM Australia/New Zealand) who had an interest in disability issues, and Anne Cregan (Partner and National Pro Bono Manager at Ashurst). At that time IBM’s law department had around 18-20 lawyers. The partnership involved IBM lawyers participating in Ashurst’s existing pro bono projects where there was a natural fit and interest from the lawyers involved, initially in the areas of estate planning for people with disability and crime compensation.

IBM has always had a strong pro bono ethos, but the project was particularly supported in the context of celebrating IBM’s centenary, there was also a strong push for law departments across IBM globally to provide at least an eight-hour (per person, per year) commitment to community projects.

The project ran for around six months, but “never really got off the ground.”

**Challenges**

• Lawyers were reluctant to undertake pro bono work involving areas of law that they were not familiar with. While some training was provided, the experience of the IBM lawyers was not aligned with the legal needs arising from the projects.

• The lawyers at IBM were at a stage in their career where it seemed difficult for them to commit to pro bono (They all had five to seven years experience and were at the stage equivalent to the time when lawyers in firms are looking for senior associate or partnership positions).

• The contact points at both the IBM and Ashurst ends did not have the time to commit to coordinating the project. Tony was relying on a deputy to manage the pro bono work. “Pro
bono work in this context can be very messy and requires dedicated coordination resources ‘pushing at both ends’.”

Applying lessons learned
IBM has recently hired 12 Australian law graduates to support IBM in the Asia-Pacific region, and Tony is planning to revitalise this initiative with these new employees. Learning from his previous experience of participating in this partnership with Ashurst, Tony Serone believes the following features to be important:

- **Recruiting appropriate in-house lawyers to participate in pro bono.** The new recruits are Australian law graduates who also speak another Asian language. They are keen to have a broader experience, hungry to learn and many have already been involved in pro bono as part of their university training. “It may just be my personal observation, but it is these young lawyers who have the most passionate interest in social justice.”

- **Having a dedicated contact point at both ends** who has the time to coordinate the pro bono work and manage the relationship.

- **Training and support for in-house lawyers involved in pro bono.** Lawyers in law firms have broader access to specialists who they can turn to when they have questions. This is where a partnership with a large law firm can make it easier for in-house lawyers to undertake pro bono as they have someone to ask when they have a question.

- **Supportive management.** There is a global push for IBM law departments to make contributions to the community (although he explains that this is easier in the US where contributions to charity are included).
This section focuses on what drives government lawyers to undertake pro bono legal work and how to encourage their involvement. More information for government lawyers who are interested in doing pro bono work is found in the section “I am a government lawyer” (2.5).

Government lawyers are motivated to undertake pro bono by the same factors that motivate other lawyers, including an ethical obligation to provide a service that is at the core of every lawyer's professional identity, and a strong personal belief in the importance of social justice and access to justice. The pro bono ethos is also highly compatible with the focus on public service that is at the core of the work of government lawyers.

Examples of the pro bono work that government lawyers have undertaken include secondments by the Australian Government Solicitor (AGS) to Street Law (a community legal service that assists people who are homeless or at risk of homelessness in Canberra) (see case study at 22.5.4), and the involvement of lawyers from the Australian Securities and Investments Commission (ASIC) with the National Children’s and Youth Law Centre (NCYLC), which offers online legal advice to children and young people (see case study at 26.5.1).

While there are significant numbers of government lawyers in Australia, the pro bono contribution of government lawyers makes up only a small part of the overall pro bono contribution of the Australian legal profession. There are practical and cultural factors that have constrained the growth of pro bono in the government sector.

Practical constraints have included:

- the fact that the work undertaken by many government lawyers does not require them to hold practising certificates, and therefore many do not hold them
- the lack of professional indemnity insurance for government lawyers wanting to undertake pro bono work on their own behalf (rather than through a pro bono project covered by the insurance of a CLC, clearing house or law firm)
- conflicts of interest.

“Our intake of clients is by the type of client, not by legal subject area. Being a generalist/holistic community legal service means there is greater potential for conflict issues with any government lawyers, although DFAT and AusAID lawyers are less likely to have conflict issues given they don’t really deal with domestic law or individuals. Given that the perception of conflict is as problematic as actual conflict in terms of building client trust and rapport, even CLE/outreach can be problematic. We do not want to give clients the impression that the service is anything but completely independent of government. Some conflict issues have arisen with AGS solicitors representing Centrelink and the Department of Immigration and Citizenship (DIAC). Even if the conflict is not direct, there needs to be an awareness that there

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are potential issues with having those solicitors on the premises with access to files/information.” (Community legal centre principal solicitor)

These practical constraints can and have largely been addressed or managed through changes to the regulatory system for practising certificates, the introduction of the National Pro Bono Professional Indemnity Insurance Scheme, and careful structuring of pro bono work to target areas of pro bono work where conflicts are unlikely or having policies in place to manage conflicts 78 (which outline the types of matters or situations where a conflict could potentially arise). (See also how conflicts have been managed in the case study on Telstra's involvement with the NCYLC Project at 15.2.1.)

However, efforts to overcome key cultural constraints may require more focus, particularly:

• the underdeveloped pro bono legal culture in government departments, agencies and authorities, (this being a key driver for pro bono)

• the fact that the government's capacity to support its lawyers to do pro bono work is more restricted than the capacity of the private sector

• the reality that government lawyers are less engaged with their professional bodies than private sector lawyers and therefore less immersed in the culture of pro bono as a professional obligation. 79

Government departments, agencies and authorities stand to gain from having their lawyers involved in pro bono seeing themselves as being part of a wider profession. Not only can they improve their skills by broadening their experience, but also they can better understand the community context in which they undertake their usual work as a public servant.

“My feedback here is that experience of pro bono volunteering has a positive impact. It helps our lawyers to develop a more rounded approach due to the variety of matters, and provides a sense of making a direct, positive impact…”

“... It is widely believed that an engaged employee, who is able to make a positive contribution to the community under the auspices of a company pro bono program, is likely to be more highly productive as an employee.” (Justine Butler, ASIC in the Community Manager, Chief Legal Office)

Encouraging government lawyers to be involved in pro bono work, or do more, may involve identifying opportunities that avoid conflicts of interest (eg community legal education, and areas such as consumer debt, governance of non-for-profit organisations, small commercial matters, employment law, guardianship, wills and powers of attorney). The risk of conflict will vary from case to case and lawyer to lawyer, and should be evaluated on its facts. Promotion of these opportunities, and success stories from those who are already involved, could be increased, especially in the ACT where there is a concentration of government lawyers.

Government departments, agencies and authorities, in particular, can take steps to encourage their lawyers to become involved in pro bono legal work by:

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• encouraging their lawyers to undertake pro bono work in a personal capacity through employment policies and promoting the benefits of being involved
• paying for practising certificates, where relevant
• allowing flexible work arrangements for pro bono legal work
• allowing reasonable use of government agency resources (such as library, telephone and photocopying) to do pro bono work.

For agencies or authorities that take the view that they can do something at an organisational level, they can, additionally:
• second lawyers to community legal organisations
• become members of a Public Interest Law Clearing House and receive referrals in a designated non-contentious/conflict-free area of law
• participate in providing community legal education programs and materials.\(^{80}\)

See section on International Pro Bono (Chapter 31) and the case study: Document Review Service (19.5.2) for more about the work of AGS, and the case study on National Children’s and Youth Law Centre, King & Wood Mallesons, Telstra, ASIC and Sparke Helmore (26.5.1).

For further examples of government lawyers doing pro bono work as part of a program supported by their agency, authority or department, see J Corker (Director, National Pro Bono Resource Centre), Government Lawyers and Pro Bono Legal Work, Paper given at the Public Sector In-House Counsel Conference 2012, 30-31 July, Canberra ACT, pp 5-7.

Further resources are available on the [National Pro Bono Resource Centre’s website](https://www.national-probono-resource-centre.com.au/).

This section focuses on what drives individual lawyers to volunteer and how to encourage their involvement. More information for individuals who are interested in doing pro bono work can be found in the section “I am an individual lawyer or barrister looking for opportunities to get involved” (2.6).

Individual volunteers make a personal choice to contribute their skills and experience to undertake pro bono work on their own time, without any payment, for example, by volunteering at a community legal centre (CLC). They increase the capacity of CLCs to provide direct legal service delivery, community legal education and law reform advocacy. Of the CLCs that responded to the National Association of Community Legal Centres (NACLC) survey in June 2012, 89.2% of these utilised volunteers working in direct legal service delivery.81

“Volunteers play a critical role in community life and contribute significantly to social and economic wellbeing. Volunteering not only encourages connections to local, national and international communities, it improves personal growth.”82 (The Hon Mark Dreyfus QC MP, Attorney-General of Australia)

The factors that drive individual volunteers to undertake pro bono work may be similar to lawyers who undertake pro bono work as part of a structured pro bono program at their law firm or other pro bono provider, including the opportunity to use their skills to make a difference, further develop their skills and do interesting work.

“I enjoyed having exposure to clients and the feeling of making a real difference to people’s lives with the advice (however limited) that I could provide. It was nice to hear people’s stories (albeit long at times) and get feedback that we had done a good job.” (Volunteer solicitor)

“Lawyers who volunteer at CLCs do so because they want to give back and feel good about helping, but it also expands your horizons to be exposed to new areas of law. By volunteering at a CLC you can learn about everyday areas of law that you wouldn’t usually deal with, like car accidents and neighbourhood disputes, and help yourself or a friend.” (Volunteer solicitor)

However, a distinction can be made between lawyers who are paid by a firm for the time they contribute to pro bono work, and individual volunteers who are completely unpaid and contribute on their own time.83 While both may be driven by a passionate belief in social justice, there may also be a “business case” for structured pro bono programs in a law firm or corporate context that is not a significant driver for individual volunteers.

Taking these different motivations into account can have an impact on the way that a community organisation uses pro bono resources for its staffing. For example, Monica Taylor, who set up a

telephone advice service at Queensland Advocacy Incorporated (QAI), explained that QAI felt comfortable engaging individual volunteers on the basis that it had limited funding and the service may not continue in the long term, but did not feel comfortable partnering with a firm on this basis because a firm wants more from the partnership than just to provide individuals with assistance.

“There are pros and cons to staffing clinics/telephone advice services etc. by partnering with law firms as opposed to making a general call out for volunteers. Partnering with a firm moves the administrative burden of rostering to the firm. It can be a very onerous task for the host organisation to find lawyers to fill every shift. However, lawyers that independently volunteer to assist in their own time might do so because they are passionate about social justice and would not be identified if only relying on a firm to provide lawyers.” (Monica Taylor)

“We have law students who volunteer, and we feel no compunction about giving them administrative and filing work when we have nothing more exciting for them to do, because they are there as volunteers. But we feel an obligation to not give this kind of administrative work to secondees (even though lawyers often do it themselves), because they are there in a professional capacity. Sometimes this creates an odd situation where we are giving them the exciting work eg legal research or writing submissions to secondees, while we catch up on data entry and filing.” (Katie Fraser, Project Officer, Street Law)

The Volunteer Coordinator at the Welfare Rights Centre in Sydney, Danny Shaw, explained that the Centre attracts lawyers to volunteer by promoting the benefits of working in a community legal centre.

“Volunteer lawyers get the opportunity to undertake legal research, have direct client communication and take instructions from clients. Volunteer lawyers may also represent clients at tribunals. We have a structured volunteer program that provides volunteers with training, mentoring and supervision. We include them as part of the team and they have a dedicated role at the Centre. It also helps to have a volunteer coordinator who is friendly and interested in volunteers and can help them see how their role fits into the overall scheme of things.” (Danny Shaw, Volunteer Coordinator, Welfare Rights Centre)

Fiona Robson (Legal Counsel, Telstra M&A, Legal Services) who volunteers at Kingsford Legal Centre providing advice during their night advice session suggested that CLCs who are looking for volunteers might want to consider explaining more about what the commitment involves to their target audience, who may be corporate lawyers (see section on In-house/corporate lawyers, Chapter 15).

“Many large companies, like Telstra, are initiating pro bono programs now and this gives CLCs an opportunity to present to those companies’ pro bono coordinators or legal teams about the benefits of volunteering. Corporate lawyers are busy people who perhaps don’t always have enough time to proactively investigate pro bono opportunities. However, if someone can come along and explain to them how easy it can be to make a small but important pro bono contribution by volunteering regularly at a CLC, I am sure that more people would sign up.” (Fiona Robson, Telstra M&A, Legal Services)

Many community legal centres provide practical assistance to their volunteers, for example, by covering the public transport costs of volunteers, to make it easier for them to participate, recognising the value of the contribution they make and the fact that they are doing it for free. Fiona Robson said that one of the things that really helped support her KLC commitment was that Telstra

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was happy to pay for her taxi home after the advice session each fortnight. Whilst this is an ad hoc, informal arrangement for her, she is considering suggesting that this be part of Telstra’s pro bono policy.

Community legal centres looking for volunteers can advertise opportunities on the website, Community Legal Centres Volunteers (www.clcvolunteers.net.au), which is a national database of community legal centres with information about current volunteering opportunities. Individuals interested in volunteering can find out more about volunteering at CLCs or search the database for “CLCs seeking volunteers”.
18 LAW STUDENTS

This section focuses on what drives law students to volunteer and how to encourage their involvement. More information for students who are interested in doing pro bono work can be found in the section “I am an individual lawyer or barrister looking for opportunities to get involved” (2.6).

18.1 STUDENTS: AT A GLANCE

**Benefits**
- Law student volunteers can increase the capacity of community organisations to deliver free legal services.
- Student pro bono inculcates the students involved with a pro bono culture, and they develop a personal commitment and the skills to practise law in a way that promotes social justice.
- Where a university is involved, student pro bono work can also strengthen the relationship between the law school that the participating students come from and the local community, and enhance the image of the law school.

**Challenges/limitations**
- Students are likely to require more training and supervision than qualified lawyers, and are limited in the type of work they can do.
- There is the risk that work done by students may not be of sufficient quality to provide an effective service or to be of benefit to the host/partner organisation.

**Features of effective student pro bono**
- Building a positive reputation for organisations that use student volunteers and their student volunteer programs.
- Targeted “recruitment” of student volunteers, for example, advertising at universities with specific position descriptions.
- Careful planning for the training, supervision, coordination, administration and preparation of suitable tasks for the participating students.

Law students make a significant contribution to the capacity of pro bono. Among the 106 CLCs that responded to the National Association of Community Legal Centres (NACLC) Survey undertaken in
June 2012, 55% of all individual volunteering hours came from law students, in contrast with 26% from lawyers.\(^{84}\)

The Volunteer Coordinator at the Welfare Rights Centre, Danny Shaw, explained that law students are motivated to volunteer by a number of factors. “Most students like the idea of helping people and getting experience in talking to clients and in understanding how a community legal centre operates. They want to see what the law is like in operation. They want to gain experience in taking instructions from clients and to see how a case is run. Basically students are looking for experience in working in a legal setting and this is what we can give them. Some students even want to know about social security law!”

Students contribute in a variety of ways to the provision of free legal services. They may volunteer to help increase the capacity of a community legal organisation to undertake its legal work, or staff a clinic. Student clinics are usually attached to a particular university law faculty and are staffed by law students who offer legal services to clients under the supervision of a managing solicitor. Many student clinics are run in conjunction or partnership with local CLCs. In some cases student clinics are established and run by the university law school itself. There are also isolated examples of programs run in association with Legal Aid commissions, the courts, another university, or directly with a law firm.

> “Homeless Person’s Legal Clinic uses six students who spend half their time at the clinic and the other half at the firm assisting.” (A pro bono clearing house manager)

> “UQ has provided us with a student researcher to assist with drafting a 2nd edition of ‘Disabled justice: the barriers to justice for persons with a disability in Queensland.’” (Community legal centre coordinator)

Several of the pro bono coordinators consulted said that their firms were not involved in student clinics as it was too difficult to ensure quality control and there was not enough value from the firms’ perspective for the effort required to run.

> “There is value in encouraging a pro bono culture via student pro bono, but this can be achieved in other ways. Student clinics are more about training and experience for the students than about delivering quality services to address unmet legal need.” (Large law firm pro bono coordinator)

There is also some debate about whether student pro bono work that is undertaken in exchange for academic credit actually falls within the definition of pro bono. The Director of Queensland Public Interest Law Clearing House (QPILCH), Tony Woodyatt, expressed the view that as long as the service is provided free to the clients, and the clients receive quality legal assistance, the distinction is of little practical relevance. He compares the arrangement where universities pay the organisations that host and supervise students doing pro bono work, with law firms that pay their lawyers to do pro bono work and questions whether there is any difference. He also sees student clinics as a way to obtain the support of the university through funding contributions and the involvement of university staff members. “The involvement of law students in the work of QPILCH is critical to its ability to address demands for assistance.”

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\(^{84}\) National Pro Bono Resource Centre, “One hour’s investment by community legal centres returns a day’s pro bono work” (Media Release, 5 November 2012), at www.wic041u.server-secure.com/vs155205_secure/CMS/files_cms/A%20picture%20of%20pro%20bono%20in%20CLCs%20-%20media%20release%20051112.pdf.
“...having more legal clinics open at institutions such as universities is an innovative way to provide more accessible legal advice or referrals for the wider Australian public...I feel very strongly that innovations such as these would enhance the sense of social justice in aspiring lawyers in universities around Australia, and help foster a pro bono culture, whilst also providing very valuable and practical legal experience.” (The Hon Mark Dreyfus QC MP, Attorney-General of Australia)

Benefits

Like volunteers who are qualified lawyers, law students who undertake pro bono work can increase the capacity of community organisations to deliver free legal services and thereby contribute to access to justice.

“Students undertake policy work that the CLC would not otherwise have the time or resources to pursue.” (University pro bono manager)

“They are the first point of contact when clients contact us so it is clear to both us and them that they are vital to the organisation.” (Community legal centre coordinator)

However, many of those consulted identified the key benefit as being the inculcation of law students with a pro bono culture, and the development of a personal commitment and the skills to practise law in a way that promotes social justice. These skills include legal and work environment skills, particularly interpersonal skills required to deal with colleagues and clients in a legal professional environment.

“Students are provided with quality opportunities to do pro bono work and build a social justice/pro bono culture.” (University pro bono manager)

“Students who participate in pro bono clinics are going to be part of the future of pro bono.” (A pro bono clearing house manager)

Where a university is involved, student pro bono work can also strengthen the relationship between the law school that the participating students come from and the local community, and enhance the image of the law school.

Challenges/limitations

Given that students have limited professional experience, they are likely to require more training and supervision than qualified lawyers, and are limited in the type of work they can do. The host organisation needs to have the resources to appropriately train, adequately supervise, administer and physically seat the students, and prepare tasks that are suitable for the participating students.

“You can't expect a student to run a client interview on their own straight away, but a Practical Legal Training student who had some experience and was close to being admitted could do it.” (Community legal centre coordinator)

“In terms of challenges, adequate supervision for students is always something that needs to be monitored. Mostly we do this well, but it’s something you can never lose focus on because good supervision usually equates to a good research output.” (University pro bono manager)

As students are usually trying to fit pro bono work in around a study schedule with lectures and exams, the period of time and the frequency of attendance a student can commit to may not match the training and learning requirements of the clinic. This may lead to the student's work not being of sufficient quality for providing an effective service or to be of benefit to the host/partner organisation.

“Occasionally there may be an unsuitable student, however the overwhelming majority contribute to increasing the capacity of the service.” (A pro bono clearing house manager)

Features of effective student pro bono

Many of those consulted from community legal centres explained that the best way to attract students to volunteer at their centre was by building a positive reputation for the CLC and its volunteer program.

“While advertisements at unis and on volunteer websites are also a useful way of recruiting students, we find that the best way to recruit students is through word of mouth. If the current students are having an enjoyable and rewarding time, they will tell friends about the experience.” (Community legal centre coordinator)

Targeted “recruitment” was also suggested as a way of identifying suitable student volunteers. This can be achieved by, for example, advertising at universities with specific position descriptions rather than a generic call out for volunteers (eg “Indigenous volunteer position” or “library volunteer”).

“We ensure that our principal solicitor checks and signs off on all the work that is done by students.” (Community legal centre coordinator)

“At our Centre they have a desk and computer which makes them feel as though they are in our working environment and contributing.” (Community legal centre coordinator)

A great deal of planning needs to be undertaken to ensure the success of a student volunteer project or program. Issues that need to be considered include:

- **training** - preparation of training materials on topics such as induction information, substantive legal issues, casework-related issues etc
- **supervision** - allocation of significant time for mentoring and checking the work of students
- **administration** - arrangements made for insurance, volunteer conditions
- **space** - ensuring there is enough room in the host organisation's office for seating students.

The principal solicitor at the Prisoners Legal Service (PLS) in Brisbane, Matilda Alexander, said that planning for the work was essential and pays off in the end. She recommended the use of a resource
produced by Victoria Legal Aid called Thinking & Planning Ahead. PLS successfully uses many students to increase the capacity of the service. Law and criminology university students and PLT students mostly undertake indirect work like responding to letters, research, filling in forms, and do not do much direct client work with prisoners. PLS also has a student hosted at Caxton doing non-casework projects, such as education in prison. “PLS draws up the project plan with timelines and tasks and the student researches and writes up a report including barriers to education, applicable human rights principles/instruments.”

“Structure the project in a way that ensures that the students are not a drain on the service.” (Community legal centre coordinator)

“You need to have a good structure set up so a volunteer student has a concrete job to do when they arrive and can see how their role fits into the overall scheme of things. It helps to have a volunteer coordinator who is friendly and interested in the volunteers.” (Community legal centre coordinator)

Community legal centres looking for student volunteers can advertise opportunities on the website Community Legal Centres Volunteers (www.clcvolunteers.net.au), which is a national database of community legal centres with information about current volunteering opportunities at a CLC. Those interested in volunteering can find out more about volunteering at CLCs or search the database for CLCs seeking volunteers.

18.2 CASE STUDIES

18.2.1 Case Study: The Roster and the Manning Street Project (UQ Pro Bono Centre)

The principal purpose of the UQ Pro Bono Centre, launched on 26 February 2009, is to engage with community legal centres (CLCs) and the legal profession for the benefit of the community, law students, and the legal profession, through involvement in the delivery of pro bono legal services in Queensland. Monica Taylor is the Director of the UQ Pro Bono Centre.

Only one of the three main avenues for student pro bono at UQ involves giving students academic credit for the work they do, which is the clinical legal education program run in partnership with QPILCH, Caxton and other community legal organisations. The other two, “The Roster” and the “Manning St Project”, do not attract academic credit for the student.

The Roster is an online database of students who are interested in undertaking pro bono work and are matched with activities as they arise. Activities may include writing articles, research for law reform submissions, or volunteering to answer the phones at a CLC.

The Manning St Project is a partnership between the UQ Pro Bono Centre and Caxton Legal Centre Inc that provides opportunities to UQ law students to participate in law reform work, action research projects, clinical practical legal training, and community legal centre projects.
and other community law activities on behalf of participating CLCs on a pro bono basis. Students who participate in the project have the chance to pursue interests in policy and law reform, public interest research, community legal education, client interviewing and file preparation within the premises of the Caxton Legal Centre at Manning St, South Brisbane, under the supervision of practising lawyers and legal academics.

UQ pays Caxton a substantial fee to rent a space in Caxton's premises and this space provides a “hub” for the student projects. Many CLCs are in the same area of South Brisbane. Each project can involve small groups of up to four students that work in a four-hour block of time once a week for a semester. Multiple projects run simultaneously. Primary supervision of the project is the responsibility of the organisation that owns the project (either by dropping in to Caxton in person, or by email) but Caxton staff will also check in with the students while they are there for an update on the direction of the research/project. Caxton also provides induction training for all the students (which is mostly concerned with internal administrative issues like occupational health and safety, and risk management). By the end of the semester the students have worked together to pull together a finished product, which might be a chapter in a review paper, or a journal article (for example, students were published in Parity, a publication of the Council to Homeless Persons).

Benefits

- Funds from the university allow the CLC to give extra time to supervising and mentoring the students.
- Students undertake projects for the benefit of the CLC sector at large (current partnerships with Caxton, Prisoners Legal Service and Sisters Inside).
- Students undertake policy work that the CLC would not otherwise have the time or resources to pursue.
- The project has yielded great results/outputs with students working both as small groups and independently (see the list of publications on the website).
- Students do not receive academic credit, but do have a finished product they can put their name to, and develop a broad range of work experiences and skills.
- Students are provided with quality opportunities to do pro bono work and build a social justice/pro bono culture.

Challenges

- Adequate supervision for students is always something that needs to be monitored.

  “Mostly we do this well, but it’s something you can never lose focus on because good supervision usually equates to a good research output.” (Monica Taylor)

Features that make it effective

- The Principal Solicitor checks and signs off on all the work that is done by students.
- The service is free to discontinue the involvement of any student that is not working out.
- The students are brought together in a “hub” environment.
“Technically we don’t need to do this. Students could meet in the law library and just work autonomously/externally. But I think having a central, friendly physical space does help generate a sense of personal responsibility and seriousness about their work. Group work can also have its challenges, but in the time that I’ve been involved I’ve never seen any slackness or issues – quite the opposite; students learn the value of collaboration and do it not because they ‘have to’ for assessment, but because that is what the real-life research problem requires of them.” (Monica Taylor)

- A constant appreciation of the contribution that the students are making.

“\textit{I find you can never say thank you enough to a student. Constant acknowledgment of their commitment is important as they’re giving up four hours per week with no academic credit!”} (Monica Taylor)

\textbf{18.2.2 Case Study: The Tasmanian Mental Health Tribunal Representation Scheme (Advocacy Tasmania Incorporated)}

Advocacy Tasmania Incorporated (ATI) is an independent, non-government organisation that has provided advocacy services across Tasmania to older people and people with disabilities since 1990. Client groups also include other vulnerable, disadvantaged and stigmatised groups. The organisation works to protect and promote the rights and interests of its clients.

One of ATI’s programs is the Mental Health Tribunal Representation Scheme (MHTRS) which provides free representation to people with a mental illness who have been listed to appear before the Mental Health Tribunal (“the Tribunal”). It provides much needed support for people with mental illness to have their say in matters that affect them.

The MHTRS is only able to be offered due to the hard work and dedication of its Volunteer Representatives, many of whom are undergraduate law students from the University of Tasmania.

Prior to its introduction, people appearing before the Tribunal for review of their involuntary orders were unrepresented at a time when major decisions about their liberty and life choices were being decided. In 2003, ATI obtained funding to commence representations in the Hobart area. By mid-2005, the Scheme was extended State-wide. This meant that every person appearing before the Tribunal had access to a Representative who could provide them with information about the process and who would accompany them at their Tribunal hearing should they so choose.

Since 2003, the MHTRS has offered assistance to over 3,700 people listed to appear before the Tribunal. In addition, over 1,000 people have participated in ATI’s MHTRS training. The MHTRS received a Human Rights Award for Humanitarian Services in December 2005.

How it works

All MHTRS Volunteer Representatives must complete a comprehensive training and induction program which provides an opportunity to hear directly from experienced mental health practitioners, and from the Tribunal. Training is free and conducted across Tasmania annually. It consists of an overview of the MHTRS, information on the major mental illnesses, a presentation from the President of the Tribunal, and workshops designed to equip future Representatives with the more practical skills which will enable them to successfully assist clients and to meet ATI’s volunteer requirements.
Hearings are listed in Hobart, Launceston and North West Tasmania each fortnight and the Tribunal provides MHTRS information with each hearing notice. An ATI staff member then contacts each person listed for hearing, explains the MHTRS, answers questions, and then offers a Representative. ATI then seeks expressions of interest from Representatives and assigns each client with a Representative. The Representative will then meet with the client an hour before the scheduled hearing. (For clients under a Continuing Care Order this meeting takes place at the hospital, and for Community Treatment Order clients, at the Mental Health Tribunal office.)

The Representative provides information and support to the client to self-represent at the Tribunal hearing; this includes reviewing the client’s medical reports and discussing ways that the client might best convey their views and wishes to the Tribunal. In instances where the client wishes more direct representation, the client will brief the Representative so that they can effectively represent the client’s wishes and ensure that they have a voice in regard to proceedings. The Representative then attends the Tribunal hearing with the client. All Representatives are required to complete a brief report detailing any issues arising and the Tribunal’s determination.

To complete the above process, Representatives generally need to be available for up to two hours. Representatives determine their availability and frequency of representations. However, it is important that Representatives are able to retain both knowledge of the process and their skills by undertaking a minimum of four representations annually.

“Representatives willingly give their time, skills and experience to assist those who are often marginalised and most vulnerable. Clearly, there is merit and great rewards in volunteering, and this is what drives those who become MHTRS Representatives. However, there are also other study/work-related, social and emotional benefits in becoming a Representative.” (Leanne Groombridge, Deputy Chief Executive Officer, Advocacy Tasmania)

Benefits

- Students are provided with opportunities to do pro bono work and build a social justice/pro bono culture, particularly in the context of mental health issues.

  “ATI conducts a compulsory training component for all Centre for Legal Studies students which means that all students receive information on mental health issues as part of their coursework. Students obtain experience representing clients with significant mental health issues and become aware of their own biases and preconceptions and the need for professional boundaries and conduct.”

- Students gain experience and networking opportunities that can help them later with finding employment.

  “While they do not receive academic credit for their representation work, they do have a finished product, a hearing and final report, they can put their name to. Students gain valuable experience that will enhance employability, particularly for those employers who understand the prevalence of mental health issues within their own workplaces and the wider community. They also attain an ATI MHTRS Statement of Volunteer Service which is a great addition to any resume.”

- Students develop a broad range of work skills and confidence, particularly the skills required to successfully support people who are unwell.
“They learn new skills as well as consolidating existing skills, including communication and interpersonal skills and gain the experience of appearing before a tribunal and the various associated protocols. The feedback they receive following each representation further increases their skills and confidence and the report they are required to complete following each representation provides an opportunity to enhance their report writing skills.”

Challenges

- Ensuring that students comply with ATI’s volunteer policy and procedural framework.
- Providing the necessary one-on-one support to students who may struggle with behaviours/conditions that they find challenging.

Features that make it effective

- **Screening of potential representatives.** To be admitted as a MHTRS volunteer, applicants must:
  - have a strong commitment to ensuring that the rights of people who are mentally ill are respected
  - demonstrate a high degree of empathy and understanding towards people with a mental illness
  - obtain a satisfactory National Police Check (ATI funded)
  - successfully complete the required training
  - be confident to speak, and represent clients' views, before the Tribunal
  - have some time spare (minimum annual commitment of eight hours) to help others

- Effective mentoring of new representatives.
- Comprehensive training and well-defined policy and procedural framework.
- Support and advice from experienced ATI staff to representatives before and after each representation.
- Feedback from the Tribunal after each representation.
- Evaluation processes for each representation which is completed by the Tribunal and provided to each representative.
- Successful partnering with the Tribunal and hospitals.
PART 3B. MODELS OF PRO BONO LEGAL ASSISTANCE

This toolkit is structured around different models of delivering pro bono legal assistance as a way of organising the wealth of information about what works in pro bono in an accessible form, and to highlight different types of pro bono projects. In reality, pro bono work may involve a number or combination of these models.

“An effective pro bono practice will involve elements of all the models described in the consultation paper. In reality the models are not as distinct as they are set out in the consultation paper and the breakdown is a little artificial, for example, having law reform and co-counselling as separate models. In reality the only model that really works on its own is case referral. However, the individual analysis of models could be useful for those who are just interested in being involved in a particular aspect of pro bono work, and are not developing or running a pro bono practice.”
(Mid-sized law firm pro bono coordinator)

19 CASE REFERRAL

Case referral is the model most commonly associated with pro bono legal assistance. In this traditional model, an individual or organisation needs help and is referred to a practitioner for legal advice and/or representation, which is undertaken by the lawyer as part of their ordinary legal practice without charge or at a reduced fee to the client. There are many pathways for a matter to be referred to pro bono legal assistance, including via a pro bono clearing house which refers individuals, community groups and not-for-profit organisations to lawyers in private practice or in-house/corporate lawyers who are willing to undertake legal work on a pro bono basis, through a community legal centre, from one firm to another, from legal aid or through a direct contact. Pro bono legal service providers contribute their resources according to the knowledge, skills, interests and resources they have available.

19.1 CASE REFERRAL: AT A GLANCE

Benefits

- Provides access to justice for people who have otherwise been unable to obtain legal assistance.
- Provides opportunities for all types of legal practitioners and sizes of firms to participate in pro bono work, thereby helping to build a pro bono culture across firms and the profession.
- Broadens the range of matters and types of unmet legal need in which pro bono providers can assist.
- Allows pro bono providers to control what matters they will take on.
- Can lead to the identification of trends and the need for law reform.
- Pro bono providers can bring additional resources to deal with a matter.
• Provides an alternative avenue of legal assistance where there is a conflict of interest.

**Challenges/limitations**

• It can be difficult to be strategic about meeting greatest needs, given that it is essentially a reactive model which relies on people with legal needs making requests for assistance.
• Limited range of matters that pro bono providers will take on.
• Obtaining a clear idea about what cases firms will or won’t take on.
• Extent to which firms can adapt and acquire the skills to address unmet legal needs which are outside their areas of expertise.
• Coordinating the case referral process, especially where there is no consistent pro bono coordinator role.

**Features of effective case referral**

• Promotion of available services to increase awareness of the existence of pro bono assistance.
• Having a well-organised referral process (such as that provided by a best practice pro bono clearing house).
• Having a list of pro bono programs, pro bono coordinators or other contacts, pro bono guidelines, and relevant areas of law practiced and not practiced.
• Having at least one dedicated contact at both the referral organisation and the pro bono provider (ie a pro bono coordinator), and a strong relationship and understanding between them.
• Effective triage/merit assessment process (referral agency understands the capacity and interests of the firms and provides a comprehensive brief with the referral).
• Initial scoping of a referred matter to define the limits of the assistance that a firm will provide to a client and timeframes.
• Matching appropriate matters with the skills of available lawyers.
• Support to lawyers undertaking pro bono work, especially where it is outside their usual field of expertise.
• Continuing involvement of the referring agency where necessary.

For more information on casework procedures, see section 2.1 of the *Australian Pro Bono Manual*. 
19.2 CASE REFERRAL: BENEFITS

The nature of the case referral model, which is responsive to requests for assistance, means that it plays an important role in filling gaps in legal service delivery and providing access to justice for people who have otherwise been unable to obtain legal assistance.

Given the potentially broad range of issues and clients that arise through case referral, it can also provide more opportunities than other models for a wide range of lawyers, all types of practitioners and sizes of firms, to participate in pro bono work. From the point of view of pro bono coordinators who are trying to build a pro bono practice and encourage the development of a stronger pro bono culture within their firm, the variety of matters received through case referral helps them to spread pro bono work across their firm and involves lawyers who might otherwise not be inclined to do pro bono work.

“Case referrals increase the variety of work that can be matched with the interests and desires of lawyers in the firm, and therefore allows more people in the firm to do pro bono work. Some feel more comfortable doing corporate legal work rather than dealing directly with disadvantaged clients in areas of law that they do not have expertise (which is what they would be doing in a clinic model).” (Mid-sized law firm pro bono coordinator)

Lawyers who would not be comfortable doing pro bono work face-to-face with disadvantaged clients in a clinic environment, or with dealing with issues outside their area of expertise, can still be exposed to the issues facing disadvantaged people by doing pro bono work that arises within their comfort zone. This can help a pro bono ethos to permeate the firm, especially where lawyers who previously did not have much of an interest in social justice are exposed to and develop a better understanding of the issues.

“People who are less likely to put their hand up to do clinic work or join a roster can do other types of pro bono work which is more aligned with their interests or suits their way of working (not committed to doing pro bono at a particular time). Those with philosophical objections to pro bono might not have such a strong view after interacting with real people and seeing their circumstances.” (Mid-sized law firm pro bono coordinator)

“The case referral model allows people in the firm who might not otherwise be exposed to issues facing marginalised and disadvantaged people to understand and possibly then advocate around these issues from positions of relative influence and power.” (Mid-sized law firm pro bono coordinator)

From a pro bono provider’s point of view, case referral can broaden the range of matters and types of unmet legal need that it assists with, but also allows them to control what matters they will take on.

“For a firm that is developing a pro bono practice, case referral is an essential way to find cases and discover unmet legal needs, especially if they don’t have dedicated pro bono partners.” (Mid-sized law firm pro bono coordinator)

“Having pro bono clearing house referrals further increases the range of matters, and brings in cases involving an area of law that needs to be tested. If pro bono work was only sourced from within the firm, it would largely consist of Deductible Gift Recipient status, review of governance and employment work.” (Mid-sized law firm pro bono coordinator)
“The case referral model allows the firm to control the cases they will take on - within their area of expertise.” (Mid-sized law firm pro bono coordinator)

Case referral can have an impact on access to justice beyond the individual case that is referred. Pro bono providers can develop expertise and experience from having a number of similar cases referred to them which allows them to identify trends and the need for law reform. For example, the National Pro Bono Manager at the Australian Government Solicitor (AGS), Geetha Nair, provided the example of AGS lawyers who provide pro bono assistance at Welfare Rights responding to the large numbers of requests for assistance with tenancy by assisting with the development of fact sheets.

“Case referral can be responsive to needs as they arise. Through collaboration with clearing houses and community legal centres the firm can see emerging trends and areas of need from patterns in the individual requests for assistance, and this can lead to law reform.” (Mid-sized law firm pro bono coordinator)

From the point of view of CLCs the ability to refer a matter for pro bono assistance provides an option where they have a conflict of interest, and can also mean that the matter can benefit from having the weight and resources of a firm. For example, the Principal Solicitor at the North Australian Aboriginal Justice Agency (NAAJA), Jonathon Hunyor, explained that “having a large firm involved in a matter can carry significant clout. In complicated matters it may also allow a vulnerable person to receive a higher level of service than would be possible if represented by a legal aid organisation or a CLC. Also, a lot of NAAJA’s work involves police, health, welfare etc so local firms are often conflicted out given they do government work. Having assistance from large national firms overcomes this problem.”

19.3 CASE REFERRAL: CHALLENGES/LIMITATIONS

At least in theory it could be said that case referral is less strategic in targeting unmet legal need than other models because it addresses unmet legal needs as they arise from requests for assistance rather than primarily targeting a particular client group or area of law. The addressing of unmet legal needs using this model is dependent on those with unmet needs making requests for assistance and appropriate legal assistance resources being available at that time, and therefore it may be a challenge to affect a strategy for meeting greatest needs rather than engaging in convenient or opportunistic pro bono legal work. For example, the Partner, Pro Bono Community Support at Lander and Rogers, Jo Renkin, explained that for a mid-size firm, capacity (and sometimes budget) can create more limitations than for a larger firm. “Landers can take on only limited public interest litigation and is generally running with its existing pro bono workload, and balancing capacity needs sometimes limits the taking on of much new work. This means that the strategy for addressing of unmet legal need is ‘a bit hit and miss’ as a good case might come along at a time when there are no resources to take it on.”

It may be the case that the reactive nature of case referral has less of an impact on better resourced large firms which have more flexibility to take on a good case that comes along, even if they have already reached their quota or target for pro bono work. Smaller firms, which are more likely to undertake pro bono on a more ad hoc basis rather than having a broad pro bono strategy, may also be happy with the trickle of cases that come from case referral.

However, there were others consulted who disagreed with the idea that case referral is not strategic in targeting unmet legal need, especially since pro bono brokers and providers have actively identified target disadvantaged groups, needs and trends to assess where unmet legal needs exist and work with community partners to access clients who have relevant matters.
“Not sure whether it is true that case referral is untargeted (although it does not target legal need in the same way as a specialist or outreach clinic does). PILCH (especially in Victoria) is good at identifying trends in requests for assistance, assessing where unmet legal need exists and seeking out ways to address those needs. While they are reliant to an extent on people coming to them with requests, they are also proactive about finding out where the need is, using contacts with CLCs etc. A good example is the ‘Stolen Generations’.” (Mid-sized law firm pro bono coordinator)

Some of those consulted also questioned the extent to which firms can adapt their skills to meet the need, “given that firms already contribute many existing skills to meet existing demands”, and that there is actually quite a narrow range of matters that a firm will take on, namely cases that are within their area of expertise, or will have benefits for the firm because they have a high profile.

“There is a limit to what gets done as the firm is reluctant to take on matters outside of its comfort zone. The firm sticks pretty much to work that partners are skilled in supervising from their paid work. Not many partners are willing to branch out into other areas. For example, property lawyers are not willing to skill up on the Residential Tenancy Act.” (Mid-sized law firm pro bono coordinator)

“It feels like it is getting more and more difficult to refer cases to firms. Firms are by nature risk averse and will often not want to take on a matter if they do not have legal expertise in the area. This is difficult to fathom from a CLC lawyer perspective where with limited resources (no law libraries, no researchers or partners with expertise) your job often requires you to research new areas of law and provide advice.” (A pro bono clearing house manager)

“It is difficult to convince some pro bono coordinators to deviate from a very narrow idea of the kinds of cases that the firm will assist with - usually the big sexy cases.” (Community legal centre coordinator)

Some CLCs and clearing houses expressed frustration that firms are reluctant to do more frontline service delivery work (see also section on Where pro bono resources should be directed, Chapter 5) or matters which are more complex and may need a holistic approach to resolve, and wanted more “honest” guidelines about what matters firms will or won’t take on. (See also section on CLCs, Chapter 12.)

“Firms are looking for referrals that happen in a vacuum. Individual referral often doesn’t work well for a legal centre trying to address problems in a holistic manner, and CLCs need to be careful to only refer matters that are suitable for individual referral. Individual case referral may not work if the problem is complex and does not address the problem in a holistic way.” (Community legal centre manager)

“Firms don’t always clearly explain that there are specific areas of law/need that they target within the general areas that they promote as their areas of interest (eg the firm states they target Indigenous clients in their pro bono practice but actually mean they will assist Indigenous organisations).” (A pro bono clearing house manager)

It can be difficult from a pro bono provider’s point of view to define the scope of the assistance that will be provided to a client when a case is referred. Firms need to scope the assistance from the beginning, and be clear about what the firm will and will not do for the client.
“Some clients think that when a firm takes on a matter on a pro bono basis that they become their general lawyer indefinitely.” (Mid-sized law firm pro bono coordinator)

Another challenge for pro bono providers is managing the expectations of referring organisations, which often want to know the outcome of matters they have referred to a pro bono provider so they can learn from the experience, and also because they want to promote the service with examples of referrals that have led to positive outcomes for clients. However, it is up to the client to decide whether they want to share this information with the referral agency after they have been advised of privilege and confidentiality issues.

“Lawyers need to be careful about respecting the privacy of clients when passing on information in a referral context.” (Large law firm pro bono coordinator)

**Coordination of case referral processes** can be challenging for everyone involved, but this can be exacerbated where there is a lack of continuity with pro bono coordinators.

“Some firms rotate pro bono coordinators. This takes up CLC resources in establishing relationships and ‘training’ every time a new coordinator moves into the role.” (Community legal centre coordinator)

### 19.4 FEATURES OF EFFECTIVE CASE REFERRAL

Given that the case referral model relies on those with unmet legal needs to make requests for assistance, it is vital that the existence of pro bono assistance is promoted to those who might need it. The National Pro Bono Manager at the Australian Government Solicitor, Geetha Nair, provided the example of the Registrar of the Office of the Registrar of Indigenous Corporations (ORIC) who travels around Australia and is very engaged with Indigenous Corporations, which may involve making them aware of the existence of pro bono legal services. This can be particularly difficult in regional, rural and remote areas.

A well-organised referral process should provide easy access for people seeking legal assistance, a timely and professional response to requests received, and follow detailed and efficient procedures for case intake and assessment (eg recording of contact details, case notes, copies of relevant documents, conflict/means/merit check etc). It is usually best for the referring solicitor, rather than the client, to make initial contact with the pro bono provider on behalf of a client as they can clearly articulate the legal issues or work that is required to be done.

The Head of Pro Bono and Community at Herbert Smith Freehills, Annette Bain, explains that in deciding which matters can be accepted, the Pro Bono Senior Associate will consider if the matter has merit, if there are any conflicts and whether there is capacity and the relevant expertise available to assist the particular client. She suggests that to make referrals more efficient, referral agencies should build relationships with pro bono departments so they have a good understanding of the types of matters they can assist with.

Strong relationships, coordination and understanding between the referring organisation and the pro bono provider often relies on having a dedicated contact point within both organisations (ie a contact person at a CLC or pro bono clearing house, and a pro bono coordinator at a firm). Most of the CLCs consulted found that having direct relationships with firms resulted in much faster case referral than via a pro bono clearing house. Some of those consulted suggested that where possible it is better to have more than one contact in each organisation to avoid having the relationship between the partners relying solely on individual people.
“It is helpful to have a committed pro bono contact within the firm (but this does not necessarily have to be the pro bono coordinator eg …a very dedicated Special Counsel pro bono contact.” (Community legal centre coordinator)

Within law firms, the pro bono coordinator not only coordinates referrals and develops and manages relationships with referral organisations, but also provides essential support to lawyers doing the pro bono work.

“It is generally better to have matters coordinated through a pro bono coordinator rather than having individual lawyers taking on cases directly. Junior staff members need supervision and support. If directly taking on referrals in some cases it would place junior staff under pressure without senior members of staff being responsible and assisting them. (It might work when a partner takes on a pro bono matter directly and delegates/supervises the work of to a junior).” (Mid-sized law firm pro bono coordinator)

The Partner, Pro Bono Community Support at Lander & Rogers, Jo Renkin, provided the following example of a situation which illustrates the benefit of having a dedicated pro bono coordinator:

“Some years ago, a junior lawyer took on the work and, although allocated a supervisor, did not feel supported, and, whether due to a lack of confidence or lack of real interest by supervisor, they did not seek assistance to manage the client or the situation. The client did not understand that by not finalising the understandings it had prior to instructing us to draft an agreement; we had to redraft whole agreements which was unsatisfactory. In addition, the client asked for further work to be done that was outside the scope of the lawyer's expertise. The junior was stressed, over-worked and unsure what to say to the client. After follow-up by the coordinator the issues were identified and addressed. Subsequently, supervisors were briefed on their responsibilities and juniors were empowered (through support and information) to speak directly with clients about effective communication and maximising their use of our resource in a reasonable manner. Definitions of our work, protocols and proper engagement letters followed soon after this matter.”

For a pro bono provider, one of the main benefits of partnering with a community organisation that will refer cases to it is that the referral agency will perform the triage and merits assessment process for it. However, in order to do this effectively, the referral agency needs to understand the capacity and interests of the firms it refers to, and avoid giving false hope to people seeking assistance. It is helpful if firms can provide a clear policy so that referral agencies understand what really guides their decision-making on what can be done.

“Our firm has a good relationship with the referral organisation, so that they understand the capacity of the firm and the issues they are interested in. We have a great relationship with PILCH and have told them the kind of cases we want (eg less litigation and more leases).” (Mid-sized law firm pro bono coordinator)

“The referral organisation needs to understand the profile of the firm. A difficulty with turnover and having secondees and students at clearing houses is that new people need to ask what the firm does and doesn’t do. This could be addressed with a greater focus on providing this information to new staff during induction training (however firms do not have the same expectations of smaller and non-legal organisations).” (Large law firm pro bono coordinator)

A pro bono provider is better able to make an assessment about whether they will assist, and is more likely to assist, if a comprehensive brief is provided by the solicitor or organisation who is
referring the case which may include, for example, draft submissions (if the matter involves a hearing) and copies of all correspondence with the client, other party and/or courts and tribunals.

Once a matter has been referred, it is important for the pro bono provider to **scope the matter and define the limits of the assistance** that will be provided to the client, and the likely turnaround time, with an agreed process in place for ending the assistance (that is, when the matter can be handed back to the CLC or clearing house).

“Take the time to fully understand the matter at the beginning and obtain appropriate instructions. For example, a lot of unnecessary additional work can be created when a NFP doesn’t fully understand the legal process and changes its ideas/approach after some of the legal work has already been done by the firm. A senior lawyer is usually able to discern when a NFP has not finalised an idea or is at least better equipped to make enquiries and/or manage situations to facilitate a refining of instructions.” (Mid-sized law firm pro bono coordinator)

A matter can only be successfully referred where there are lawyers with the necessary skills, experience and interest to undertake the pro bono work. One pro bono coordinator made the point that these skills go beyond the legal expertise of the lawyer, to an understanding of the issues facing marginalised and disadvantaged people and that lawyers who are not familiar with dealing with these clients, especially where it is outside their usual field of expertise, may need additional support to do it effectively.

“Lawyers providing pro bono assistance who may be unfamiliar with the kind of clients and issues that arise in pro bono work may need additional support, for example, counselling support via an Employee Assistance Program.” (Government pro bono manager)

In some circumstances, it may be helpful for the referral agency to remain involved in the matter and deal with managing the client. The Principal Solicitor at North Australian Aboriginal Justice Agency, Jonathon Hunyor, explained that, where necessary, NAAJA remains the local agent who keeps contact with the client after the matter has been referred.

### 19.5 CASE STUDIES

#### 19.5.1 Case study: Case Referral (Lander & Rogers)

The Partner, Pro Bono Community Support at Lander & Rogers, Jo Renkin, provided the following case study:

“We represented a remote Indigenous community from Central Australia with a discrimination claim against the NT government following the prohibitions placed on bilingual teaching which impacted the bilingual program at the school. Through our representation, which included building relationships with community members and attending at a commission hearing in Alice Springs, we were able to advocate on the community’s behalf, resulting in their being given permission to continue the program. The community members were able to participate in hearings, have their voices heard in the highest places and feel empowered. This was gratifying. We worked closely with the Human Rights Law Centre (HRLC) to have the client identified and to build a meaningful relationship with the client. The lawyer who spent over 2 years working on the matter describes it as the best work she has done. Partners were actively involved supporting the lawyers who did the work also and this added
to the firm's sense of purpose and commitment to providing access to justice. Without the assistance of a referral body we would not have known of this matter. The firm's pro bono policy made it easy to consider the merits of the matter at the outset and make a decision to pursue representation even though at the time our capacity was limited."

Features that made it effective

- Strong relationships between referral agency, pro bono broker and pro bono provider.
- Support from partners at the firm for the lawyers doing pro bono work.
- Firm's clear pro bono policy made the merits assessment process easy.

19.5.2 Case study: Document Review Service and Advice Service (Arts Law Centre of Australia)

Arts Law gives legal advice to artists and arts organisations across all art forms on a wide range of arts-related legal and business matters. Such matters include contracts, copyright, moral rights, trade marks, business names and structures, defamation, insurance and employment. Legal advice is free or low-cost depending on the nature of the enquiry. Arts Law accepts requests for legal advice by phone or online form, and assists by either providing telephone legal advice or a document review (depending on whether the provision of legal advice involves reviewing any documentation).

The Document Review Service (DRS) is available to Arts Law subscribers. Subscribers send any document that they want explained to Arts Law. An Arts Law lawyer (in-house or external volunteer lawyer or law firm acting on behalf of Arts Law) then reviews the document and holds a review consultation with the subscriber to explain the document and provide legal advice in relation to that document.

The DRS was originally provided in night-time advice sessions staffed with individual volunteer lawyers (see section on Individual volunteers, Chapter 17). The DRS and telephone advice service is now supported by a panel of around 200 lawyers around Australia who are prepared to review contracts and give advice. Among these lawyers there are many sole practitioners and small boutique firms that specialise in the area, as well as several larger firms, including DLA Piper whose relationship with Arts Law became stronger about five years ago, and has developed into one of the firm's “Signature Projects.” Other firms like Minter Ellison, Herbert Smith Freehills and Allens Linklaters have supported Arts Law for more than 20 years.

In relation to the Telephone Legal Advice Service (TLA), Arts Law staff/volunteers take instructions from clients, and then send a summary of the issue and the party details to the firm to undertake conflict checking. The firm provides advice (under Arts Law’s insurance) and prepares a comprehensive file-note which is checked by Arts Law. Arts Law will provide feedback and mark up the advice if necessary. The firms currently assisting with the TLA are: Allens Linklaters, Minter Ellison, Herbert Smith Freehills and Holding Redlich.
Benefits

- **Involvement of a broad range of legal practitioners.** Small firms/sole practitioners can be particularly motivated to do a good job with their pro bono work because they have a vested interest in the success of the artist’s work. If the artist is successful then they will often go back to the lawyer on a fee-paying basis (Arts Law needs to be clear that there is to be no touting and that lawyers cannot refer Arts Law clients to themselves).

- **The work is interesting for the volunteer lawyers** who, for example, might be doing IP work all day but do not have the opportunity to consider a moral rights issue in their usual work.

- **The service uses lawyers/parts of firms that may not normally do much pro bono work,** and therefore involves more lawyers in pro bono work than would otherwise be the case. For example, Arts Law is working with a medium-sized firm to develop legal resources for game developers who would not be able to afford legal assistance, including resources to skill up the legal community and technology start-ups (standard documents, factsheets, and community legal education sessions). It was so far outside the firm’s traditional concept of pro bono that the partner at the firm asked Arts Law for confirmation that this was in fact pro bono work.

- **Many firms/volunteers go well beyond expectation** in the amount of assistance they provide. Allens Linklaters, for example, initially provided constitutional review for a client, but ended up doing significant work that resulted in the client’s premises being transferred into its own name. DLA Piper initially reviewed a music agreement, but ended up representing the client who suffered from a mental illness (in litigation relating to the transfer of the client’s real property by the client’s relative without the client’s consent or knowledge).

Challenges

- **Making sure that all the lawyers in the network are utilised** so they remain engaged with Arts Law (around half of the Panel members are active).

- **Occasionally, poor quality of advice** (usually because they haven’t thought of something rather than providing wrong advice) or where the matter has fallen to the bottom of the priority pile. For example, Arts Law has had a negative experience with a medium-sized firm which was unresponsive and feared that a potential negligence claim would arise from the delays. This had happened twice with the same firm.

- **Managing ongoing casework** (involving a more complex matter that is referred and where the artist becomes the client of the pro bono provider) is more difficult than telephone advice or document review. Telephone advice and document reviews involve more discrete/contained tasks, with a merits review and summary of issues prepared by Arts Law so all that the pro bono lawyer needs to do is provide the advice and write a file-note to close the case. Even though casework is referred, Arts Law stays in contact with both the client and the firm to ensure that the matter progresses smoothly, to provide a liaison role with Indigenous clients who are unaccustomed to dealing with lawyers, and to assist where needed. Arts Law maintains a copy of the file which is included in its cross-check as a backup measure. Pro bono lawyers are sometimes reluctant to say that a matter has not actually progressed.

- **It is more difficult to find expertise nationally than in the big cities.** About half the panel is based in Sydney. However given that most of the work is federal, it is not as much of an issue as it could be in other areas of law. Until recently, there were no music lawyers in WA, and it is
much more difficult to find lawyers in QLD and SA. Wills and debt recovery work is jurisdiction-specific, but it is also easier to find lawyers to do this work.

Features that make it effective

- **Match of needs of clients with the existing skills of firms/lawyers.** Even though the clients are not commercial, the nature of the legal assistance they need is commercial.

  “The type of client/matter that arises during the Arts Law service is a good fit for the firm’s expertise and within the comfort zone of the lawyers volunteering.” (Large law firm pro bono coordinator)

- The pro bono work is a match with the interests of lawyers.

- Arts Law undertakes training with the firms and volunteer lawyers.

- Arts Law provides an easy “package” for the pro bono lawyers (with a summary of the matter, clear instructions and the relevant documents).

  “The number of cases (a couple per month) is manageable for the firm.” (Large law firm pro bono coordinator)

- Arts Law has an established process for monitoring the quality of pro bono work and for discontinuing the use of volunteers who are not delivering services at the required standard. Arts Law has an automated message system that sends reminders to the lawyers to provide file notes. If lawyers do not provide file notes, Arts Law applies a “three strikes and you’re suspended” policy.

- **Arts Law constantly nurtures its pro bono relationships** and seeks to extend its network. For example, for a film law session in Brisbane it asked the screen resource agency to recommend people.

- The Deputy Director of Arts Law has experience running a litigation practice and can credibly discuss strategy with firms and address any under-performance.

19.5.3 Case study: Medical Legal Partnership in a Rural Context (Bendigo Health Outreach)

In 2006 the Loddon Campaspe Community Legal Centre’s (LCCLC) Older Persons Legal Program established an outreach service at Bendigo Health to provide legal assistance to disadvantaged and vulnerable older patients. The Bendigo Health Outreach is modelled in part on the Cancer Patients’ Legal Service at the Peter McCallum Institute where practitioners from Baker & Mackenzie Lawyers provide pro bono services to cancer patients. LCCLC adapted that model to a regional centre by harnessing the support of a panel of local lawyers to assist on a pro bono basis.89

The Older Persons Legal Program aims to provide services that are face-to-face, are based in the local community, adopt a multidisciplinary approach, are in the best interests of the older person

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and take a least restrictive approach. Legal information and advice services are generally provided free of charge, although eligibility criteria is applied where people require assistance in the form of ongoing casework activities. Excluding the regular staff of the Older Persons Legal Program, approximately 13 volunteer solicitors from the local area have participated in the Program.

Given that older people who are admitted as patients often present with a convergence of health and legal issues that require a collaborative approach, it was felt that this multidisciplinary approach would provide the opportunity for lawyers and social workers to work together to build on knowledge and expertise. It was also seen as potentially having the dual benefits of resolving a patient’s legal issues, while contributing to important health outcomes. Free legal assistance is provided on a range of legal matters, including: enduring powers of attorney, wills, guardianship, administration, elder abuse, consumer issues, welfare issues, age discrimination, family care arrangements and accommodation.

However, there has also been some doubt expressed about whether this project is really targeting areas of greatest need. “Some solicitors criticised the program for providing a free service where it was reasonable to request remuneration. They declined to support such an initiative in their region. Further, they felt that the services could be provided on an ad hoc basis and that patients that could afford legal services would receive them in the ordinary manner.”

The Coordinator at Loddon Campaspe Community Legal Centre, Peter Noble, explains that many of the clients might have assets but have no cash flow. “A simple will or POA [Power of Attorney] can be done quickly. The lawyers involved in the service are comfortable with the idea of providing the service to people who are not necessarily without the means to pay for it. Means is only one of three considerations for providing the service - 1) Capacity to pay, 2) Urgency and 3) Vulnerability. If the matter is more complex, and the person has capacity to pay, then the service will end the retainer and refer the person.”

The process from referral to resolution follows a simple, seven-step approach that enables clear communication and accountability between the parties as follows:

1. The staff at Bendigo Health identify clients who might need legal assistance and provide them with an information sheet about the Program. If the client wishes to participate, a referral form is completed by Bendigo Health and sent by facsimile to LCCLC.

2. LCCLC assesses the referral (whether the matter falls within the casework guidelines and how urgent it is) and where appropriate, will also obtain further information for the purpose of completing a comprehensive referral to a panel volunteer. At this stage LCCLC will open a file for review.

3. LCCLC refers the matter to a panel pro bono solicitor, by checking the roster and contacting the next listed volunteer by telephone to confirm their availability. They will send the initial referral form from Bendigo Health, along with an additional LCCLC referral form, to the pro bono solicitor and request confirmation of receipt of the referral.


91 Note that Albury-Wodonga CLC has used a different model. The CLC triages clients, assessing them for a $50 will voucher that will be accepted by a number of firms which have signed up for the service.
4. The pro bono solicitor reads the referral and attends at the hospital as soon as practicable, undertakes any urgent legal work, and provides advice on additional matters if these fall within the expertise of the volunteer. They then report back to LCCLC by telephone or email that they have attended to the client and describe actions they have taken.

5. The client is formally a client of the solicitor who is providing their services on a pro bono basis and the advice/casework is covered by each practitioner’s professional indemnity insurance, not the insurance held by LCCLC. The client’s file and all relevant documents are required to be maintained by the volunteer.

6. The pro bono solicitor sends a report to LCCLC by mail/facsimile/email detailing all the actions they have undertaken in the matter, which must be completed and returned to LCCLC within three weeks of the initial referral.

7. Where necessary, a client can be referred back to the LCCLC for further assistance. However, if there is ongoing legal work to be done and the client has the capacity to pay for a private practitioner, the pro bono solicitor can refer the client to themselves to choose to take the matter on a pro bono or fee-paying basis, but must also refer the client to at least two other law firms or the Law Institute of Victoria.

8. When the matter has been finalised, both the pro bono solicitor and LCCLC close their respective case files.

Benefits

- The Program creates targeted structured and supported (rather than ad hoc) pro bono opportunities for smaller firms in regional areas many of whom have considerable skills to offer in the health setting but would not normally do much pro bono (and might not be so inclined to do pro bono work for a less sympathetic client group). The Bendigo Health Outreach service currently has 13 lawyers volunteering.

Challenges/limitations

- Means testing of potential clients.
- Convincing local lawyers that they have, or can quickly develop, the required expertise.
- Overcoming perceived conflicts.

Features that make it effective

- Ongoing training for lawyers on how to deal with highly vulnerable and ill clients.
- Ongoing training with partner agencies regarding what health workers can and can’t do, what they can and can’t witness. Health workers are critical to the success of the service as they make patients aware of it. The service is providing training to all social workers in the aged care division of the Department of Health.
Pro bono referral schemes and clearing houses have provided an accessible and organised referral pathway for many matters which might not otherwise reach pro bono assistance providers. They vary considerably in scope and scale in different jurisdictions. (See section on Pro bono clearing houses and referral schemes, Chapter 9.)

Pro bono referral schemes, which include those run by professional associations (law societies and bar associations), facilitate the provision of a significant amount of pro bono legal assistance, particularly by small firms (see section on Small firms, Chapter 11). Individual practitioners or law firms can register with these schemes which provide pro bono referrals in a variety of areas of law for people who cannot afford to pay for legal assistance and do not qualify for legal aid. The schemes provide an accessible contact point for those seeking pro bono assistance. They assist practitioners by undertaking a means and merits assessment before referring matters to them, but giving them discretion to accept or decline referrals on a case-by-case basis after considering whether they have capacity and expertise to take on the matter. For practitioners and firms which already make a significant pro bono contribution, registering with a referral scheme offers a way for their contribution to be recognised and counted.

Public Interest Law Clearing Houses are member organisations which will generally refer appropriate matters to their members who have indicated an interest in undertaking pro bono matters. Pro bono clearing houses provide around a third of all referrals to law firms with 50 or more lawyers. Members include law firms, the legal sections of corporations, and individual barristers and solicitors. Although each clearing house has its own merit-based selection criteria, in some states the matters need to also satisfy public interest criteria before a pro bono provider is approached to find out if they can assist.

“Before the existence of JusticeNet, case referral was very informal and difficult to keep track of. The pathways to legal assistance were: Legal Aid Commission, CLCs, informal pro bono referral, Hardship and Public Interest and Test Case Schemes (Commonwealth funding for matters where there was an issue of Commonwealth law) and Litigation Assistance Fund (interest from lawyers trust accounts). However even with JusticeNet, the demand for legal services far exceeds the available pro bono resources and JusticeNet sometimes contacts CLCs to try to refer matters where appropriate.” (Community legal centre solicitor)

“We have been able to refer more clients to pro bono assistance with the help of JusticeNet. Prior to its existence, most CLC staff built up their own personal list of barristers/law firm people who were willing to assist in different areas. It was hard to keep track of people on the list as they moved jobs etc. JusticeNet has been able to

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92 For a full list of pro bono referral schemes see the National Pro Bono Resource Centre’s website at www.nationalprobono.org.au/page.asp?from=7&id=128.

93 For more information about the pro bono clearing house model see Pro Bono Clearinghouse Manual (PILnet and A4ID, 2011) at www.pilnet.org/component/docman/doc_download/52-pro-bono-clearinghouse-manual-resources-for-developing-pro.html. See also section on Pro bono referral schemes and clearing houses (Chapter 9).

capture much of the pro bono assistance that is available in SA (including ‘hidden pro bono’ that lawyers were doing on an ad hoc basis and whatever amount of assistance that national firms have to offer in Adelaide) and made it accessible. Having a visible coordination point like JusticeNet also encourages lawyers to do more pro bono, especially with promotional events like the Walk for Justice.”

(Community legal centre solicitor)

Pro bono clearing houses are in a unique position to develop relationships with firms, barristers and CLCs that can facilitate communication between all of them.

“Many pro bono relationships rely on personal contacts between particular CLC staff and particular barristers or law firm staff. Given that there can be a relatively high turnover in CLC staff, we seem to have become a reliable channel of communication between different parts of the profession. A request for assistance will reliably reach the bar in a timely manner if it is made via us and is not reliant on having someone in a CLC who knows a particular barrister.” (A pro bono clearing house manager)

Having a pro bono clearing house involved in the referral of a matter also provides a client with an alternative option for voicing concerns about the timeliness or quality of pro bono assistance.

“We also provide an additional quality control mechanism. For example, if a CLC has concerns about pro bono work being done for them via a referral we have made, they can raise those concerns with us rather than the lawyer or firm directly.” (A pro bono clearing house manager)

However, a potential disadvantage of the clearing house model is the loss of personal contact and relationship building that facilitates the provision of so much pro bono assistance.

“The potential disadvantage of having a clearing house making the referrals is that the project/CLC loses control of the relationship-building. It is difficult to build a sense of ownership or emotional link to the work if you are only calling on someone once a year to assist with an isolated matter.” (Community legal centre principal solicitor)
In the clinic model, pro bono legal service providers use their resources to increase their capacity to provide legal assistance in the particular area of need. This may involve:

- developing partnerships with organisations that have access to the target client group (and possibly co-location and integration with other essential support services)
- providing staff with knowledge and skills to provide legal advice/representation in subject areas where clients have unmet legal needs
- engaging in training to develop the specialised knowledge and skills to assist clients in the identified area of unmet legal need
- establishing physical location of service in a geographically and physically accessible, safe and trusted place
- contributing resources to promote/publicise the service to the relevant client group
- a commitment to contributing resources for a significant period of time to ensure the establishment and effective operation of the service.

The clinic model overlaps with the secondment model (see Chapter 22) because clinics are often staffed by lawyers who are considered to be on a “sessional secondment.” Some of the projects that appear in the Secondments section of this resource as case studies of sessional secondments could also be considered case studies of clinics. See the case studies on the Unfair Dismissal Project (22.5.3) and The Aged-care Rights Service (22.5.5).

Different ideas also exist about what is meant by an outreach clinic as opposed to a specialist clinic, and whether there is a significant difference. Some consider an clinic to be an “outreach clinic” when it is focused on delivering services to a regional, rural or remote (RRR) area, while others consider that a clinic is an “outreach clinic” when it is at any location (not necessarily RRR) which is away from the legal service provider’s office and aimed at making it more accessible to the target client group.

While several law firm pro bono coordinators expressed the view that there was no helpful distinction to be made between outreach and specialist clinics, those responsible for managing the logistics for those clinics thought that the difference had a significant impact on their planning process.

“There is a significant difference between specialist and outreach clinics from the point of view of those organising those clinics. With outreach clinics there are the additional concerns for the organisers regarding the safety of staff, how to record advices and manage files off site, how to move resources to the outreach site, timely conflict checks, the time involved and costs of travel.” (A pro bono clearing house manager)

For the purposes of this resource, “specialist clinics” are regarded as those providing legal assistance in a particular area of law, to address a particular area of need, or to target a particular disadvantaged client group, with a number of firms and/or barristers providing pro bono legal assistance within, or in partnership with, an existing community organisation or CLC. Legal assistance resources are specifically developed to address those needs. An example of a specialist clinic is the Refugee Advice and Casework Service’s temporary protection visa clinic or various CLC run “DIY divorce clinics” which are held at the premises of the CLC.
“Outreach clinics” are regarded as those involving lawyers providing legal advice, and sometimes ongoing assistance at outreach locations, usually at the premises of a community organisation and/or a CLC, but not necessarily in a RRR area. The legal assistance may be provided for the period of a particular project or a partnership arrangement on an ongoing basis.

Outreach clinics aim to address unmet legal need that is exacerbated by barriers to the accessibility of legal services by being located in a place that is safe and accessible for clients. Barriers may include lack of knowledge about the existence of the service, geographic inaccessibility or having no service available in the region, and lack of trust in the service or the legal system in general. Examples of outreach clinics include the Homeless Persons’ Legal Clinics (21.5.2 and 21.5.3) which are located in community organisations where people who are homeless or at risk of homelessness already go and trust to access other services.

This section on “Clinics” deals with issues that are relevant to both specialist and outreach clinics. The next section on “Outreach” deals specifically with the issues relating to outreach clinics only.

### 20.1 CLINICS: AT A GLANCE

#### Benefits
- The work involved in identifying the unmet legal need has already been done by the partner/host organisation.
- Provides access to justice targeted to a particular area of need.
- Can lead to law reform and identification of other/related unmet legal needs.
- Increases opportunities for law firm lawyers to do pro bono work and thereby encourages a pro bono culture.
- Builds the skills and networks of the lawyers involved in the work of the clinic, that is of benefit to the individual lawyer, their firm, the clinic and can be applied to address unmet legal needs in the future.

#### Challenges
- Need for sufficient funding and resources to set up and run clinics.
- Reliability of the partner organisation.
- Recruitment of appropriate volunteers to staff clinics.
- Providing the required level of training and supervision to monitor and maintain the quality of the pro bono legal work done by lawyers in clinics.
- Ensuring that pro bono solicitors do not advise on areas outside the scope of the CLC’s expertise (or insurance coverage).
- Defining the scope of the work and ensuring that clinic work has a broader strategic purpose.
- Administration/coordination of the work of the clinic.
## Features of effective clinics

- The unmet legal need is established.
- Effective partnership with an appropriate, well-run host agency/partner organisation which provides access to the target client group.
- Accessible location for clients, preferably co-located with other services they use.
- Accessible location for the firm.
- Support for the clinic amongst the leadership of firms that provide lawyers.
- Promotion of the clinic with the firm.
- Recruitment of volunteers whose skills/interests and level of commitment match the needs of the clinic.
- Training for the lawyers participating in clinic work in both the legal and non-legal issues, and how to deal with clients.
- Effective clinic coordination and volunteer management.
- Adequate supervision of the work pro bono lawyers undertake at clinics.

For more information on supervision and risk management (conflicts, discrete tasks, etc) see section 2.2 and section 2.4 of the *Australian Pro Bono Manual*.

### 20.2 CLINICS: BENEFITS

“Clinic work has authenticity. It is this day-to-day work at the coalface that which is the essence of pro bono. The reality on the ground is that people need help and if firms don't offer this assistance, nobody else will.” (Large law firm pro bono coordinator)

Clinics aim to increase access to justice for people who face particular barriers. They use the resources and skills of pro bono providers to increase the capacity of community organisations to provide legal assistance in a targeted area of need, in a place that is safe and trusted.

“Clients are much more comfortable in an outreach clinic environment which is familiar to them, rather than the law firm environment which can be very daunting for someone not used to it.” (Mid-sized law firm pro bono coordinator)

“Providing clients with a positive interaction with the justice system and lawyers contributes to increasing access to justice as they are more likely to seek assistance and assert their rights in the future.” (Large law firm pro bono coordinator)

As with other models, it is also a benefit to pro bono providers to be involved in clinic work where the existence of unmet legal need and demand for services in the particular area or for the particular group has already been identified by a community partner organisation.

The clinic model can also lead to law reform and identification of other related unmet legal needs as lawyers participating in clinic work are dealing with a large volume of clients from the same
disadvantaged group. For example, the Partner for Pro Bono Services and Corporate Responsibility at Gilbert + Tobin (G+T), Michelle Hannon, explained that G+T lawyers involved in the Homeless Persons’ Legal Service clinic at Matthew Talbot Hostel take on a lot of casework and have developed expertise in the area of fines and tenancy issues, leading to law reform work in these areas.

“A program to address infringement issues arose from seeing many homeless people at the clinic with the same problem, and is much more effective than having lawyers dealing with infringements on a case-by-case basis.” (Mid-sized law firm pro bono coordinator)

A specific example provided by a large law firm pro bono coordinator involved assistance for clients who were being repeatedly fined for parking near their rooming houses because they were afraid to walk and could not obtain parking permits. “PILCH has the resources to gather infringements data and lobby for changes to the infringement system. This led to PILCH Victoria submitting a letter to the Minister of Planning asking that the rooming house residents be allowed to obtain parking permits.”

Several pro bono coordinators expressed the view that clinics can increase the opportunities for law firm lawyers to do pro bono work because clinic work does not depend on the lawyer being in a practice area that lends itself to pro bono work.

“With traditional referral work, lawyers are more likely to have opportunities to do pro bono work if their supervising partner is interested in pro bono work and delegating tasks related to pro bono work. The nature of some practice areas does not lead to many opportunities for pro bono work, eg mergers and acquisitions.” (Large law firm pro bono coordinator)

Clinics can be an attractive option for firms because it involves a less time-intensive commitment than other models, like secondments, and the responsibility for supervising the work of the firm’s lawyers participating in the clinics is often shifted from the firm to the supervisor of the clinic at the community organisation or CLC.

“The responsibility for the work of the lawyers involved in the clinic is shifted from the firm to the supervisor of the clinic (eg a PILCH lawyer), which means that more junior lawyers can be involved and they can see more clients.” (Mid-sized law firm pro bono coordinator)

Increasing the opportunities for lawyers, especially junior lawyers, to do pro bono work can help to develop and encourage a culture of pro bono within the firm.

“It is a great way to engage young lawyers in doing pro bono work. Lawyers find it satisfying to do hands on legal work.” (Large law firm pro bono coordinator)

“Clinic work can provide a motivational boost for the lawyers involved who have direct client contact and can see how their work yields positive outcomes for the clients they see at the clinic.” (Mid-sized law firm pro bono coordinator)

Building the skills of lawyers through clinic work can benefit the individual lawyer, their firm, and can also be used to address similar unmet legal needs in the future as clinics build a pool of lawyers with expertise in a particular area of need. For example, the Partner and Pro Bono Manager at Corrs Chambers Westgarth, Heidi Roberts, explained that being involved in a clinic with Victorian Association for the Care and Resettlement of Offenders (VACRO) has developed a pool of lawyers within Corrs who have specialist knowledge about issues relating to prisoners and has allowed Corrs to assist in related areas, like refusal of prison visitors.
“We have participated in a joint seniors rights clinic for a number of years. This has resulted in the building of knowledge in the area of elder abuse law. We now have a larger group of lawyers who attend training regularly on areas of importance to this practice and are beginning to engage in policy and systemic change through PILCH and other related working groups. The capacity building has greatly enhanced our ability to meet the needs of the clinic clients. There is a greater understanding within the firm of the issues being faced by the clients and a readiness to take on related referred matters.” (Mid-sized law firm pro bono coordinator)

In addition to the skills and knowledge that lawyers acquire from doing clinic work in an area of law they may not usually practise in, they also develop important transferable legal skills (eg in communication and representation) and take the knowledge and skills they have gained back to their firms.

“Clinic work develops the skills of the lawyers involved, especially junior lawyers, who become more mature and confident. They have to learn to listen to clients and identify issues in a manner that they do not often have the opportunity to do in a large firm environment. The skill of explaining the legal concepts to clients who do not have any understanding of the law, is transferable to the commercial law firm environment (where they may have to explain legal concepts in commercial rather than legal language).” (Mid-sized law firm pro bono coordinator)

“We have participated in a drop-in clinic. Younger lawyers greatly enjoy attending as it challenges them to understand and identify legal problems, increases their skills and enables them to engage with the community using their legal skills. Initially lawyers were sometimes challenged by the type of legal knowledge required but we are assisting the service with legal education and training programs and have encouraged the formalisation of volunteer agreements. This is now going from strength to strength.” (Mid-sized law firm pro bono coordinator)

Clinic work also builds the networks of the host organisation and the lawyers involved in the clinic which similarly benefits everyone involved. For example, the Partner, Pro Bono Community Support at Lander & Rogers, Jo Renkin, explained that her firm’s involvement in clinic work has developed relationships within and between firms, with the lawyers involved in the clinics working together and also meeting outside of the clinic to discuss the work of the clinic. “Landers lawyers catch up for coffee with lawyers from Hall & Wilcox (firm located in the same building as Landers) who are also working at the Seniors Rights Legal Clinic to discuss issues arising from the work of the clinic.”

“Clinic work brings together lawyers from different practice groups who would not otherwise have reason to interact with each other, leading to positive outcomes for team building and cross-fertilisation of ideas.” (Mid-sized law firm pro bono coordinator)

“Having a number of different firms involved in a clinic helps can also minimise conflict of interest problems as there are other firms’ staff immediately available when a firm has a conflict.” (Mid-sized law firm pro bono coordinator)

Lawyers involved in clinics also draw on and learn from the experience of those involved in the clinic, both within and outside the firm. The ability to draw on each partner’s networks can have a very positive impact, widening the pool of lawyers that are available to call on for help with future legal problems.

“CLCs and large city firms each have different sets of networks. CLCs come with knowledge of the local service providers and of each other’s service eg support
services for clients and specialised legal services. Large city firms have networks of barristers and corporate clients who could provide assistance to particular clients.” (Community legal centre principal solicitor)

The relationships that are developed between pro bono providers and host organisations by doing clinic work together can also lead to a greater level of commitment to assisting the host organisation and additional resources being provided. For example, the Pro Bono Senior Associate at Herbert Smith Freehills (HSF), Lara Garfinkel, explained that HSF has a long-standing relationship with the North Melbourne Legal Service (NMLS) where they: provide NMLS with pro bono legal advice on various projects; send volunteer solicitors to a fortnightly NMLS drop-in clinic; and provide in-kind support to NMLS, including hosting events, publications and providing funding towards a project between NMLS and the Royal Women’s Hospital to reduce violence against women.

“Relationships are developed between the firms and the welfare agencies (as well as between our CLC and the firms) which increases the firms’ commitment to the clinic. Firms share in fundraising activities for the welfare agency, allocate non-legal staff to assist in other ways.” (Community legal centre coordinator)

20.3 CLINICS: CHALLENGES/LIMITATIONS

It can be difficult to secure and maintain the funding needed to set up and continue running clinics. While clinics may rely heavily on pro bono assistance, significant resources from the partner and host organisation are still required to manage, coordinate and supervise the work.

“One large law firm provides volunteers to a specialist employment law clinic (5-6 volunteers on a rotating basis once a month) with supervisors who are volunteers (not paid by firms) in a completely unfunded service. Flood relief was able to do more because of one-off funding.” (Community legal centre coordinator)

Clinics rely on having a community partner to manage the clinic and provide access to clients from the target group and are therefore vulnerable to changes in the health, effectiveness and capacity of the partner organisation that can result from factors like staff turnover, mismanagement or loss of funding. For example, Michelle Hannon explained that G+T provided two lawyers once a month to a clinic in a partnership which worked very well for around 10 years. However, turnover in the partner organisation meant that there were increasingly less experienced staff involved in the clinic. “Training for the firm’s lawyers became less readily available and less clients were turning up to the clinic as the host organisation had less capacity to consult clients, follow up matters and coordinate the underlying services. The firm found that it became increasingly difficult to attract lawyers to the roster for the clinic and decided that it was not the best use of its resources to staff a clinic where client numbers were dropping.”

“Our community partner suddenly closed its service for a lengthy period and by the time they reopened, we had moved on.” (Large law firm pro bono coordinator)

Many of those consulted spoke of the challenges relating to the recruitment, training and supervision of appropriate volunteers to staff clinics that is required to monitor and maintain the quality of the pro bono legal work. Adequate resources need to be made available for training and supervising pro bono lawyers who may not be familiar with the area of law or the non-legal issues affecting people who use the service.
“While the legal issues are often not complex, the lawyers involved need to be appropriately trained in both the relevant law and issues affecting clients.” (Large law firm pro bono coordinator)

“For a mid-size firm, budget and capacity are more limited than for a larger firm. This means that gathering a group of lawyers to take part in clinics and/or training over a day or days can be challenging.” (Mid-sized law firm pro bono coordinator)

“Training is resource intensive to set up, but is easy to run once it is established.” (Mid-sized law firm pro bono coordinator)

To maintain an appropriate standard of legal work, adequate supervision needs to be in place, both at the clinic and when the matters undertaken at the clinic are also being checked by supervisors at a firm.

Another challenge is managing the different expectations about how work is conducted and the quality of the work which arise due to the different experiences and cultural differences between the host organisation and the pro bono provider.

“Ensuring quality of advice can be a real challenge.” (Mid-sized law firm pro bono coordinator)

“Pro bono solicitors may not be aware of the structure of the CLC or limitations on its service. This can mean that the solicitors may make representations on behalf of the CLC regarding further assistance which is beyond the resources of the CLC. Occasionally, pro bono solicitors may be tempted to advise on areas outside the scope of the CLC’s expertise (or insurance coverage).” (Community legal centre principal solicitor)

“It can be difficult to ensure there is adequate supervision within the firm and some firms have not responded well to feedback that their supervision of clinic lawyers is not adequate. Some firms use junior lawyers for supervision of even more junior clinic lawyers, and this has affected the quality of the work contributed by these firms.” (A pro bono clearing house manager)

“Different approaches of firms and CLCs are reflected in the work of the pro bono lawyers that staff the duty service. It can be tricky to manage the differences and the CLC needs to be careful to communicate about their philosophy eg the time they give to either party is different when there are no billables, safety of the family is paramount.” (Community legal centre principal solicitor)

Some of those consulted expressed concern about the lack of a broader strategic direction for clinics and highlighted the need to prioritise greatest needs, define the scope of clinic work, and ensure that clinic work has a purpose beyond assisting individual clients (see also section on Where pro bono resources should be directed, Chapter 5).

“It can be a challenge to target people with the greatest needs eg some of the people who approach the Seniors Rights Legal Clinic in Melbourne for assistance, can afford to pay for legal services and are sometimes ‘service shopping’.” (Mid-sized law firm pro bono coordinator)

“Budgetary constraints force firms to look at how resources are allocated and ways to control the use of resources eg time limits for each matter. Up to now HPLC has taken priority over everything else. However some individual HPLC files can take up a lot of resources, which leaves less for anything else. We may need to reassess our
priorities. Even PILCH have resource constraints and are looking at real priority areas within HPLC.” (Large law firm pro bono coordinator)

“Doing clinic work can be very time consuming and it is sometimes difficult to see where it leads. People seeking assistance at clinics often have multiple problems so the resolution is not satisfactory for their situation. There needs to be a strategic goal for clinics so that they are doing more than resolving individual matters, for which there is a never-ending source of clients and problems.” (Mid-sized law firm pro bono coordinator)

“Clients can return to clinics many times with similar problems like fines. Lawyers need support with how to scope and end the assistance.” (Mid-sized law firm pro bono coordinator)

The administration and coordination of all the participants in a clinic model can be highly resource intensive. Michelle Hannon, explained that administration can be more challenging for clinics than in a case referral model as many more clients are taken on at one time in a clinic model. For example, G+T will provide advice in 16-20 matters during an outreach session. The firm needs a full list of clients from the agency (who takes the appointments) so that conflict checks can be done before the advice session.

“We have to call clients to confirm appointments as the host organisations often fail to do this, and we have to chase host organisations for the list.” (Mid-sized law firm pro bono coordinator)

20.4 FEATURES OF EFFECTIVE CLINICS

To address the concern that clinic work may not always be targeting greatest needs it is important that the clinic is focused on an area of unmet legal need that has been identified consistently in research.

“The decisions we make about the clinics that we will support are based on established unmet legal need and research on how to address those needs. Our clinics are based on findings of the Law and Justice Foundation’s research on access to justice and the value of outreach clinics.” (Large law firm pro bono coordinator)

Clinics cannot exist without an effective partnership with an appropriate, well-run and trusted community organisation which provides lawyers with access to the target client group, and it is therefore important for pro bono providers to choose the right host agency and maintain a strong, supportive relationship with it.

“A well organised and resourced host agency will promote the clinic, reaching appropriate clients, making clear to clients what the clinic does and does not do and why, and is able to refer non-legal matters that the clinic does not deal with.” (A pro bono clearing house manager)

“There needs to be a peak of enthusiasm to get the clinic organised (after initial set up, clinics are generally well organised).” (Large law firm pro bono coordinator)

“The strength of a host agency can make or break an outreach clinic, and can change in a relatively short space of time. If a key personality leaves an organisation, others may follow, and a less effective organisation is unlikely to attract clients. The investment of time and resources in building an outreach clinic needs to be followed
by an ongoing investment in maintenance of the relationships and health of the host organisation.” (University law school pro bono manager)

Having a clear agreement between partners from the beginning about what each of them is contributing to the clinic can avoid problems arising later. This may include specific details about issues like the number of hours and the period of time, the types of matters that a firm will or will not take on, and who is responsible for rostering and supervision. Some of those consulted suggested that it is helpful to formalise this agreement in a Memorandum of Understanding (MOU) between a firm and CLC hosting a clinic.

Given that the primary aim of clinics is to provide access to justice to people who face particular barriers, it is essential that clinics are established in an accessible location for potential clients, preferably co-located with other services they use. For example, the principal solicitor at Macarthur CLC, Prue Gregory, explained that to make their services accessible to clients, their clinics “piggy-back” with other trusted services: Macquarie Fields outreach clinic is located in the IT Centre, Claymore outreach clinic is located in the Community Centre, and the Minto outreach clinic is located in a service “Access Point.”

“The ideal is when a service can be co-located/integrated with other client services eg the multi-disciplinary clinic at Monash where law, social work and commerce students assist clients. However, this is an ideal that is difficult to implement, especially where the unmet legal need is complex.” (Mid-sized law firm pro bono coordinator)

In addition to being accessible for clients, realistically it is difficult for clinics to operate if they are not also in an accessible location for the pro bono lawyers staffing the clinics. (See also section on Distance from big cities at 6.2.)

“The Homeless Persons Legal Service works really well ... the lawyers always have clients and it's not far for them to go from the firm to the clinic.” (Mid-sized law firm pro bono coordinator)

“Running outreach in an urban location is much easier than in RRR areas given lawyers do not have to travel far to the clinic and have support/resources/supervision close by.” (Large law firm pro bono coordinator)

Support for the clinic within the firms providing staff, particularly amongst the firm's leadership, has an impact on every aspect of the work of the clinic. One large law firm pro bono coordinator explained that they are actively promoting the work of clinics within the firm, for example, with a one-page explanation of lawyers' participation in HPLC being provided over the past six months to supervising partners of lawyers wanting to participate. “While their coordinators for the HPLC have not received any direct feedback about the document, they said that they do feel it is useful, as it keeps the lines of communication open between partners and lawyers in relation to their involvement in the HPLC and ensures that partners are informed about how lawyers are spending their time and why.”

“Our work with the HPLC is really helped by the fact that there are partners in each of the state offices of our firm who are genuinely committed to homelessness issues.” (Large law firm pro bono coordinator)

“Many of the lawyers working in clinics are very dedicated and would like to do more, but are hampered by the lack of pro bono culture within their firm.” (A pro bono clearing house manager)
“It is essential that the firms which contribute lawyers to the clinics are committed to the work of the clinics.” (Community legal centre coordinator)

There also needs to be a match between the skills and interests of the individual lawyers who staff clinics and the needs of the clinic. On the whole, the pro bono lawyers who attended clinics were described by the host agencies consulted as highly respectful, professional and committed.

“We appreciate firms that understand that they can’t just send anyone to work with vulnerable clients and do not presume that any good lawyer can just jump in to do clinic work. They need other skills and adequate training and orientation to be effective.” (Community legal centre solicitor)

Some CLCs shared the proactive steps they have taken to avoid having inappropriate lawyers recruited to work at their clinics. For example, the Principal Lawyer at Eastern Community Legal Centre (ECLC), Belinda Lo, explained that firms/volunteers are not attractive to CLCs unless they understand where clients are coming from. “ECLC communicates with firms and pro bono solicitors before partnering with them about what it will be like to volunteer and what the philosophy of the CLC is. ECLC has prepared a brochure that tells firms what the CLC does and what volunteering involves.”

Once appropriate lawyers have been recruited to staff clinics, they need to be provided with training in both the legal and non-legal issues that are likely to arise during the course of their pro bono work at the clinic, and for many lawyers who may not normally deal with people who are profoundly disadvantaged, how to deal with the clinic’s clients. Experience and expertise in areas of law practised by corporate firms does not necessarily qualify or prepare a lawyer for community practice.95 The way that the host organisation works may be quite different from what the pro bono lawyer is used to at their firm, due to the different philosophy of the organisation. The training may also include very practical information; for example, the coordinator of the Housing Legal Clinics at the Welfare Rights Centre in South Australia, Bill Manallack, explains that lawyers are told to sit between the client and the door so if there are concerns with a difficult client they can get out of the room quickly. The community organisations and CLCs that host clinics need to be well resourced to provide this training.96

“It is essential to provide coordinated and regular training for lawyers working at the clinic, given they may be working outside their area of expertise (both initial and refresher training where the lawyers attend clinics infrequently eg once a month).” (Mid-sized law firm pro bono coordinator)

“Training needs to come from the community organisation or other practitioners/barristers in the legal context. Corporate lawyers also need training in how to deal with the clients they might meet; including how the social welfare system works and what support services exist for referral.” (Mid-sized law firm pro bono coordinator)


96 The 106 CLCs that responded to the National Association of Community Legal Centres survey in June 2012 reported investing 8,674 hours per year providing general induction and training to pro bono workers and volunteers and 2,276 hours per year providing additional training for direct service delivery (eg for lawyers and paralegals). See National Association of Community Legal Centres, Working Collaboratively: Community Legal Centres and Pro Bono Partnerships (2012) p 4, at www.naclc.org.au/resources/NACLC_PROBONO_web.pdf.
“Our CLC provides volunteer solicitors with a proper induction and continuous communication to ensure that they understand and reflect the philosophy and approach of the CLC. While CLCs are loathe to ruin a relationship with a firm that is providing staff resources, neither the firm nor the CLC is happy if problems are not effectively communicated.” (Community legal centre principal solicitor)

Providing support to pro bono solicitors who participate in clinics may also help to support solicitors who may not be aware of the structure of the CLC or the limitations on its service.

The Employment Law Centre of Western Australia Inc (ELC) has successfully used law students to provide the pro bono solicitors working in its specialist clinic with support during client appointments, which has been particularly helpful where pro bono solicitors are new to the work of the CLC. The Principal Solicitor at ELC, Toni Emmanuel explained that: “All pro bono solicitors who volunteer with ELC’s specialist clinic (our Evening Legal Service (ELS)) are supported by a law student volunteer who can manage the expectation of further assistance while in the appointment as well as taking a comprehensive file note during the appointment. By having this volunteer support, solicitors can see more clients during ELS because the administrative work is performed by the volunteer law student. Volunteer law student support has been a very effective feature of our ELS.”

A well run clinic will have effective processes for coordinating the work and managing the pro bono lawyers staffing the clinic. Many of those consulted said that having a team leader/contact point at either or both the host agency and the pro bono provider end was very important. For example, Bill Manallack said that it is essential to provide coordination and management support to the law firms and welfare agencies involved in clinics. He prioritises attendance at clinics and personally attends each legal clinic taking a “hands on” approach to managing (linking clients with welfare services, and managing clients’ links to lawyers and other services).

“It is important to have someone in charge of the running of the clinic (not a legal supervisor, but an organisational manager) who is a point of contact for the firms and the community organisations and works out any problems. This can be either someone from a firm or from the host organisation, but needs to have a holistic view of the work of the clinic.” (Mid-sized law firm pro bono coordinator)

“It can be a very onerous task for the host organisation to find lawyers to fill every shift. Partnering with a firm moves the administrative burden of rostering to the firm.” (University pro bono manager)

“It is helpful when each law firm has a team leader who organises rostering, and allocation of appropriate lawyers for a matter requiring particular expertise.” (Community legal centre coordinator)

“Having an effective broker to organise the clinic’s participants is essential (PILCH do a good job of brokering, bringing firms together to work at clinics).” (Large law firm pro bono coordinator)

“There needs to be flexibility in the management of the roster. If a lawyer cannot attend the clinic when rostered due to other work commitments the coordinator will try to find someone to replace them on that day.” (Large law firm pro bono coordinator)

There are also practical considerations that need to be taken into account when involving pro bono lawyers in a clinic, including health and safety assessments/procedures for staff. For example, the Partner and Pro Bono Manager at Corrs Chambers Westgarth, Heidi Roberts explained that Corrs lawyers are trained to block caller ID when calling clients from the firm, and use the letterhead of
the host organisation for correspondence. “Before they do any work at the Victorian Association for the Care and Resettlement of Offenders (VACRO), the staff at the host agency manages the appointments so if a client is drunk or agitated then they will call the lawyer and cancel the appointment. They have also installed an emergency alarm button.”

Given that clinics may be conducted offsite and documents may move between several locations (eg the host organisation's premises, an outreach location, or the offices of a law firm) an essential part of organising clinics is having **clear file management procedures**. For example, the principal solicitor at Macarthur CLC explained that one of their partner firms photocopies case details of outreach clients, undertakes legal research in-house, and emails the advice back to Macarthur. Given the limited resources of clinics, the administrative systems for file keeping, document management and appointments need to be as efficient and low-cost as possible.

> “Strict file management procedures are needed for example, to ensure that if work is brought back to the firm that the clinic file is properly handed over.” (Mid-sized law firm pro bono coordinator)

Depending on how the clinic is organised and the agreement between the partners, it may be the host organisation that bears all the risk by supervising the lawyers and having the lawyers work under their name, or the pro bono provider may also take on supervisory role. Either way, maintaining the quality of the pro bono work undertaken in clinics requires a significant amount of **adequate supervision**, especially since it is often junior staff working at clinics. The Principal Solicitor at North Melbourne Legal Service (NMLS), Emily Clark, explained that NMLS provides written feedback to its clinic staff, especially if file notes are incomplete or advice is inaccurate or incomplete. “It is time-consuming but ultimately worth the effort in terms of the quality of advice and training of the lawyers.”

Some of those consulted expressed the view that it is preferable for firms to involve senior lawyers in the supervision of junior lawyers working in clinics, while one large firm made the point that some less senior lawyers are capable of providing effective supervision.

> “Mallesons have involved two Special Counsel who have relevant expertise in infringements. PILCH recommends that there is a debrief meeting on the day of the clinic or the next day involving the senior lawyer. Corrs, Minter Ellison and Mallesons all do this well.” (A pro bono clearing house manager)

> “HPLC clinic is on Thursday and the lawyers involved debrief with their supervising partner on Friday before they autonomously work on the matter.” (Mid-sized law firm pro bono coordinator)

> “Commitment is as much a factor as seniority when ensuring adequate supervision and quality of work. We have senior associates and other senior lawyers supervising the work of junior lawyers at HPLC, but I’ve also has seen 2nd/3rd year lawyers who can provide effective supervision.” (Large law firm pro bono coordinator)

97 The 106 CLCs that responded to the National Association of Community Legal Centres Survey in June 2012 reported investing 1,071 hours per year supervising pro bono workers and volunteers, including checking all their legal advices and providing feedback or supplementary advice where necessary. See National Association of Community Legal Centres, Working Collaboratively: Community Legal Centres and Pro Bono Partnerships (2012) p 4, at www.naclc.org.au/resources/NACLC_PROBONO_web.pdf.
Some of the large law firms consulted expressed a preference for clinic work to be limited to a small pool of lawyers and contained to a specific number of hours to make it easy for them to manage the supervision and quality control.

“It is best if the work required can be contained to a specific number of hours, conducted on a roster.” (Large law firm pro bono coordinator)

“We try to effectively manage clinic volunteers so that they are not spending unnecessary time over-servicing clients.” (Large law firm pro bono coordinator)

“Having a small pool of lawyers, so that they can maintain familiarity with the clients and the host agency, works well for us.” (Large law firm pro bono coordinator)

## 20.5 CASE STUDY

### 20.5.1 Case study: Self Representation Service (QPILCH)

The **Self Representation Service (SRS)** run by the Queensland Public Interest Law Clearing House (QPILCH) provides free legal advice and assistance to self-represented parties in the Supreme and District Courts of Queensland; the Queensland Court of Appeal; and the Queensland Civil and Administrative Tribunal. A 2011-2012 pilot in the Brisbane district of the Federal Court and Federal Magistrates Court was not re-funded by the Commonwealth Government. The Service is the only one of its kind in Australia, developed to meet a recognised need in all jurisdictions in which it operates.

The Service aims to help self-represented parties to understand the law and the rights and perspective of the other party, observe court and tribunal rules and procedures, be aware of potential orders and the effect of not complying with orders, and present their case in the best possible manner.  

**Benefits**

- **Discrete nature of tasks.** The work is contained to three hours of appointments and work is not taken back to the firm. Preparation is as little as a conflict check and reading the client and case summary for each scheduled appointment.

- **The service provides access to courts, which is the ultimate form of access to justice.** Providing a service that assists unrepresented parties to access the system, especially when considering that one third are defendants who are there against their will, is improving access to justice.

- **SRS is better than having a duty lawyer service because it provides assistance at every stage of the process.** Twenty percent of the service’s clients are diverted before initiating proceedings, with more being diverted later in the proceedings.

- **The service directs people away from the court system when their case has no merit,** avoiding the adverse costs orders they would receive if they pursued a case with no merit.

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Challenges

- Initially firms expressed **concern about whether the Service targets greatest needs**. Some clients have means to pay but these clients will only be provided with one appointment and no ongoing assistance. The Director of QPILCH Tony Woodyatt’s view is that it is still worthwhile to provide this service especially where cases with no merit can be directed out of the court system.

- Initially firms were **concerned about whether their lawyers would have the expertise** to resolve the legal issues for example in a defamation case. However Tony Woodyatt explained that the service is “often more about translation of the client's issue to legal language and vice versa into plain English that the client can understand rather than complex legal issues. Knowledge of the relevant rules is sufficient.”

Features that make it effective

- **QPILCH provides volunteer lawyers with case summaries** for the three appointments before the session so the lawyer can do research if they need to.

- **The litigation skills of the volunteer lawyers are a match for the need.** Some firms sometimes contribute senior staff including partners. Tony Woodyatt explains that “a tough firm experienced lawyer can be a good match for a difficult client who needs to hear the reality of their situation and prospects (different to the kind of lawyer that would be a match for a vulnerable Homeless Persons' Legal Service client).”

For more case studies on clinics see the section on Outreach (Chapter 21).
21 OUTREACH

Outreach may take many forms, including clinics, workshops, community legal education, and secondments to remote locations, and increasingly may involve the use of technology to deliver legal services to remote locations (see also section on Technology-based services, Chapter 26). Some of those consulted considered outreach to refer only to the delivery of services that are focused on a regional, rural or remote area, while others considered outreach to include a service provided in any location (not necessarily RRR) that is away from the legal service provider’s office and aimed at making the service more accessible to the target client group. For the purposes of this resource, outreach is used in the latter, broader sense.

Outreach clinics present challenges beyond clinics that are conducted onsite (eg at a CLC or clearing house), especially if the outreach is in a RRR area rather than in or near a capital city, given that additional time and resources are needed to travel long distances and the fact that lawyers are far away from their usual support networks.

21.1 OUTREACH: AT A GLANCE

**Benefits**

- Outreach services reach clients who might otherwise have very limited or no access to legal assistance.
- Outreach can lead to law reform and identification of other/related unmet legal needs.
- Pro bono resources increase the capacity of the host organisation with additional resources and a transfer of skills.

**Challenges**

- Ensuring sufficient involvement of stakeholders (host agency and target client group) to ensure the outreach service will actually address the need.
- Irregularity of outreach services, and the impact of the irregularity on building relationships with the community and the provision of advice.
- Finding lawyers/pro bono providers willing to travel long distances to staff outreach services.
- Coordination of any regional partners.

**Features of effective outreach**

- Relationship-building between local community organisations and pro bono providers to encourage the provision of pro bono assistance, even in situations where it is not convenient.
- Pre-planning and needs assessment done in consultation with local stakeholders.
- Effective partnership with an appropriate, well-run host agency/partner organisation which
provides access to the target client group and knowledge about their needs.

- Design of a culturally appropriate service.
- Accessible location for clients, preferably co-located with other services they use.
- Containing the area of law so that lawyers are able to familiarise themselves with it.
- Preparation of good precedents.
- Adequate supervision of the work pro bono lawyers undertake at clinics.
- Organised and efficient file management and other administrative systems.

For features of effective outreach using telephone advice, see also section on Telephone advice at 26.6.

For more information on supervision and risk management (conflicts, discrete tasks, etc) see section 2.2 and section 2.4 of the Australian Pro Bono Manual.

21.2 OUTREACH: BENEFITS

As outreach services are located in a place that is accessible, familiar and trusted, they reach clients who might otherwise have very limited or no access to legal assistance, who have not sought assistance before from mainstream legal services providers, or who would not otherwise have received legal assistance.

The broader benefits for the host organisation and the community are similar to those discussed in the section on Clinics (Chapter 20), namely the positive impact on the target group through advocacy and reform and the positive impact on the host agency through increase in resources and transfer of skills.

The fact that lawyers who provide legal assistance as part of an outreach model may have to travel a long distance to see clients for a short period of time, can often force them to work very efficiently, especially where the service or project is dealing with a contained area of law. For example, the Partner and National Pro Bono Manager at Ashurst, Anne Cregan, explained that when legal assistance is provided in remote locations as part of their Wills Project, three lawyers can see 45 clients in one session and most of these matters can be resolved or completed over two days. The firm partners with community organisations, community legal centres and Aboriginal Legal Services to run workshops drafting wills, powers of attorney and appointments of enduring guardian for parents of people with cognitive impairment and Aboriginal people, particularly people living in regional and remote communities.

Pro bono lawyers are accompanied by a lawyer and/or a worker from the organisation which is familiar with the community and their needs. A community legal education session is delivered in the morning and the lawyers see clients in the afternoon. The lawyers draft documents overnight and take them back to be signed the next day. It minimises the potential problem of having difficulty finding clients and completing work. The results are easy to record with a tangible “product” being produced as an outcome for clients; for example, a will is drafted during the clinic session.
It can be challenging for pro bono providers to identify the greatest unmet legal needs and understand the best way to address those needs, especially when the issues facing clients are outside their personal experience. Pro bono providers rely on community organisations who are directly involved on a day-to-day basis with the target client group and the issues they face, and need to involve relevant stakeholders (host agency, client target group) to ensure the outreach service actually addresses the barriers to accessibility. For example, the evaluation of the Family Law Affidavit project (a service developed with the aim of addressing a perceived need for affidavit drafting in family law matters for Aboriginal women in the Walgett region of NSW) found that one of the major factors contributing to the low uptake of the service was insufficient involvement of Aboriginal workers and elders in designing and planning the service.

The inconvenience of having to travel long distances to provide outreach services may mean that the service is provided at irregular intervals and for short periods of time. This is not conducive to building relationships of trust with the community and clients, and may force clients and lawyers to make decisions more hastily than is ideal.

“It takes time to build trust and rapport with clients, so having an ‘outsider’ rushing in and rushing off again is not ideal, but it is difficult for a firm to commit resources to giving any more time to the clinic (eg there was a ‘hit and run’ feeling about the work done for the Aboriginal Credit and Debt Clinic (ACDC) in regional areas with four or five other firms involved)” (Mid-sized law firm pro bono coordinator)

“Having short term outreach workshops forces clients to make decisions quickly, which can be problematic where the issue is complex, eg the Wills project - the decision on who the beneficiaries are can be made quickly, but trustee issues may need longer. It may also be difficult to locate/contact a client once they have left the clinic.” (Large law firm pro bono coordinator)

Most of those consulted identified the primary challenge of outreach as being the difficulty of finding pro bono providers and individual lawyers who are willing to devote resources to outreach, especially where long-distance travel is involved (see also section on Distance from big cities at 6.2). The impact of travel on the lawyers involved goes beyond the time it takes to travel, as they are often working in stressful circumstances a long distance from their usual support networks. The Principal Solicitor at Macarthur CLC, Prue Gregory, explained that even a drive of 40 minutes (from Sydney to Macquarie Fields) can represent a significant enough inconvenience to deter lawyers from participating in outreach.

“It is difficult to find resources for regional area work (VCAT tenancy lists, credit and debt clinic - usually only Clayton Utz and Allens do that work).” (Large law firm pro bono coordinator)

“Lawyers doing outreach work at a hostel in Sydney deal with a similar disadvantaged client group but feel less drained as they don’t have to be out of the

99 The Family Law Affidavit Project was developed through a partnership between Women’s Legal Service NSW (WLS) and the Law Society of NSW with a grant from the Law and Justice Foundation of NSW (LJF). Volunteer solicitors based in Sydney were trained to draft affidavits for family law matters, with instructions taken over the telephone. See Law and Justice Foundation, Family Law Affidavit Project Evaluation Report (2009), at www.lawfoundation.net.au/jf/app/Id=96A5E275C9519729CA257544000FFA9C.
office as much as lawyers who do outreach clinics on the Central Coast.” (Mid-sized law firm pro bono coordinator)

“Running outreach in an urban location is much easier than in RRR areas given lawyers do not have to travel far to the clinic and have support/resources/supervision close by.” (Large law firm pro bono coordinator)

“The reality is that CLCs that are well positioned (that is, near the city, and better resourced with personnel and the capacity to promote themselves well) are often better placed to develop relationships with firms and are more likely to be successful in requesting resources from firms, but this means that CLCs with the greatest needs are missing out.” (A pro bono clearing house manager)

Given that the distances between those involved in the delivery of outreach legal assistance services can be great, gaining momentum for the coordination of these regional partners can be difficult. For example, the Cooperative Legal Service Delivery Program (CLSD) is a regionally based approach to legal service delivery in NSW, coordinated by Legal Aid NSW, which aims to improve outcomes for economically and socially disadvantaged people by building cooperative and strategic networks of key services and community organisations. CLSD is based on the theory that better coordination and cooperation in the planning and delivery of legal services will improve access to justice for disadvantaged people. ¹⁰⁰

While one of the aims of the CLSD Program is to enhance access to pro bono services, the involvement of mid to large sized law firms in CLSD has been limited. ¹⁰¹ The CLSD Program Manager at Legal Aid NSW, Jenny Lovric, explained that “In recent years, CLSD partners in some regions are working more closely with smaller regionally based firms, and Regional Law Societies in recognition of the benefit of building relationships with local practitioners who are in a better position to understand the local needs and conditions than larger firms.”

In addition to taking referrals of matters from participating CLSD partners, pro bono activity that has been undertaken through CLSD partnerships has included:

- workshops and clinics for parents and carers of people with impaired capacity
- wills, powers of attorney and appointment of enduring guardianship clinics in remote Aboriginal communities
- participation in regular joint-service legal advice clinics in community agencies in rural NSW
- participation in joint service fines & debt outreach projects in regional and remote NSW.

¹⁰⁰ The 2012 evaluation of the CLSD program found that “networking, information sharing and referral pathways between services have increased as a result of CLSD activity in all regions, indicating an improvement in the ability and capacity of participating agencies to assist disadvantaged clients in their legal needs.” The findings in relation to the extent to which service delivery planning and delivery within regional partnerships was being approached in a more cooperative and collaborative manner as a result of CLSD were more mixed. For more information see Legal Aid New South Wales, Evaluation of the Cooperative Legal Services Delivery Program (2012) at www.legalaid.nsw.gov.au/__data/assets/pdf_file/0020/15176/Evaluation-CLSD-Final-Report-August-2012.pdf.

¹⁰¹ Of the 50 regional partners interviewed in the course of the 2013 Evaluation of the Cooperative Legal Services Delivery Program, seven partners cited access to pro bono services had been of benefit to them, see Legal Aid New South Wales, Evaluation of the Cooperative Legal Services Delivery Program (2012), p25 at www.legalaid.nsw.gov.au/__data/assets/pdf_file/0020/15176/Evaluation-CLSD-Final-Report-August-2012.pdf.
“Regional partners need to drive and own the CLSD project, as a way of delivering increased legal services through collaboration...” (Large firm pro bono coordinator)

21.4 FEATURES OF EFFECTIVE OUTREACH

Given the difficulty of obtaining pro bono resources for outreach, it is essential to form relationships that will be strong enough to overcome the barriers of distance and encourage the provision of assistance in situations where it may not be so convenient. For example, the Coordinator at Shoalcoast CLC, Kerry Wright, said that in her experience, obtaining pro bono assistance in regional areas relies on being able to form and rely on personal relationships between lawyers. “Shoalcoast is a CLSD partner agency with a contract for Shoalhaven and South Coast. Initially we were partnered with PILCH but our experience from other CLSD regions is that it is better to be partnered with a law firm’s pro bono coordinator directly, for example, Ashurst which have a strong commitment to assisting access to justice in RRR areas.”

Careful pre-planning and needs assessment is needed to ensure that the service will actually address the need. Consulting with relevant stakeholders such as local community organisations, legal aid and CLCs will assist in making decisions about finding an accessible location for the service and designing culturally appropriate services. A partnership with a local community organisation is essential to assist in coordinating clients and provide a safe and trusted place where people in need may be able to access legal services together with other services that are important and relevant to the client (like medical or counselling services).

“Having a local partner who understands and can provide information about the needs of the community is essential for outreach in RRR areas, eg junior lawyers from our firm accompany legal aid lawyers in WA on a one week circuit in WA.” (Large law firm pro bono coordinator)

“Outreach only works where there is a partner organisation that has a good relationship with the community which gives them access to clients and an understanding of their needs. (Our firm has a fairly good idea of the reputation of the organisations they consider partnering with from working in the sector).” (Large law firm pro bono coordinator)

Outreach that delivers quality services to address people's needs will gain a strong reputation in the community and attract clients from the target group. The Partner and National Pro Bono Manager at Ashurst, Anne Cregan, explained that clients have learned of the existence of their Wills Clinic and how it works through word of mouth, and plan to use the clinic (even if it is not due to return to the remote area for another 12 months).

Communication and coordination between partners is also made more difficult by distance, so it is important to make arrangements for regular catch-ups between partners to ensure that everyone involved is aware of what is going on.

“The person running the outreach service might spend a lot of time in outreach locations and therefore there needs to be particular effort made to maintain communication between that person, and the CLC and firms involved in the service.” (Community legal centre principal solicitor)

Given that close supervision of pro bono work might be more difficult when it is being done in a temporary outreach location, it is important to ensure that senior staff of the host organisation and pro bono provider allocate sufficient time to effectively supervise the work of the outreach service,
and also to maintain the relationships with the partner organisation, volunteers and firms involved. For example, the principal solicitor at Eastern Community Legal Centre, Belinda Lo, said that she makes time to review files straight after every outreach session.

One large law firm pro bono coordinator suggested that containing the area of law that lawyers can become familiar with and the preparation of good precedents can be particularly helpful for lawyers working in outreach locations because they may be far away from their usual administrative, research, supervisory and other support mechanisms.

“The Family Law Affidavit Project\textsuperscript{102} was problematic for many reasons, but one reason was that the lawyers were working in an area of law they were unfamiliar with. Even if they were meant to be doing a discrete task, it was not possible for them to do it without understanding the legal context. Family law is particularly difficult because the relationships which are at the core of the legal issues are changing and therefore the lawyers don't have a fixed set of facts to work with like they do in other matters.” (Large law firm pro bono coordinator)

As discussed earlier in the section on Clinics (Chapter 20), having well-organised file management and other administrative systems is particularly important given that information/documents may move between several locations (for example, the host organisation's premises, an outreach location, or the offices of a law firm). The pro bono partner at Clayton Utz, David Hillard, explained that one way that the firm assisted in making administration more efficient was by linking their local partner with the firm's word processing system. “The firm provided access to its word processing system to a lawyer in the Kimberley who was able to quickly complete 120 applications to the Redress scheme (for people who were abused or neglected as children in state care) by dropping recordings made on a digital recording device into the system.”

See also section on Telephone advice for features of effective outreach using telephone advice (26.6) and the case study in the section on Case referral: Medical Legal Partnerships in a Rural Context (Bendigo Health Outreach at 19.5.3).

21.5 CASE STUDIES

21.5.1 Case study: Claymore Outreach Clinic (Macarthur Legal Centre and Minter Ellison)

The aim of the partnership between Macarthur Legal Centre and Minter Ellison is to improve the access to justice of socially and economically disadvantaged people living in south west Sydney.

The Principal Solicitor of the Macarthur Legal Centre, Prue Gregory, was familiar with the unmet legal needs in south west Sydney given her previous involvement in St John’s Legal Counselling and Referral Service (a service funded by St John’s Anglican Church). In October 2003, she initiated a pilot project in partnership with Minter Ellison to provide legal advice and referral in Claymore and Macquarie Fields, which are suburbs in social housing estates in south west Sydney. Solicitors from

\textsuperscript{102} The Family Law Affidavit Project was developed through a partnership between Women’s Legal Service NSW (WLS) and the Law Society of NSW with a grant from the Law and Justice Foundation of NSW (LJF). Volunteer solicitors based in Sydney were trained to draft affidavits for family law matters, with instructions taken over the telephone. See Law and Justice Foundation, \textit{Family Law Affidavit Project Evaluation Report} (2009), at www.lawfoundation.net.au/jif/app/&id=96A5E275C9519729CA257544000FFA9C.
Minter Ellison were rostered to attend community centres in both suburbs on a weekly basis, and provide legal advice and referrals. Over time, Minter Ellison focused its efforts on the Claymore site, but is now centred on Macquarie Fields. The partnership was transferred from Prue (as an individual solicitor), to Macarthur Legal Centre when she became Principal Solicitor at the Centre in January 2009.

**How it works**

Solicitors from Minter Ellison attend the clinic on a weekly basis and perform additional work on files between sessions. In some circumstances Minter Ellison accepts referrals of more substantive matters. For example, Minter Ellison has taken on a pro bono matter involving several divisions of the Supreme Court (probate, equity and common law) to save a house for a brother and sister in their fifties who are both on the disability support pension. Minter Ellison contributed the equivalent of $200,000 in costs and counsel.

Minter Ellison takes on matters where clients have no means to pay for legal representation, even though they may fall outside the legal aid guidelines/means test.

**Benefits**

- **The solicitors become familiar with the client base and with the issues** peculiar to that community (eg legal issues arising from the demolition of a housing estate and the affected residents being moved out). While it is often one-off advice, there are also instances where the client is seen two or three times to sort out the matter.

- **Efficiency** - up to six clients are booked in over a two-hour session.

- **Builds the capacity of the CLC.** Having the solicitor from Minter Ellison at the clinic eases the load of the CLC solicitor and enables them to do other work on site.

- **Personal growth of the lawyers involved.** Prue Gregory explains that “the primary benefit for the lawyers, before we even discuss their legal skills, is it makes them better people. They learn humility, empathy and that the best victories are not measured in millions. The best evidence of the value to the lawyers is that once they join the roster, they stay. It is not a revolving door.”

- **Lawyers develop their legal skills.** “They need to listen carefully and not presume to know what the problem is; to communicate clearly in language that is easy to understand; to isolate the legal problem from the social/economic problem, and to think outside the square to find a solution to what appears to be an intractable problem.”

- **Using the strengths of both partners in a collaborative approach.** For example, in the case involving the disability support pension recipients losing their house, the CLC took instructions from the clients and emailed them to Minter Ellison, participated in telephone conferences because one of the clients was too ill to travel to Sydney, took photographs of the property and obtained evidence to forward to Minter Ellison, and assisted clients with the signing of documents. Minter Ellison attended the mentions, negotiated with the other side and directed the CLC solicitor as to what needed to be done.

- **Ability to draw on each partner’s networks.** CLCs and large city firms each have different sets of networks. CLCs come with knowledge of the local service providers and of each other’s service, including support services for clients and specialised legal services. Large city firms have networks of barristers and corporate clients who can provide assistance to particular clients.
Challenges

- **Fear of the unknown.** Prue Gregory explains that “if, as lawyers, we are serious about promoting access to justice we have an obligation to work together regardless of whether we are public or private, big or small, radical or conservative in our culture. Often the greatest barrier to cooperation is fear of the unknown. Let's get to know each other better, work together and make a difference together.”

- **Finding a suitable partner** and starting a partnership project.

- **Different perceptions due to the different cultures of CLCs and big city firms.** “For example, there could be a perception from within the CLC that the firm might treat clients in a condescending way because the clients are not ‘paying clients’, not returning calls or following through with undertakings to take action. However, this has not been the experience at Macarthur.”

- **Finding volunteers who are willing to travel** the distance (Macquarie Fields is 40 minutes by car, Claymore is an hour by car).

- **The limitations/special needs of profoundly disadvantaged clients.** For example, Prue Gregory explained that Ashurst offers a service to carers of children over 18 with intellectual disabilities preparing wills with testamentary trusts, many of whom would be unable to travel to the firm’s Sydney office. “Most of the parents had to drop off their children at 10am and pick them up at 2pm and could not travel to the Sydney CBD. When Ashurst offered the service in Minto, there were people lining up to use it.”

- **Where the relationship between the partners is not one of equals.** “The CLC feels likes the poor cousin in the partnership - and that it is not a partnership of equals, and the firm feels under-appreciated for the time and resources they invest in maintaining the relationship” (Prue Gregory explains that this has not been the case in relation to Macarthur Legal Centre’s relationship with Minter Ellison).

- **Maintaining the relationship.** Partnerships that are dependent on personalities are vulnerable to floundering if a key person at either the CLC or the firm leaves.

- **Conflict checking.** At Macarthur, when an appointment is taken by a volunteer they phone to check for conflict at the outreach site. If there is a conflict they give the person a brochure on the issue and refer to three other solicitors.

Features that make it effective

- **Networking to find potential partners.** For example, attending a meeting and talking about what the CLC is doing then discussing it further.

- **Ensuring there is a positive relationship between the partners from the beginning.** “If the chemistry is not there recognise the signs early and move on. Where there is compatibility bottle it and nurture it.”

- **Having trust and respect on both sides** of the partnership and honesty from both partners especially when things are not going well.

- **Maintaining the relationship.** For example, avoid taking volunteers or volunteer opportunities for granted; seek out times to catch up in person (difficult when there is an issue of distance) to discuss what is working well and what can be improved; and communicate regularly.
• **Willingness to push boundaries.** For example, the use of new technology like Skype to deliver services where distance is an issue (See also section on Technology-based services Chapter 26).

• **Co-location “piggy-backing” with other trusted services.** Macarthur Legal Centre runs services at the IT Centre in Macquarie Fields the Community Centre in Claymore and an Access Point in Minto.

• **Promotion of the service.** The Principal Solicitor Prue Gregory does a lot of public speaking (at local high schools community legal education sessions to relevant agencies newly-arrived migrants) and networking (for example, sitting on a lot of committees).

• **Training for volunteer solicitors on frequently needed areas of law** that they are unfamiliar with and how to engage clients in particular issues. Prue Gregory explains that “in general, 30% of the problem is legal in nature, and lawyers need to learn to be non-judgmental about the other 70%.”

• **Established file management system.** For example, one of the CLC’s partner firms photocopies the case details of outreach clients undertakes research in-house and emails the advice back to Macarthur.

### 21.5.2 Case study: Homeless Persons Legal Service Clinics (Public Interest Advocacy Centre)

The [Homeless Persons’ Legal Service (HPLS)](https://www.piac.org.au/services) in NSW is a joint initiative of the Public Interest Advocacy Centre (PIAC) and Public Interest Law Clearing House NSW (PILCH NSW). It aims to provide access to justice for homeless people in NSW by providing free legal advice and ongoing representation to people who are homeless or at risk of homelessness, and advocating on their behalf.

HPLS currently operates ten free legal clinics on a roster basis, partnering with welfare agencies in the greater Sydney metropolitan region that provide direct services, such as food and accommodation, to people in housing crisis. The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Normal Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Vincentian House (the St Vincent de Paul Society), Wayside Chapel (Uniting Church) and Women’s and Girls’ Emergency Centre.

The clinics are coordinated by HPLS and staffed by lawyers from PILCH NSW members, namely Allens Linklaters, Baker & McKenzie, Corrs Chambers Westgarth, Norton Rose Australia, Dibbs Barker, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW, Minter Ellison and Thomsons Lawyers.

Last financial year, HPLS staff and pro bono lawyers assisted 713 clients totalling 1,258 clinic attendances. PIAC provides induction training for all the lawyers working in the clinics. Each firm

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103 In addition to the HPLS clinics PIAC is also involved in delivering legal services at “hubs” which bring together various services to provide a “one-stop-shop” to people who are homeless or at risk of homelessness, for example the Woolloomooloo Integrated Services Hub ([www.cityofsydney.nsw.gov.au/community/community-support/homelessness/woolloomooloo-integrated-services-hub](http://www.cityofsydney.nsw.gov.au/community/community-support/homelessness/woolloomooloo-integrated-services-hub)).


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generally sends both a junior and senior solicitor to the clinic, so the senior solicitor can provide support to the junior solicitor, but it is PIAC’s practice and PIAC bears the responsibility for matters undertaken at the clinic. The lawyers attending the clinics fill in contact/advice sheets for each client, which are checked by the supervising solicitor at PIAC and used by PIAC to open a file on the matter. Most of the work is undertaken by lawyers from firms acting pro bono under PIAC’s supervision, although a small amount of the work is referred to and undertaken by the pro bono providers directly.

**Benefits**

- The volume of resources available to PIAC to run the clinics is greatly increased by the contributions of the pro bono providers.
- Pro bono providers are provided with training for their lawyers that improves their skills and broadens their experience.
- It is a rewarding and fulfilling way for pro bono providers to achieve their pro bono targets.

**Challenges**

- The pro bono lawyers do not always have expertise in the type of matters that arise at the clinics and may be unfamiliar with both the legal issues and dealing with disadvantaged clients.

**Features that make it effective**

- PIAC has invested significant resources into training and supervision. Prior to attending the clinics each lawyer must attend induction training which covers areas of law that clients seek advice on from fines, debt and tenancy through to discrimination criminal law and victim’s compensation referral options and dealing with challenging clients (eg with drug and alcohol issues or a mental illness). During the training they are given the opportunity to role play typical clinic scenarios.

**21.5.3 Case study: Housing Legal Clinic, Homeless Persons’ Pro Bono Legal Service, Welfare Rights Centre South Australia**

The SA Housing Legal Clinics (HLC) are run by the Welfare Rights Centre (WRC) South Australia and modelled on the Homeless Persons Legal Service (HPLS) clinics in Sydney (see 21.5.2). The Coordinator of the HLC, Bill Manallack, secured State government funding for the establishment of the HLC in 2006.

There are seven HLC clinics run by firms that are each partnered with a different welfare agency. Each firm provides at least two lawyers to attend the clinics each week. A staff member of the HLC attends every clinic to assist with the coordination and management of the clinics.
Benefits

- Highly vulnerable clients, who are unlikely to seek assistance by attending a legal aid office or another CLC, are able to access legal assistance.
- Lawyers working at the clinics feel good about helping people who are very needy.
- Relationships are developed between the firms and the welfare agencies (as well as between WRC and the firms) which increases the firms’ commitment to the clinic. Firms share in fundraising activities for the welfare agency and allocate non-legal staff to assist in other ways.

Challenges

- Not all lawyers have knowledge of community services and referral pathways but they can build this knowledge on the job.
- Demands on the clinic’s staff to be involved in forums and policy work can put a strain on its limited resources.

Features that make it effective

- HLC staff provide coordination and management support to the law firms and welfare agencies. Bill explains that “WRC prioritises attending each legal clinic and takes a ‘hands on’ approach to managing, linking clients with welfare services, and managing clients’ links to lawyers and other services.”
- Each law firm has a team leader who organises the rostering of staff for the clinic, and the allocation of an appropriate lawyer for matters requiring particular expertise.
- The firms which contribute lawyers to the clinics are very committed to the work. Around 3,000 clients have been assisted by clinics over the past six years.
- The lawyers who volunteer to attend the clinics are highly respectful, professional and committed.
- WRC prepares lawyers for their work at the clinic by explaining how the service operates and how their role fits into it.
- WRC filters the clients before the pro bono lawyers see them, and advises lawyers to sit between the client and the door so if there are concerns with a difficult client they can move out quickly.
This model aims to increase the capacity of a community legal organisation to undertake its legal work, and therefore addressing unmet legal need by that organisation, by providing an additional staff member for a specific period of time or purpose.

Secondments generally involve placing pro bono lawyers within community legal organisations. However, the principal solicitor at Women's Legal Service NSW, Janet Loughman, also suggested the possibility of having secondments in two directions to provide professional development opportunities for CLC staff. “While this would not directly contribute to the CLC’s service delivery, it would do so indirectly by increasing the skills/capacity of the staff member seconded.”

Secondments may be:

- full-time or part-time and for a fixed period (eg for three, six or 12 months). A fixed period secondment may be part of a single- or multi-firm rotation that ensures a secondee is always available to the community legal organisation
- sessional (eg a firm solicitor attends a community legal organisation to operate an advice clinic one afternoon each week)
- short-term (eg locums to cover staff shortages)
- specific secondments (eg for the period of a particular project or initiative of a community organisation).

The secondment model overlaps with the clinic model because lawyers who are considered to be on a “sessional secondment” are often used to staff clinics (see section on Clinics, Chapter 20). Some of the projects that appear in this section as case studies of sessional secondments could also be considered case studies of clinics. See, for example, the case studies on the Unfair Dismissal Project (Redfern Legal Centre and Clayton Utz) (22.5.3) and The Aged-care Rights Service and Sparke Helmore (22.5.5).

### 22.1 SECONDMENTS: AT A GLANCE

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<tr>
<th>Benefits</th>
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<tr>
<td>Secondments increase the capacity of a community legal organisation to undertake legal work and address unmet legal need.</td>
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<tr>
<td>The work of establishing the unmet legal need has already been done by the host organisation.</td>
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<td>The secondee brings an entire network of “phone a friend” resources with them to the host organisation, with the specialised skills of community lawyers being transferred to secondees.</td>
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<tr>
<td>Secondees develop skills and maturity while on secondment.</td>
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<td>The secondee’s firm benefits from seconded solicitors bringing back enhanced legal, communication and managerial skills to the firm, in addition to specific subject matter knowledge from practising in an area in which they may not normally become involved.</td>
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• Law firm employee morale and retention may be improved, with secondees experiencing increased sense of professional satisfaction.

• It allows firms to become involved in lobbying work via the secondee that it could not otherwise do due to conflicts of interest.

• It is a contained way for the firm to provide support and can be an easy way for some firms to make up pro bono hours.

• The relationships between firms, individual pro bono lawyers and the organisations with which they work may be strengthened.

• Secondments raise awareness of social issues within the pro bono lawyer's firm and increases the visibility of the law firm pro bono program, which encourages continuing commitment to pro bono work.

• Secondees maintain their contact with the host organisation and other contacts they have established during the course of their secondment, so they are in a good position to bring in appropriate pro bono matters when they return to the firm.

**Challenges/limitations**

• Firms that are reluctant to release staff to take up secondments, especially smaller firms, and firms that fear losing their staff to secondments.

• Finding lawyers who want to go on secondment.

• Firms that are unsupportive of secondments, considering it a “black mark” or “another non-billable demand”.

• Short-term or sessional secondments that are inappropriate/insufficient to meet the host organisations needs, and can end up being a drain on the host organisation's resource.

• Disorganised, under-prepared or under-resourced host organisation.

**Features of effective secondments**

• Selection of the best people for secondments (staff who want to do the secondment and are appropriately skilled, motivated, and senior enough to need minimal training).

• The period of secondment matches the needs of the host organisation. A sessional secondment can be very successful if the appropriate staff are seconded to the right project, for example, Redfern Legal Centre's unfair dismissal project (see case study at 22.5.3). They can also, however, end up being a drain on the CLC's resources, for example, the AGS graduate rotation to Street Law (see case study at 22.5.4).

• Pre-planning and preparation for the training, supervision, administration and seating of secondees.

• Well-organised/prepared host organisation and support for secondees during the secondment.
For more information on secondments and sample secondment agreements, see section 4.1 and section 3.11 of the Australian Pro Bono Manual.

22.2 SECONDMENTS: BENEFITS

“There are many benefits to secondments. They contribute skills that boost the capacity of the host organisation to respond to client need.” (A pro bono clearing house manager)

As with other models, the benefits to pro bono providers who second staff to a CLC or other community organisation include the fact that the work of establishing the unmet legal need has already been done by the host organisation.

Secondments contribute significantly to the professional development of the staff members who are seconded, especially since secondees are often junior lawyers. Seconded solicitors bring back to the firm enhanced legal, communication and managerial skills, in addition to specific subject matter knowledge from practising in an area that they may not normally become involved in.

“Secondees develop skills and maturity while on secondment, and often turn out to be pro bono leaders when they return to the firm.” (Large law firm pro bono coordinator)

These skills may include policy and law reform skills. Charlotte Ahearne, from the Members' referral program at PILCH Victoria, said that PILCH tries to make each secondee a champion of a particular inquiry trend, for example costs, Stolen Generations, or prisoners' issues. “That secondee takes responsibility for monitoring the media and works with managers and staff to ensure a consistency of approach in recording data and making referrals. This also gives the secondees a real sense of purpose. Secondees are generally well trained to spot legal issues and write well.”

While it is often junior lawyers who are seconded, one large law firm pro bono coordinator made the point that secondments can also work well with more senior lawyers because, while they may have less available time, they also have the expertise to contribute a lot within the time available.

“Secondments can also work well for experienced lawyers. Having senior associates doing project work can be less disruptive to the firm’s work than casework.” (Large law firm pro bono coordinator)

“Secondments can be effective at any level of experience. We have a graduate rotation program with one firm (lawyers that have completed 12 months in the firm). We also currently have a secondee with 10 years experience, to be followed by another 2/3 year lawyer.” (A pro bono clearing house manager)

Secondments can also lead to improved employee morale, with secondees experiencing an increased sense of professional satisfaction from being involved in social justice work that has a direct impact on the lives of people who are very vulnerable and disadvantaged.

“Staff build their skills and staff retention is boosted.” (Mid-sized law firm pro bono coordinator)

Supporting CLCs and other community organisations with secondees allows firms to become involved in lobbying work that they could not otherwise undertake due to conflicts of interest, for example, where a matter involves a complaint against government and the government is a client of the firm. An example provided by the Partner and Pro Bono Manager at Corrs Chambers Westgarth, Heidi Roberts, involved a secondee to PILCH who appeared before the Law Reform Commission as a PILCH lawyer rather than a Corrs lawyer, following work he did as a secondee developing a submission on the rights of people conceived with donor gametes.

Some of those consulted said that secondments were an easy way for the firm to provide support.

“Some firms consider that secondments are an easy way to make up pro bono hours. This is not necessarily a negative.” (A pro bono clearing house manager)

Secondments can help to strengthen the relationships between the secondee lawyers, their firms, and the host organisations in a way that increases the level of support that the host organisation receives, even when the secondment is over.

“The secondee brings an entire network of ‘phone a friend’ resources with them.”
(Community legal centre manager)

“Secondees often maintain their contact with the host organisation and other contacts that they have established during the course of their secondment and are in a good position to bring in appropriate pro bono matters when they return to the firm.” (Mid-sized law firm pro bono coordinator)

Secondments generally contribute to the development of pro bono culture within firms that second lawyers as they raise awareness of social issues within the firm's pro bono program and thereby encourage continuing commitment to pro bono work. For example, Charlotte Ahearne, from the Members’ referral program at PILCH Victoria, explains that the relationship between PILCH and firms is developed through secondments in a few different ways: “Once they return to their firm, the secondee brings a more sophisticated understanding of the public interest and pro bono principles, they become an internal champion of pro bono and a supporter of PILCH; during the secondment secondees can tap into in-kind contributions by their firm (eg secondees arrange for their firm to do transcribing of interviews, printing reports, creation of flowcharts etc).”

22.3 SECONDMENTS: CHALLENGES/LIMITATIONS

For a secondment to be successful, the resources required of a pro bono provider in providing a secondee usually go beyond the individual lawyer and may extend to additional support for the secondee and the host organisation. Many of those consulted expressed the view that it is becoming increasingly difficult to obtain secondees with firms reluctant to release staff to undertake secondments, especially smaller firms with fewer lawyers and resources to spare. (See also section on Size matters, Chapter 6.)

For example, the Partner, Pro Bono Community Support at Lander and Rogers, Jo Renkin, explained that for a mid-size firm, capacity (and sometimes budget) can create more limitations than for a larger firm, and that secondments might therefore have to be for a shorter period than she would like them to be. “Secondments at the Human Rights Law Centre (HRLC) are three months full time, with an extension for a further month in some circumstances when the firm is not too busy. Secondments to North Melbourne Legal Service (NMLS) are two days a week for three months. It
would be better if secondments could run for longer and this is something that I would like to change.”

The Partner for Pro Bono Services and Corporate Responsibility at Gilbert + Tobin (G+T), Michelle Hannon, also explained that due to its size, G+T has less capacity to have staff on secondment as they are leanly staffed. “If secondments are in addition to an in-house pro bono practice, a firm needs to be of a certain size to have the capacity to provide a constant secondment and have the number of lawyers interested in doing the secondment, especially secondments in remote communities.”

The Director of Queensland Public Interest Law Clearing House (QPILCH), Tony Woodyatt, said that he has been trying to broker secondees for other CLCs, but that it is difficult to obtain a secondee in Queensland as the firms are smaller and have less capacity than the bigger offices in Sydney and Melbourne, especially when firms are busy. “It is more likely that firms will provide a short term secondee, for example, to fill in for a staff member on leave for a month, although Corrs provides a permanent full-time secondee to QPILCH on six-month rotation and other firms have provided long-term and short-term secondments over the last 12 years.”

“Firms increasingly prefer to do discrete tasks that they can work on autonomously rather than providing staff to work within a legal service, which can be difficult for the lawyer who has to work without the benefit of fully understanding the context that they would gain if they worked within the CLC. It is difficult to obtain assistance in the form of secondee lawyers, however, that is the optimal form of assistance that firms can provide.” (Community legal centre solicitor)

“Some secondees have been told by partners in firms that are not supportive of pro bono that doing a secondment will be a black mark in their career. We recently lost a secondee this way.” (A pro bono clearing house manager)

Some of those consulted thought that pro bono providers were also fearful that staff who go on secondment may never return. The principal solicitor at Eastern Community Legal Centre, Belinda Lo, said she had heard of three such resignations of lawyers following a six-month secondment. However, others consulted thought that it was possible that these staff might have been thinking about leaving the firm in any case and putting their hand up for a secondment might have been symptomatic of that.

Some of those consulted said that it can be difficult to find lawyers who want to go on secondment.

“It is difficult to find volunteers for secondments. The reasons for the downturn in interest is unknown, but possibly the impact of the GFC (much leaner staffing in firms), interest ebbs and flows.” (Large law firm pro bono coordinator)

“Many host organisations (that do legal rather than policy work) tend to want litigators, which limits the pool of lawyers that the firm has to draw from.” (Mid-sized law firm pro bono coordinator)

“Secondees may worry that being away from the firm for a significant period of time will have a negative impact on their career advancement because they might be forgotten while they are away.” (Large law firm pro bono coordinator)

“Finding secondees who are willing to work in an area out of Sydney can be a challenge.” (Community legal centre principal solicitor)
However, some also suggested that the reluctance to release staff and lack of interest in volunteering for secondments could also be due to the existence of myths about secondments that could be challenged with the circulation of more information about secondments.

“There are many myths circulating within firms about secondments: that it is an opportunity to slack off, that no legal skills are involved, that it is used as a transitioning role for people who have already decided to leave the firm.” (A pro bono clearing house manager)

“Relying on the firm to do the recruitment of secondees is challenging because the host organisation has little control over how the secondment is promoted internally. It’s therefore hard to judge whether there is a genuine lack of interest on the part of lawyers when firms are unable to secure a candidate or whether other factors are in play such as: lack of detailed information about the secondment; partners in individual practice groups not supporting their lawyers doing a pro bono secondment; or broader capacity issues.” (A pro bono clearing house manager)

While pro bono providers increasingly seem to prefer short-term or sessional secondments that represent less of a resource commitment for them, many of the community organisations that host secondments warned that a secondment will not work unless the period and frequency of the time of the secondment match the training and learning requirements for the secondee’s work to be of benefit to the host organisation.

“A three month secondment is too short (unless for a specific project), not enough to be absorbed in the culture of the host organisation. Some partners find that six months is a long time to be without that lawyer in their team, and four months may be better (but finding three secondees a year is logistically more difficult than two). Six months is optimal (not too long away from the office, but enough to be up and running and contribute to the host organisation).” (Large law firm pro bono coordinator)

“Sessional secondments often don’t work as well because the secondee does not feel like they are part of the life of the CLC and it is not enjoyable for them.” (Community legal centre principal solicitor)

While pro bono providers may be reluctant to release staff to go on secondment, particularly their best performing lawyers, the impact on both the firm and the host organisation of having an under-performing staff member sent on secondment can be disastrous for the host organisation, the reputation of the firm, and the pro bono program. The Head of Pro Bono and Community Services at Allens Linklaters, Nicky Friedman, explained that Allens never sends graduates on secondments. Their secondees are at least “first years”. “Graduates are more likely to be a training burden for the host organisation rather than providing resources to boost their capacity. Pro bono should first and foremost be about meeting unmet legal need, and business benefits should be a secondary consideration.”

“While it is difficult to convince partners to release their best people to go on secondment, it is detrimental to the secondment program to send under-performers on secondment because the secondment gains the reputation within the firm of being the place where poor performers are sent and the program loses momentum. It is also disastrous from the host organisation’s perspective as they end up expending resources on a difficult secondee rather than boosting capacity.” (Mid-sized law firm pro bono coordinator)
“Problems are likely to occur when staff members are ‘conscripted’ to secondments, especially where they have political/philosophical views that are inconsistent with the host organisation for example a firm (not ours) that sent a staff member on pro bono secondment when the firm did not find a suitable rotation group for them, so they felt like the secondment was a punishment rather than an opportunity.” (Large law firm pro bono coordinator)

“Some firms have attempted to send very junior lawyers that are not yet admitted. This can be a burden on our resources and is not encouraged.” (A pro bono clearing house manager)

“It can take a while for a secondee to adapt to the ‘mindset’ of being a secondee, especially if they are asked to do a secondment rather than actively volunteering.” (Large law firm pro bono coordinator)

Unfortunately the community organisations that have the greatest need for a boost in their capacity may also be the organisations least likely to have the resources to appropriately train, find suitable tasks, adequately supervise, administer and physically seat secondees. For example, the coordinator at Footscray Legal Service, Denis Nelthorpe, said that the CLC had recently declined an offer of a secondee for lack of space. He suggests that pro bono firms can provide additional assistance to CLCs, with administrative improvements like storing files off site, which can create space and improve the appearance of CLC offices. The principal solicitor at Macarthur CLC, Prue Gregory, said that physically finding space for a secondee would be difficult as the CLC has recently given up office space for interview rooms.

“Bad experiences with CLCs discourage firms from partnering with CLCs in the future for example firms that second staff to poorly run or resourced CLCs are unlikely to repeat the arrangement as their staff do not enjoy it or gain enough from the experience.” (Community legal centre manager)

“Initially our secondees were well organised by the host organisation, had plenty to do and felt that they made an impact. In the end however, we ceased attending as the service was unsure as to how to use us after an organisational restructure and secondees felt they were ‘in the way’ and not well utilised. We have since continued discussions as to how we might again provide assistance.” (Mid-sized law firm pro bono coordinator)

22.4 FEATURES OF EFFECTIVE SECONDMENTS

To dispel the myths about secondments, which may contribute to the reluctance of some pro bono providers to support secondments and release their best people, there needs to be strong communication about what secondments actually involve and the benefits of secondments. For example, PILCH Victoria has developed an information portal on secondments (www.pilch.org.au/secondments) with information, videos and testimonials. Given the preference of many firms for pro bono work that has some broader strategic purpose beyond helping the individual client, it may also be helpful to structure the secondment around a particular law reform goal. (See section on Where pro bono resources should be directed, Chapter 5.)

“It is often easier to sell a secondment within a firm if the secondment is linked to a specific project rather than general legal referral work, especially a law reform goal,
for example a secondment aimed at producing a report on women and homelessness.” (A pro bono clearing house manager)

Many of those consulted identified the selection of the best person for the secondment as being one of the most important features - a lawyer who wants to do the secondment, and is skilled, motivated, and senior or smart enough to need little training, and whose interests, skills and experience match the needs of the host organisation. For example, Lara Garfinkel, Pro Bono Senior Associate at Herbert Smith Freehills, said that the firm only seconds lawyers who will represent the firm in a positive manner and are conscious of finding the right person for the role. “Herbert Smith Freehills is very opposed to the idea of sending under-performing staff on secondment.”

“Secondment positions should be staffed with lawyers who volunteer to be seconded and see the secondment as an opportunity.” (Large law firm pro bono coordinator)

“Our firm’s best people are given the opportunity to be seconded, as a reward.” (Mid-sized law firm pro bono coordinator)

“The secondee should have the general skills to contribute to the work of the host organisation with minimal training. Secondees should not require training from the host organisation in general legal skills, only the specific knowledge about what is going on in the host organisation.” (Large law firm pro bono coordinator)

“Select a secondee that can hit the ground running so that they build the capacity of the host organisation rather than being a burden.” (Mid-sized law firm pro bono coordinator)

In selecting the best person for a secondment it is not only legal skills that need to be taken into account, but their interest in social justice and, where a secondee may need to be involved in direct client work, the ability to deal with people experiencing social and economic disadvantage.

“Ensure that the secondee is a fit for the host organisation (both in terms of technical legal skills, but also interpersonal skills and cultural sensitivity).” (Government pro bono manager)

“We ask that applicants for secondments have an interest in social justice, that they are self-directed, confident in interacting with a wide variety of stakeholders and keen to learn about different areas of the law.” (A pro bono clearing house manager)

It is important that the period and frequency of secondment matches the needs of the host organisation. A short-term or sessional secondment can be very successful if the appropriate staff are seconded to the right project. For example, all solicitors at Herbert Smith Freehills' Perth office undertake a two-week full-time secondment at Sussex Street Community Law Service in their post-admission year.

“The secondments work well, despite the fact that they are for a short period of time, because there is appropriate legal work available for the secondees, and the CLC’s coordinator spends one hour per fortnight supervising the handover between secondees.” (Annette Bain, Head of Pro Bono and Community, Herbert Smith Freehills)

However, they can also end up being a drain on the CLC’s resources. For example, before a recent review of their secondment arrangements, the Australian Government Solicitor (AGS) previously provided secondees to Street Law who were graduate solicitors on one of their three-month rotations. They attended Street Law once a week, with each secondee attending on alternate weeks. Once a fortnight was not often enough for each solicitor to learn effectively and Street Law was
finding that it took the whole three months for each solicitor to reach the stage where they could independently manage a file. Street Law was essentially providing training to AGS graduate solicitors. Katie Fraser, a Project Officer at Street Law explained that “Clayton Utz also provided secondees on an alternating fortnightly basis, however, given that the secondees were second and third year they had developed legal skills and experience that allowed them to work with much less supervision.” (For more details see case study on Sessional secondments (Street Law, AGS and Clayton Utz) at 22.5.4.)

The consulted community organisations unanimously preferred having full-time secondments for at least six months but realised that due to the resource constraints of pro bono providers, this would not always be possible. The Partner, Pro Bono Community Support at Lander and Rogers, Jo Renkin, agreed saying that “it is obviously better for the host organisation, but also better for the secondee if the secondment is full-time as they don’t miss out on work that requires a consistent, long term presence.” She said that secondees at North Melbourne Legal Service who attended the Service two days a week find it more difficult to establish relationships and need some time to relearn what they were doing, in contrast with Human Rights Law Centre secondees who are seconded full-time. “They may also come under pressure from the firm to continue doing a full-time work load at the firm within the few part-time days they are at the firm. If they are seconded full-time they can ‘switch off’ from the work of the firm and fully focus on the work of the host organisation.”

“It is usually best to have a secondee working full-time at the host organisation because it is difficult to manage work back at the firm (and the firm’s expectations of their availability) if they are part time.” (Large law firm pro bono coordinator)

Having the more senior or high-performing lawyers selected for secondments certainly can address some of the challenges associated with sessional or short-period secondments. For example, the Executive Director of JusticeNet, Tim Graham, said that even though there is frequent turnover of AGS secondees, the arrangement works for JusticeNet because AGS sends relatively senior staff who require very little training or supervision, so they can be left to review a few difficult files. “Even the junior lawyers that AGS sends also have high level skills.”

Finding work of a suitable nature for a short term or sessional secondee can also help to make it work. For example, Tim Graham said that given that the nature of the work that JusticeNet gives secondees is not direct client work, there is less pressure than there would be in a clinic situation.

The Head of Pro Bono and Community Services at Allens Linklaters, Nicky Friedman, explained that a secondment for one day a week for a year to Bush Heritage Australia (BHA) worked well because the secondee acted more like in-house counsel to the NFP rather than a CLC lawyer doing casework. “A staffing cutback meant that BHA did not have anyone providing in-house legal advice and since they had a pre-existing relationship with the firm, they asked if the firm could assist. The firm provided a secondee who was a senior associate from the precedents team with good drafting skills one day a week for a year. The work involved small, contained pieces of work that could be completed in a day, or ongoing issues that could be worked on bit by bit, so the one day a week arrangement worked well (especially since the secondee was a fairly experienced lawyer).”

“It is generally more useful for a CLC to have a secondee full-time (especially if it is for a short period of time), however, having sessional secondees for a long period of time also works.” (Community legal centre manager)

Pre-planning is necessary to achieve the best match of the right person for the secondment with the appropriate tasks and needs of the host organisation. For example, the Partner, Pro Bono Community Support at Landers & Rogers, Jo Renkin, said that she discussed the firm’s capacity limitations with North Melbourne Legal Service early on (that they could only second someone for
two days a week) to ensure that the secondment would be useful to the host organisation and they would have appropriate work and supervision for the secondment.

Pre-planning may also include preparation by the host organisation for:

- training - preparation of training materials on topics such as induction information, substantive legal issues, casework-related issues, etc
- supervision - allocation of significant time for mentoring and checking the work of secondees
- administration - arrangements made for insurance, employment conditions
- space in host organisation office for seating secondees.

“It is ideal when the host organisation can prepare work for the secondee which is well structured, properly supervised, diverse and challenging.” (A pro bono clearing house manager)

An important part of pre-planning involves developing the relationship between the pro bono provider, host organisation, and the secondee. This ensures that both the pro bono provider and the host organisation know what the capabilities of the secondee are, and what the objectives of the secondment are for both the host organisation and the secondee. Knowing the capabilities of the secondee allows the host organisation to allocate appropriate tasks accordingly. The Partner and Pro Bono Manager at Corrs Chambers Westgarth, Heidi Roberts, explained that before a Corrs secondee begins at PILCH, Corrs will explain to PILCH what the performance objectives are for the secondee so that their activities and performance feedback can easily plug back into the performance review structure of the firm.

“The firm needs to understand the politics of the host organisation, and the host organisation needs to understand the way the firm works.” (Mid-sized law firm pro bono coordinator)

“Development of a relationship between the secondee and host organisation before the secondment begins, builds an understanding of what can be achieved and what the needs are. Our secondees have a coffee with the host organisation before starting so they can explain the areas of law they are interested in and what their capabilities are.” (Mid-sized law firm pro bono coordinator)

“We try to be responsive to secondees’ skills and interests in allocating work. For example, some secondees are better tasked working on client files rather than writing submissions. Not all secondees are suited to law reform work.” (A pro bono clearing house manager)

“It is helpful to have a handover between secondees at changeover, so that the incoming secondee has some understanding of the work that the previous secondee has been doing and there is some continuity.” (Mid-sized law firm pro bono coordinator)

Effective supervision and support for secondees during the secondment period is essential to the success of the secondment and may involve regular feedback, opportunities to extend their skills and recognition for their work. A good example was provided by the Partner, Pro Bono Community Support at Lander & Rogers, Jo Renkin, who said that the Human Rights Law Centre has an excellent secondee program and really supports their secondees. A Landers secondment to HRLC of three months was extended for a further two months, which enabled the lawyer and the HRLC to benefit from the increased confidence and knowledge that the secondee had developed. “Our secondee
attended parliamentary enquiries, briefing sessions and even represented Australian non-government organisations in a peer review in Geneva.”

“Support for secondees could include access to counselling via an Employee Assistance Program, especially for those who are not used to, for example, dealing with people in distress.” (Government pro bono manager)

Some of those consulted also suggested that linking the development plan for the secondment with the secondee's regular performance review system is a good way of ensuring that the work they do at the host organisation is recognised back at their firm, and that any performance issues are addressed to minimise the impact on the host organisation.

For example, the work of secondees at PILCH(VIC) is linked to their firm's performance review/development plan. Secondees are asked to identify performance goals within the first month of their secondment (once they have some idea of what they are doing), so that PILCH feedback on these goals can be plugged into their firm performance review system. Charlotte Ahearne from the Member’s Referral Program at PILCH(VIC) explained that “goal setting (and reviewing against those goals) helps secondees to reflect on how their secondment work relates to their professional development as lawyers and ensures that they are given credit within their firm for their achievements while off-site.”

“We encourage secondees to meet regularly with their practice group, attend relevant training back at their firm and generally maintain a strong connection with their employer while working off-site.” (A pro bono clearing house manager)

“We have indicated to us that they want to be involved in performance management early on if there is an issue of under-performance.” (A pro bono clearing house manager)

22.5 CASE STUDIES

22.5.1 Case Study: Full-Time/Long-Term (North Australian Aboriginal Justice Agency and Ashurst)

The North Australian Aboriginal Justice Agency (NAAJA) delivers high quality and culturally proficient Aboriginal legal services to the Top End of the Northern Territory.

Its role is to:

- ensure that clients are appropriately represented when they come into contact with the justice system
- assist and inform Aboriginal people and enhance their understanding of the justice system
- ensure that clients and families receive quality legal advice and representation
- influence a positive change within the justice system that reflects better understanding and appreciation of the diverse cultural backgrounds, problems and challenges that impact upon Aboriginal people.

Ashurst seconds a civil lawyer for six months full-time to the NAAJA Katherine Office on a rotating basis. The arrangement has been in place since 2005.

The secondees travel to areas that are very remote (outside of Katherine) for periods of one to four days at a time, once or twice a month. During these “bush trips” they undertake traditional clinic work, providing one-off legal advice, as well as taking the opportunity to take instructions from clients with ongoing matters.

During their secondment the solicitors deal with whatever matters arise within NAAJA's general civil practice, including compensation work (eg motor accidents, victims compensation and standard personal injury matters), coronial inquests, guardianship, discrimination and employment law matters. Many of the matters relate to complaints about service providers such as hospitals, schools and police.

Benefits

• **The secondment increases the capacity of NAAJA to provide services in a remote location.** A Senior Associate at Ashurst, Andrew Hilton, who was recently seconded to NAAJA, explained that “while Katherine itself is a remote location, the clinic work undertaken by secondees involves communities that are remote even for Katherine.”

• **Issues identified during the secondment can lead to law reform or improvements to services.** Many of the problems identified in complaints about service providers (eg hospitals, schools, and police) and coronial inquests can help the local services to argue for more resources or a change in policy, which leads to better service delivery. “Our work in relation to several complaints about how the morgues were operating led to parliamentary recommendations to better regulate the morgues in the Northern Territory.”

• **The professional skills and knowledge of the secondee are transferred to NAAJA.** The Principal Legal Officer at NAAJA, Jonathon Hunyor, said that “the skills and professional knowledge of the secondee ‘rubs off’ on the staff at NAAJA, especially on the support staff who learn from someone who is used to sophisticated office systems.”

• **The secondee brings an entire network of “phone a friend” resources with them.** Andrew Hilton explained: “When I am not sure about something I can call someone at the firm with a lot of expertise in the area, which allows me to tell the client early on whether their case has merit and assists in the conduct of the matter.”

• **The secondee develops useful professional and life skills.**

> “I learned about negotiating from a position of exposure or weakness. At Ashurst, a lawyer is very unlikely to be in a situation where the other side doesn’t care what your client thinks. But at NAAJA, the other side, for example, a health service provider, frequently does not care whether your vulnerable client is happy with the standard of the health service they are providing. I learned how to convince the other side that my client had the law on their side and that they should do the right thing.

> In addition to legal skills, I developed other important skills, for example, in cross cultural communication and how to use interpreters. However, some of the most important lessons I learned were about life. Living in a remote community with complex social issues gave me life experience that made me realise that I had a narrow ‘big city’ perspective. Whatever I thought I knew before was wrong. Issues in
remote areas are more complicated, so any solutions will also need to be more complicated.” (Andrew Hilton)

Challenges

• Ensuring that the secondee is actually boosting the capacity of the host organisation.

  “I was conscious of avoiding a situation where I was getting more from the secondment than I was giving to NAAJA, and spending the whole time learning. This is a big risk with shorter secondments and clinics where the lawyers can go away feeling good about what they've done, but don't actually make a big contribution.” (Andrew Hilton)

• Many of the skills required for the secondment cannot be learned without actually experiencing it. Andrew Hilton explained that he did as much preparation as he could, but that the nature of the work is so different from ordinary practice, that he had no choice but to learn a lot on the job.

  “The communication and problem solving skills required of me were so different. I needed to ask questions in the right way to fully understand the situation. If you don't speak Aboriginal English you are probably misunderstanding the concepts, even if you know the language.”

• NAAJA have been unable to find a secondee for their criminal team. Jonathon Hunyor explained that many firms and lawyers do not have experience in criminal law, and legal aid has not been able to supply a locum. On a philosophical level, NAAJA views criminal law as a government responsibility that the private profession should not be taking over.

Features that made it effective

• Having a long-term secondment with consistency at both the firm and the host organisation. It is important to select the right people for secondments who can build on the experience of the previous secondee, minimising disruption for the host organisation. When Ashurst sends its lawyers on secondment it encourages them to contact people who previously did the same secondment so they can pick up practical tips. Andrew Hilton explains that “unfortunately many community organisations that are funded on a year to year basis are ‘stunted’ in what they can do as they don't know whether their programs will continue.”

• Having a full-time secondment of six months.

  “Even though I was there for six months, it felt like a short time to learn everything I needed to be effective. Three months would have been a lot less effective. It's not because secondees don't know the law, but because they need the time to develop the communication skills and relationships, as clients will not tell you what's on their mind until they trust you.” (Andrew Hilton)

• The secondees are experienced and very responsible/professional with at least two years of experience. Jonathon Hunyor explained that “having a senior associate who can work independently is very helpful for an organisation with limited capacity for supervision.”

• Indigenous cultural training and other practical preparation of the secondees. While the secondees do receive legal induction, which provides them with information on the relevant areas of law so they can learn about them on their own, practical tips about how to communicate and deal with clients are the most important preparation. Andrew Hilton
explained that “lawyers can easily learn the law, but most have not been trained in cross
cultural communication skills. These skills cannot be learned in an academic way.”

- Those coordinating the project at the firm have previous experience of the secondment, and
can help to prepare and provide support to the secondees.

22.5.2 Case study: Full-Time/Long-Term (Kingsford Legal Centre and Herbert Smith
Freehills)

Kingsford Legal Centre (KLC) is a community legal centre embedded within the University of NSW law faculty. The Herbert Smith Freehills (HSF) and KLC secondment program has been in place for over 20 years. Since its commencement in 1992, HSF has provided KLC with a full-time secondee solicitor on six-monthly rotation. The solicitor participates in all areas of KLC service including advice and casework, community legal education, law reform and policy work, as well as educating and mentoring students participating in KLC’s clinical legal education program. The success of the partnership received recognition as the winner of the 2012 Pro Bono Partnership Award at the Law and Justice Foundation’s annual Justice Awards.

Benefits

- The provision of an additional staff member increases the capacity of KLC to provide legal assistance and improves the accessibility of these services to the community. Seconded solicitors at KLC have given over 2,000 advices to members of the community since the program began and have increased the Centre’s access by its community by around 20%. The partnership has allowed KLC to do outreach that it would not have otherwise been able to do. Secondees have staffed outreach services at the South East Neighbourhood Centre and the Junction Neighbourhood Centre as well as delivered community education on topics such as powers of attorney, debts and fines.

- New and innovative methods of delivering legal services have been developed and organised by secondee solicitors. For example, a “pop up” clinic on the South Coogee housing estate was a successful arrangement established in response to the concerns of clients who were unable to access public transport. Secondees also developed a community legal education program on Powers of Attorney and Guardianship, along with a kit of materials, which has proved very popular with older members of the community, and increases their access to KLC.

- Secondee solicitors bring a different perspective to the Centre, which comes from their experience in private practice.

- The secondment greatly contributes to the secondee’s professional development, as they have responsibility for files, learn about areas of law where they previously have no experience, and have direct client contact in relation to a wide variety of day-to-day matters. The Director of KLC, Anna Cody, explained that secondee solicitors, which include junior lawyers through to senior associates, are exposed to “a breadth of experience through the opportunity to work with the community which is not ordinarily available to them.”

- Secondee solicitors act as role models and mentors to the students at KLC by demonstrating a personal commitment to pro bono work, which helps to build a pro bono culture in the lawyers of the future.
The partnership becomes a self-perpetuation [promotion] for pro bono - it inspires students and helps them to see you can have a mixed model practice of commercial and pro bono work which assists the community and disadvantaged people.” (Anna Cody, Director, Kingsford Legal Centre)

- Secondee solicitors often **continue their support of the Centre after completion of their rotation** by joining the KLC volunteer roster as well as occasionally taking a case back to the firm with them.

- The firm assists KLC with **additional non-legal assistance** such as hosting events, publications and planning. It lobbied against a funding cut that would have severely reduced KLC’s capacity to continue its programs.

**Challenges**

- Early on in the relationship the firm felt that it was not receiving as many referrals from KLC as it was receiving from other organisations. When the issue was raised with KLC they realised that KLC had been under the mistaken impression that it would be an imposition to expect the firm to undertake even more pro bono work than it was already doing via the secondment. This demonstrates the importance of communication and understanding the perspective of your partner organisation.

- The level of **interest from solicitors in the secondment has fluctuated** over the years. However, both KLC and HSF are very committed to the relationship and to continuing the secondment, and HSF obtained the support of its partners and previous KLC secondees to raise the profile of the secondment. Anna Cody, the Director of KLC, said that “it was encouraging to see that in 2012 there were nine applications for the two secondment positions.”

- It can be difficult to **find the time to maintain contact**, although the relationship is now at a stage where it largely looks after itself. Face-to-face meetings occur at around 18-month intervals.

**Features that make it effective**

- Having two extremely **committed organisations** that are centres of excellence and regard each other with mutual respect.

- KLC has had **consistent, high-quality staff running the practice**, with its current Director having worked at the Centre for over ten years.

- The **long-term nature of the partnership**, which has been consistent, regular and reliable for over 20 years, has allowed the program to be innovative and continually evolve and adapt to any changes that are necessary.

- Secondee solicitors are entrenched in the running of the Centre’s operation, including casework, the supervision of students, involvement in CLE sessions and participation in projects and ideas about the strategic direction to the Centre’s practice.

- The provision of secondees who have a personal commitment to access to justice.

- The **partners at the firm are supportive of the program**. Three HSF partners were KLC secondees and encourage their lawyers to be involved in the secondment.
22.5.3 Case study: Sessional Secondments - Unfair Dismissal Project (Redfern Legal Centre and Clayton Utz)

Redfern Legal Centre (RLC) and Clayton Utz have partnered to provide representation to clients in unfair dismissal matters up to and including conciliation. Lawyers from Clayton Utz volunteer to be involved. They are seconded to RLC and supervised by RLC for the purpose of the project.

One volunteer from a roster of around six volunteers attends RLC every Wednesday morning and provides face-to-face advice to one or two clients who have made contact with RLC at one of their evening advice sessions. On average each secondee takes one client every six weeks. The client remains a client of RLC and Clayton Utz maintains active involvement in the matter, including supervising the secondee. The secondees add documents to the physical file which remains at RLC. RLC is on the record and Clayton Utz does not generate any documents so there is no risk of conflicts for Clayton Utz. If the matter proceeds to conciliation, the secondee’s involvement is by telephone.

The scheme has been running for 12 months and has assisted 30 clients, almost all of which went to conciliation. It has been difficult to obtain exact figures from Fair Work Australia (FWA), so RLC usually draws on academic work independent of FWA, but of the matters undertaken by the secondees 96% have settled (note that it is a small sample group and a merit test has been applied by RLC before taking on a matter). Of the remaining 4%, some resolved before conciliation, were terminated by RLC or did not settle. The scheme has achieved three offers of reinstatement which is a significant achievement given that the occurrence of reinstatements is so rare that FWA does not even record numbers of reinstatements.

The Pro Bono Partner at Clayton Utz, David Hillard, said that: “The Redfern Legal Centre (RLC) unfair dismissal project is an example of a clinic that works with few resources to deliver good results. RLC has a specialist employment lawyer who prepared an excellent training pack… RLC bears the risk and takes the credit. Note that it would be possible for a firm to send a secondee to run the clinic (in the absence of a specialist employment lawyer within the CLC) and that the same model could work in the tenancy area.”

Benefits

- **RLC assesses matters for merit** so secondees are not wasting their time, however Senior Solicitor at RLC, Megan Cameron, explained that “unfair dismissal seems to be intuitive to clients who seem to be able to identify fairly accurately when they have been unfairly dismissed in a way that will also meet the technical legal definition.”

- **The CLC’s capacity to undertake unfair dismissal work has been increased.** The lawyer at RLC who coordinates the clinic could not have undertaken this volume of work in her current capacity as a two-day-a-week part-time worker.

- **Clients love going to Clayton Utz** (rather than feeling daunted) as they feel like they’re being looked after by the big end of town, and have been happy with the outcomes achieved. Their experience of the legal process has been improved with representation/support (telephone conciliation can be an isolating process).

- **Trends in unfair dismissals have been identified by the secondees.** For example, 50% of clients have underpayments in relation to their unfair dismissal.

- From the firm’s point of view, the work is generally contained to a certain number of hours within a specific time period (usually five to six hours per matter within a six-week period), so there is little potential for an unexpected drain on their resources.
- **Secondees have a manageable, predictable workload** (one client every six weeks) and enjoy the instant gratification of resolving a matter. They enjoy having more autonomy than they usually do working at the firm.

- **The firm can contribute its intellectual and human resources** without using its professional reputation (therefore avoiding the risk of conflicts), and without expending the time and resources involved for a partner to supervise the work.

- With fees taken out of the equation, the **CLC is free to negotiate non-economic outcomes** for clients that firms may not (eg apologies or donations to breast cancer research).

**Challenges/limitations**

- **Time standards leave little room for down time.** There is generally a month between first seeing a client and the conciliation (14 days to make an application and conciliation within three to four weeks) and within this period the service needs to fit in an evening advice session, a day advice session, and responses to/from the employer. For example, the loss of time due to a public holiday like ANZAC day can be significant, especially for a CLC where the workers are not resourced to work long hours or take on a substantial amount of additional work.

**Features that make it effective**

- **The unmet legal need was identified.** There would have been no point to the project if there were no clients or the claims were not worth pursuing. RLC had to think about whether the CLC would lose face with Clayton Utz if there were no clients to assist.

- **High quality of the personnel involved.** Even though the secondments are sessional and do not require the secondees to commit to any specified fixed period of time, the quality of the secondees has allowed the project to work really well. Megan Cameron explained that “the secondees have been smart, committed and reliable, and have a good general skills base of legal research and writing. Secondees that have little or no experience with employment law can be trained (especially in an area like unfair dismissal that is easy to learn). While participation is completely voluntary, almost all of the volunteers have remained with the project for 12 months and continuing. Where for some reason a secondee has been unable to do a conciliation, they have organised between themselves to ensure that the matter is covered by another secondee.”

- **Match between interests, skills and experience of secondees and the needs of the host organisation.** “Unfair dismissal clients, who were the target group for RLC’s project, are less likely than other CLC clients to be experiencing entrenched complex needs so they are a good match for pro bono lawyers who are often junior lawyers with little or no experience dealing with disadvantaged clients.”

- **Having a consistent person at the CLC end** to oversee administration and logistics, as well as supervise the provision of advice.

- **Both parties were open and clear about what their interests in the project were.** Megan Cameron said that Clayton Utz wanted to maintain and increase engagement with RLC in a project that would be ongoing and were aware of the benefits gained from a similar project that the firm undertook with RLC in the discrimination law area.
• An agreement was negotiated between RLC and Clayton Utz that covered both the abstract and practical issues, including:

• Where does the risk fall and who is responsible for doing the work (the answers to this question should be the same)? Make sure clients understand the arrangement between CLC and firm, and that all communication with the clients make it clear what is happening in plain English.

• Where does the electronic footprint fall? Whose computer is the document generated from?

• Who is responsible for doing the administrative work? Whose style guide should be followed for letters and advices? Whose email address should be used? Clayton Utz secondees always use RLC email addresses, never their Clayton Utz email.

22.5.4 Case study: Sessional Secondments (Street Law, Australian Government Solicitor and Clayton Utz)

Street Law in Canberra assists people who are homeless or are at risk of becoming homeless by providing a free legal service and by connecting clients with other services.

Lawyers from Australian Government Solicitor (AGS) and Clayton Utz have been seconded to Street Law on a sessional basis, although adjustments to the arrangements are being made on an ongoing basis to ensure that it works well for both Street Law and these pro bono providers.

Initially the AGS secondees were graduate solicitors on one of their three-month rotations. They attended Street Law once a week, with each secondee attending on alternate weeks. Once a fortnight was not often enough for each solicitor to learn effectively and Street Law was finding that it took the whole three months for each solicitor to reach the stage where they could independently manage a file. Street Law was essentially providing training to AGS graduate solicitors. (Note that this arrangement is different from the clinical legal education that Street Law is resourced and paid to do, where it is understood that the expected outcomes are primarily focused on training of students rather than boosting the capacity of the CLC.)

Clayton Utz also provided secondees to Street Law on an alternating fortnightly basis, however, given that the secondees were second and third year they had developed legal skills and experience that allowed them to work with much less supervision.

AGS and Street Law also tried a different arrangement where two secondees were provided every week on different days for 12 weeks. While it was better to have the same secondees attending every week, it has still been difficult for Street Law to supervise them on different days.

Street Law is now moving to an arrangement where they only have one secondee at a time, three months with AGS, then three months with Clayton Utz. They are also exploring other options for volunteers, including College of Law students who might be able to commit to providing more hours in a week for a longer period.

The nature of Street Law’s work makes it difficult to have secondees that only attend once a week. Many of Street Law’s clients are in crisis and need their matter acted on quickly. This may sometimes require intensive work (research or follow up enquiries) in a relatively short period of time. Street Law does not tend to take on many protracted matters that can be “chipped away at” over an extended period of time. Having someone in the office only once a week means that there is no possibility for them to take ownership of a matter and do a substantial amount of work on any one matter. This means that by necessity the supervising solicitors at Street Law must carve off smaller/discrete tasks out of a larger case which is both more work for Street Law staff and less
satisfying for the secondee. Sessional secondments may work better for Centres that have matters which are less time-sensitive or “project work” such as law reform or CLE materials that can be worked on over an extended period of time. (However, in Street Law’s experience, secondees express more interest in “coal face” client work, rather than project work as it provides a greater contrast to their normal working environment.)

“We have law students who volunteer, and we feel no compunction about giving them administrative and filing work when we have nothing more exciting for them to do, because they are there as volunteers. But we feel an obligation to not give this kind of administrative work to secondees (even though lawyers often do it themselves), because they are there in a professional capacity. Sometimes this creates an odd situation where we are giving them the exciting work, for example legal research or writing submissions to secondees, while we catch up on data entry and filing.” (Katie Fraser, Project Officer, Street Law)

Benefits

- **Secondees contribute to the capacity of Street Law** by undertaking tasks such as initial follow-up phone calls, small/discrete research tasks, and writing up file notes (especially when they accompany outreach officers to offsite locations).

- Secondees also contribute towards larger research projects of the centre by working on research tasks over an extended period of time.

- **Strengthens the pro bono relationship between referral partners.**

  “We feel more comfortable referring our clients to a firm we know and can trust to do a good job.”

- Creates a greater awareness in the general legal community about some of the challenges that Street Law’s client group face in gaining access to justice.

- **Raises the profile of Street Law in the general legal community.**

Challenges

- Preparing suitable work and finding the resources to provide adequate supervision and feedback for secondees especially if they are very inexperienced. Correcting the work of secondees and providing supervision and feedback can end up using up more of the CLC’s time than if they had done the work themselves.

- **Conflict issues relating to the use of government lawyers** need to be carefully managed. Street Law’s intake of clients is by the type of client not by legal subject area. Being a generalist/holistic service means there is greater potential for conflict issues with any government lawyers. “DFAT and AusAID lawyers are less likely to have conflict issues given they don’t really deal with domestic law or individuals. The perception of conflict is as problematic as actual conflict so CLE/outreach may not be suitable for some government lawyers. Street Law does not want to give the impression that its service is anything but completely independent of government. There are already some conflict issues with AGS solicitors seconded to Street Law who are also representing Centrelink and DIAC. Even if the conflict is not direct there is a risk with having those solicitors on the premises with access to files/information.”
Features of effective secondments

- Secondees who can be committed for at least a three month period full-time or close to full-time.
- If firms cannot contribute full-time secondments it is preferable to have experienced lawyers who do not need as much time and supervision to learn what to do.
- **Sessional secondments might also work where experienced lawyers are providing advice in a discrete area.** Street Law’s Project Officer Katie Fraser explained that this was the case in her previous experience at Footscray Community Legal Centre with lawyers seconded to Homeless Persons Legal Service to provide advice on fines.

> “Street Law has no shortage of secondees but the secondees who are most helpful are those who need little supervision or are committed for a useful period of time. It would be better from Street Law’s point of view to have a secondee for three to six months full-time.” (Katie Fraser, Project Officer, Street Law)

### 22.5.5 Case study: Sessional Secondments (The Aged-care Rights Service and Sparke Helmore)

The relationship between The Aged-care Rights Service (TARS) and Sparke Helmore originated in the relationship between the principal solicitor at TARS and the previous pro bono coordinator at Sparke Helmore who went to university together. Sparke Helmore is a mid-sized firm that has undertaken pro bono cases referred from various sources, but was open to the possibility of expanding its pro bono contribution beyond the traditional case referral model.

Sparke Helmore secondees attend TARS to provide assistance with the TARS intake list. They assist people over 60 years of age who do not have the means to pay for legal assistance. A pilot project was run from September to October 2011 with Susan Hunt (a lawyer in the position of Knowledge Manager) and a fee-earning lawyer attending TARS half a day per week. They provided telephone advice, minor assistance (which includes extra steps such as sending a factsheet or drafting simple correspondence), and referrals to other agencies or private solicitors where it was more appropriate to do so. Some more complex matters were able to be referred in-house for pro bono assistance via the pro bono director (eg property, trusts, wills and estates).

During the pilot, the secondees found that once a week was too much for them to fit in on top of their usual work at the firm. The actual project has now been in operation for a year with a permanent team of four volunteer lawyers. The lawyers attend TARS in pairs. Each pair attends once a fortnight for four hours, so there is an alternating pair attending TARS each week. They find that once a fortnight is more manageable for the volunteers but still frequent enough for them to remember what they learned during the previous session.

The project is a success in the context of a firm where pro bono, in recent years, has had a relatively modest profile, particularly in relation to secondments and clinics. Sparke Helmore has recently reviewed its pro bono strategy and formally committed to the National Pro Bono Aspirational Target, and its partnership with TARS will continue to evolve in light of this development.

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107 See Abbreviations and Glossary.
**Benefits**

- **Lawyers from the firm find it rewarding** and inspiring to work alongside lawyers at TARS who are highly competent but also dedicated to assisting people in need. It provides them with an opportunity to experience a work culture which is less corporate.

- It provides an opportunity for the firm to **apply existing areas of expertise to assist people in need**, in the context of a service that aims to provide holistic support (legal and non-legal) to a vulnerable group.

- Lawyers from the firm **expand their legal and general knowledge**, and are challenged by having to research unfamiliar areas.

- The secondees end up **assisting TARS with other needs** in addition to the intake list casework, including developing precedents and drafting letter templates. Susan is keen to assist with reorganising the CLC’s file management systems.

- It is an opportunity to present **the firm in a broader community context**.

**Challenges**

- Some lawyers found that weekly attendance at TARS was unsustainable given their **other work commitments**.

- There is an initial learning curve for the secondees who are **not familiar with many of the areas of law** (POA, wills, trusts, estates) and occasionally dealing with difficult people (eg rude family members of clients). The work requires lawyers who are “happy to be outside their comfort zone” and continuously learning.

- Managing the project so that there is **consistency in the staff attending** the service. Susan is resisting the temptation to personally fill in for lawyers who pull out at the last-minute due to the pressure of work at the firm, but it can be difficult to find a last minute replacement.

- The way the project is currently structured means that the **legal work is largely reactive**, leaving little scope for policy or law reform work.

- Organising **physical space for secondees**, swipe passes for them to get in/out of the office etc.

- Choosing a **convenient day/time for secondees** to attend TARS that matches the need for assistance. For example, Friday afternoon may be a convenient time for fee-earning lawyers to attend TARS, but is not a good time for making calls to clients as they often do not answer the phone at this time.

**Features that make the project effective**

- The lawyers from Sparke Helmore have great respect for the **outstanding legal skills of the lawyers at TARS**. Susan Hunt has found the TARS lawyers to be highly competent, but has made the general observation that the ability of CLC staff to explain complex concepts in simple language can sometimes be misinterpreted by law firm staff as lack of competence.

- The secondees who have volunteered are very **mature, dedicated and competent**. This may be because those who are interested in doing pro bono have to be interested enough to seek it
out, given it does not have a high profile at the firm. This may not be the case if pro bono was more compulsory in nature.

- **The nature of the work**, being on-the-spot advice or minor assistance, is discrete and not too difficult for Sparke Helmore lawyers to provide in unfamiliar areas of the law.

- The client base is **within the comfort zone** of the secondees (which is not always the case with profoundly disadvantaged clients). The work is actually of personal interest to lawyers with ageing parents.

- TARS and Sparke Helmore have agreed to a **one-month trial period** for secondees, where the secondee or TARS can decide after a month that they do not wish to continue with that secondee.

- **Training of secondees.** The training has been ad hoc, however following feedback that it would be better to have formal training, Susan is working on an induction pack that provides information about processes like conflict checking and areas of law that are unfamiliar to the secondees.

- The culture of TARS **encourages the secondees to ask questions.** Lawyers can be reluctant to say that they do not know the answer.

- The secondees **work in pairs** so they can support each other and cover for each other.

- The secondees are also **supported by the firm's library and research resources.** Susan organised for a laptop with a USB modem to be available for secondees to take with them to TARS so they can access the firm's library resources. The secondees can also call the librarians at Sparke Helmore when they are at TARS with a particular research question. This makes the secondees feel more supported and comfortable with working in an unfamiliar area of law.

- The secondees are **supervised by the principal solicitor at TARS** who checks the advice they are giving by reviewing the information they input into the electronic case management system. He provides feedback to the secondees by email.

- A **group email** has been set up so that all the lawyers involved can keep up with what is going on, even if they are not at TARS that week.
FELLOWSHIPS

Most often fellowships are monetary awards - scholarships - connected to working in a specific field, usually at the graduate or post-graduate level. An example of fellowships used as a model of delivering pro bono assistance is the Clayton Utz Foundation Fellowship. The Pro Bono Partner at Clayton Utz, David Hillard, explains that since 2007, the program has funded a regional CLC to employ a graduate or new solicitor for two years on a particular project, specifically targeting regional Australia, with the aim of recruiting new lawyers to regional CLCs who will stay there. “The success of the fellowship program is reflected in the fact that all positions have secured continued government funding beyond the period of the fellowship. The firm provides additional support from the outset, offering a representative to sit on the selection panel for the recruitment, then paying the salary, providing access to the firm’s training, and IT support (supply of laptops etc). It has been an effective way of building the capacity of the CLC and is not included in the firm’s pro bono hours.”

Fellowships have been funded by the Clayton Utz to assist:

- Loddon Campaspe Community Legal Centre in Bendigo from 2007 to 2009; (outreach to new migrant communities, established a pilot community legal service based in Shepparton)
- Hawkesbury-Nepean Community Legal Centre in Windsor from 2008 to 2010; (outreach focused on domestic violence)
- Loddon Campaspe Community Legal Centre, to pilot community legal services in the Goulburn Valley from 2009 to 2011
- Geraldton Resource Centre WA (Indigenous wills support).

Two of the fellows came from the relevant regional area, and two came from outside the area. All have remained with the CLC after completing the fellowship.

Fellowships are a more commonly used model of delivering pro bono legal assistance in the United States. The Skadden fellowships are a good example:

The Skadden Fellowship Program, described as “a legal Peace Corps” by The Los Angeles Times, was established in 1988 to commemorate the firm’s 40th anniversary, in recognition of the dire need for greater funding for graduating law students who wish to devote their professional lives to providing legal services to the poor (including the working poor), the elderly, the homeless and the disabled, as well as those deprived of their civil or human rights. The aim of the foundation is to give Fellows the freedom to pursue public interest work; thus, the Fellows create their own projects at public interest organisations with at least two lawyers on staff before they apply.

Fellowships are awarded for two years. Skadden provides each Fellow with a salary and pays all fringe benefits to which an employee of the sponsoring organisation would be entitled. For those Fellows not covered by a law school low income protection plan, the firm will pay a Fellow’s law school debt service for the tuition part of the loan for the duration of the fellowship. The 2012 class of Fellows brings to
The Coordinator at Loddon Campaspe Community Legal Centre, Peter Noble, who has undertaken research in this area, \footnote{Noble P, Better Health Through Medical-Legal Partnerships (2012), at www.advocacyhealthalliances.files.wordpress.com/2012/08/aha-report_general1.pdf.} said that corporations in the US (including Hewlett Packard, Pfizer and Walmart) have sponsored medical legal partnerships, targeting particular communities and types of clients where the corporate partners’ interests coincide with the pro bono client's interests.

David Hillard suggested that a fellowship program may be a good way to start a pro bono relationship.

### 23.1 FELLOWSHIPS: AT A GLANCE

#### Benefits
- Gives the CLC much more freedom than a secondment to choose someone who fits the culture of the organisation, the project they want to do, and the work they want the fellow to do.
- Pro bono provider can help with the recruitment and training of the fellow.
- Provides an opportunity for an interested graduate in a sector where there are few opportunities for them to join.
- Fellows tend to remain with the organisation and can attract ongoing funding for the position/project.
- The fellowship helps to establish or maintain a close working relationship between the CLC which is the fellowship recipient, and the pro bono provider.

#### Features that make it effective
- The pro bono provider provides additional support to the fellow (and the organisation hosting the fellow) for the period of the fellowship.

### 23.2 CASE STUDIES

#### 23.2.1 Case study: Indigenous Wills Support (Geraldton Resource Centre and Clayton Utz)

Geraldton Resource Centre (GRC) is a recipient of the Clayton Utz Foundation Fellowship, receiving two years of funding to recruit a staff member to run an Aboriginal wills project. In Aboriginal communities there can be major disputes about where a person will be buried if the person dies without a will. The project arose from a specific case which highlighted the problem where

\footnote{Skadden Foundation, The Foundation, at www.skaddenfellowships.org/about-foundation.}

\footnote{Skadden Foundation, The Foundation, at www.skaddenfellowships.org/about-foundation.}
“‘blackfella law’ conflicts with ‘whitefella’ law.” The matter was urgent, especially given that Aboriginal people need to be buried within a month of death. Clayton Utz assisted with the application to the Supreme Court and recognised there was a broader need for Aboriginal people to have wills so their wishes could be recognised in law.

The highly useful and effective relationship started because GRC had a relationship with Clayton Utz’s National Pro Bono Coordinator (not the Perth Coordinator). Over the years, this has developed into a good relationship with the Perth office, demonstrating that positive relationships do not always need to start locally.

Benefits

- Ability to for the CLC to choose someone who fits the culture of the organisation and will also assist with the other work of the Centre.
- Clayton Utz’s assistance with the recruiting process.
- The fellowship helps to maintain the longstanding close relationship that GRC has with Clayton Utz, which has enabled GRC to facilitate the provision of pro bono assistance for other community organisations in the Geraldton area. For example, Clayton Utz has also assisted with settlement of a property for a local organisation, and provided advice around workplace relations, constitution redrafting, and constitutional corporation status.

Features that make it effective

- Use of community legal education to prepare communities for the idea that having a will is important and necessary before running a legal advice session and drafting wills.
- GRC has a good relationship with Clayton Utz and sees the benefit of having a partnership. The Operations Manager at GRC, Chris Gabelish, explained that “some CLCs can be over-protective of their territory, seeing themselves as the only carriers of social justice. Working towards positive relationships can yield real benefits for clients.”

23.2.2 Case study: Goulburn Valley Project (Loddon Campaspe Community Legal Centre and Clayton Utz)

Loddon Campaspe CLC has been the recipient of the Clayton Utz Fellowship twice over the past four years.

Benefits

- Gives the CLC much more freedom than a secondment to choose the person they want, the project they want to do, and the work they want the fellow to do. Clayton Utz funded a fellow to set up the Goulburn Valley project.
- Clayton Utz provided assistance with the recruitment, training, and took referrals from the sites where the project was being conducted.
• Provides an opportunity for an interested graduate in a sector where there are few opportunities for them to join.

• Fellows have tended to remain with the organisation and have proven the value of the position/project. For example, one fellow stayed for five years and the other stayed for three years. The Coordinator at Loddon Campaspe Community Legal Centre, Peter Noble, explained that it would be very difficult for the service to be discontinued, now that the need has been established and is being addressed. “$200K recurrent funding has been secured for continuation of Goulburn Valley service until 2014.”
In this model, firms and CLCs work together to undertake public interest litigation either for an individual client or as a law reform initiative. Typically, the CLC does the initial work establishing the merits of the case or issue and maintains the client relationship. The firm may then give written advice, do background research and draft court documents as required. The firm or the CLC (or both) may be on the record.

In this way, the pro bono provider increases the capacity of a community legal organisation to address unmet legal need by undertaking public interest litigation, with a contribution of expertise, skills and other resources.

One large law firm pro bono coordinator questioned whether the concept is “something borrowed from American television”, which does not really work in the Australian legal context.

> “While there may be strategic/political reasons for wanting to have a law firm and a CLC on the record in a piece of litigation, ultimately decisions need to be made about who is being instructed by the client, and who takes responsibility for the work eg who signs off on pleadings.” (Large law firm pro bono coordinator)

Most of the pro bono coordinators consulted said that firms and CLCs like to do co-counselling but that it does not happen very often. One large law firm pro bono coordinator said that it had been difficult for them to find co-counselling opportunities because when CLCs find a good case to run they tend to try to hold onto them, so the firm has ended up running test cases on its own.

The Head of Pro Bono and Community Services at Allens Linklaters, Nicky Friedman, spoke of her firm’s experience of co-counsel arrangements with the Human Rights Law Centre (HRLC), the Refugee and Immigration Legal Centre (RILC) (M61/M69 cases), and working with both HRLC and Fitzroy Legal Centre (Occupy Melbourne). She explained that co-counselling arrangements can arise from pre-existing relationships but also where a matter is referred from another source that has a pre-existing relationship (for example, a co-counselling arrangement with a small commercial firm referred by HRLC).

A more common way that pro bono is provided to assist CLCs with their public interest litigation is where the CLC uses a firm as a sounding board or lifeline, but remains the sole representative on the record, with responsibility for the matter. This kind of mentoring assistance can also be provided by CLCs to law firms. For example, the Pro Bono Partner at Clayton Utz, David Hillard, explained that in the early days of the firm’s Victim’s compensation practice, the firm’s lawyers were mentored by lawyers at Marrickville Legal Centre, who were available for advice and questions.

> “Mentoring of CLC lawyers is more likely eg in employment law. The CLC tells the firm the facts of the case and asks for an opinion or asks for the firm to review a statement of claim or calls about the matter from time to time to discuss strategy.” (Mid-sized law firm pro bono coordinator)

See also section on “secondary consults” or “phone a friend” assistance (Chapter 25).
## 24.1 CO-COUNSELLING: AT A GLANCE

### Benefits
- Allows CLCs to be the public face of the litigation or campaign while harnessing resources of pro bono lawyers for behind-the-scenes assistance which a CLC may not have the expertise or resources to manage alone.
- Transfer of skills/knowledge from the firm to the CLC and vice versa resulting in the skilling-up of CLC lawyers or pro bono lawyers in areas in which they are unfamiliar, and an increase in overall capacity to address unmet legal need.
- Firms provide resources and clout that the CLC would not have on its own.
- CLCs assist firms by managing client contact.
- Clients feel supported by a big team and may feel more comfortable with the idea of instructing corporate lawyers if they can continue to maintain an existing relationship of trust with the CLC lawyer.

### Challenges/limitations
- Impracticality of having two sets of lawyers involved in the work and decision-making, especially when they have different views about what is the best outcome for the client.
- Lack of expertise in either or both the CLC and the firm in the areas in which co-counselling is sought.
- Communication and cultural gap between the firm and CLC, and dissatisfaction from both firm and partner organisation about each other's level of contribution.
- CLC lawyers unfamiliar with complex litigation, with limited experience of instructing barristers can be a drain on a firm's time and resources, and may not be serving the best interests of the client.
- There is a risk that if a CLC becomes reliant on pro bono assistance to run the matter that they will be left in a difficult position if pro bono resources are not continued throughout the matter.
- A co-counselling arrangement that does not work as well as planned, and ends up requiring more resources, can lead to greater scrutiny of future proposals making it difficult to convince the firm to run test cases.

### Features of effective co-counselling
- Initial risk/resource assessment so that both CLC and firm agree on extent of assistance to be provided.
- The subject matter is contained to an area of law in which the firm has expertise and the CLC has some knowledge.
- The CLC is upfront and honest about their level of knowledge and expertise.
The roles to be played by the CLC and the firm are clearly set out at the beginning.

Pre-planning about how the firm and the CLC will work together on the matter including who is the lawyer on the record, who has the solicitor-client relationship with the client, what area each is responsible for, what the CLC lawyer is hoping to get from co-counselling.

A pre-existing or developed strong relationship between the firm and the CLC. Planning cannot take every possibility into account, so there needs to be a relationship that can adapt to changes in circumstances.

The client is given the choice about whether the firm or the CLC makes decisions where there is a disagreement about an aspect of the case.

Having a pro bono coordinator who understands the firm and CLC can help to resolve disagreements.

24.2 CO-COUNSELLING: BENEFITS

Many of those consulted said that clients generally view co-counselling arrangements positively as they feel supported by a big team with different skills.

“It helps the client to feel more comfortable with the idea of instructing corporate lawyers, if they can continue to maintain an existing relationship of trust with the CLC lawyer.” (Large law firm pro bono coordinator)

From the perspective of CLCs, co-counselling allows them to be the public face of the litigation or campaign while harnessing resources of pro bono lawyers for behind the scenes assistance which a CLC may not have the expertise or resources to manage alone. Firms also provide resources and a level of clout that the CLC would not have on its own. For example, solicitors at Caxton Legal Centre explained that lawyers from Minter Ellison contributed two months of work to a case (See Gleneagles case study at 24.5.2). Phillips Fox (now DLA Piper) represented the other party and bombarded Caxton with correspondence that would have been intimidating if they did not have the resources of Minter Ellison to assist with responding.

“If a CLC completely refers out a case that they don’t have the knowledge to run on their own, they end up ‘dumbing down’ even more. If they work with people who have the expertise, they increase their skills.” (Community legal centre coordinator)

The transfer of skills and knowledge is not necessarily only from the firm to the CLC. Co-counselling often involves skilling-up of both CLC lawyers and pro bono lawyers in areas in which they are unfamiliar, increasing overall capacity to meet unmet legal need.

“You can play to the different strengths of both the law firm and the CLC.” (Large law firm pro bono coordinator)

For the firm, it is also useful to have CLC assistance with managing client contact. For example, the pro bono coordinator at Allens Linklaters, Nicky Friedman, explained that in relation to a test case on prisoners’ voting rights, it was the Human Rights Law Centre (HRLC) that found the client and visited her in prison and it would have been difficult for the lawyers from the firm to do so.
24.3 CO-COUNSELING: CHALLENGES/LIMITATIONS

Given that CLCs seek co-counselling partnerships to assist them with running public interest litigation where they do not have the necessary expertise, experience or resources, there is a risk that they will be left in a difficult position if they are reliant on pro bono resources which are not continued throughout the matter.

Some of those consulted expressed concern about how to structure the co-counselling arrangement in a way that skills up CLC staff without wasting the firm's time and resources in an arrangement that does not work well for either partner. One large law firm pro bono coordinator provided the example of a co-counselling project involving the firm and two CLCs. One of the CLCs had no experience with this kind of arrangement and a relatively junior lawyer in the role who did not have any supervision and was looking for support from the firm. “It was not the firm's role to provide the CLC lawyer with supervision. The other CLC had to be more involved than usual. It all worked out fine, but took more work from all parties.”

“It is very challenging for us when CLC lawyers are unfamiliar with complex litigation, and have limited experience of instructing barristers.” (Large law firm pro bono coordinator)

“If a CLC is unable to provide any instructions at all to a firm, then it raises the question why the CLC is involved at all.” (Community legal centre coordinator)

One large law firm pro bono coordinator also stressed the need to ensure the best interests of the client, whose interests may not be served by being represented by any lawyers who do not have the expertise or experience to run the matter.

“Is it in the client's best interest for them to be represented by a lawyer who does not have sufficient experience about the legal issues faced in the case? If your lawyer needs to be ‘shadowed’ by another firm or CLC, is there a good reason why that other firm or CLC should not be representing you?” (Large law firm pro bono coordinator)

“Using the prestige of the firm to promote the work of a CLC or firm in a co-counselling arrangement is not necessarily in the best interests of the client.” (Large law firm pro bono coordinator)

Another pro bono coordinator expressed the view that co-counselling could not really be an equal partnership if the CLC lawyers did not have litigation experience and could only contribute by managing the client communication, describing this as “social work” rather than legal work, and that it would be better for a CLC to shadow a firm to learn litigation skills rather than calling it co-counselling.

The Coordinator at Footscray Legal Service, Denis Nelthorpe, thought that some of the criticism about the legal skills of CLC lawyers may actually be in part due to the archaic systems, facilities and surroundings of CLCs which do not reflect a professional image, rather than reflecting their actual skill level. The principal solicitor at the Public Interest Advocacy Centre (PIAC), Alexis Goodstone, made the suggestion that firms could commit to running several matters with a CLC so that they can build up skills in a meaningful way. “It takes more than one go at litigation to develop/refine skills.” However, it is not only CLCs that might lack the expertise or skills to run a matter.

“Challenges include that we receive few requests and that we don’t always have expertise in the areas in which co-counselling is sought. Employment law is the
exception and we have had several good co-counselling relationships in that area.”
(Large law firm pro bono coordinator)

Having two sets of lawyers making decisions and interacting with the client can be difficult, especially when they have different views about what is the best outcome for the client. One large law firm pro bono coordinator provided the example of a disability discrimination matter where the firm advised the client what the likely outcome would be and assisted the client to negotiate an outcome that the firm considered to be positive for the client. However, the firm felt that the CLC had raised the client’s expectations about what the outcome should have been, leading the client to feel they had settled for less than they should have.

“There can really only be one leader and only the client can instruct. There is a risk that decisions will be delayed and clients will be confused by having to consult with two sets of lawyers.” (Large law firm pro bono coordinator)

The cultural differences between firms and CLCs can make communication between them difficult, and can lead to dissatisfaction from both the firm and partner CLC about each other’s level of contribution.

“The firm thought that the CLC was unnecessarily engaging with clients to appear more involved in the litigation than they actually were, and the CLC thought the firm wasn’t adequately looking after its clients when there was no evidence of this. In another case the CLC continued to be involved in matter after the firm thought that their involvement should have ceased. This was a case where there wasn’t meant to be co-counselling.” (Mid-sized law firm pro bono coordinator)

Given that co-counselling opportunities are rare and firms may be reluctant to support such a resource intensive matter, it is important to carefully plan and assess whether a co-counselling arrangement is going to work, to encourage future partnerships of this nature.

“The consequences of having a co-counselling arrangement that doesn’t work as well as planned and ends up requiring more resources is that it can lead to greater scrutiny of future proposals which can make it difficult to convince the firm to run test cases. A strong, established pro bono practice is able to take more risks and withstand more internal scrutiny than a developing practice.” (Large law firm pro bono coordinator)

### 24.4 FEATURES OF EFFECTIVE CO-COUNSELLING

The best way to avoid many of the problems associated with a co-counselling arrangement is to conduct an initial risk and resource assessment so both CLC and firm agree on extent of assistance to be provided, and to plan for the roles to be played by the CLC and the firm so both have a clear sense of who is responsible for different tasks early on. Pre-planning might involve decisions about how the firm and the CLC will work together on the matter, including who is the lawyer on the record, who has the solicitor-client relationship with the client, what area each is responsible for, and what the partners are hoping to achieve with the co-counselling arrangement.

“There can sometimes be an assumption that the firm is well-resourced and therefore has unlimited capacity to provide administrative support when in reality firms have their own procedures and approval processes for requesting additional resources like paralegals.” (Large law firm pro bono coordinator)
A co-counselling arrangement may be more likely to succeed where the subject matter is contained to an area of law in which the firm has expertise and the CLC has some knowledge. While it may not be critical for the CLC lawyer to have pre-existing knowledge, it is important for CLCs to be honest about their capability and resources.

“Most CLCs do not have the expertise or resources to contribute as an equal partner. Refugee and Immigration Law Centre (RILC), Human Rights Law Centre (HRLC), Public Interest Advocacy Centre (PIAC) and Consumer Action Law Centre (CALC) stand out because they have staff who are extremely competent and had the expertise before they joined those centres as well as developing it further working there. CLCs need to specify the amount of time and level of expertise of the person that will work on the matter from the CLC end. Most will need ‘a bucket, not a trickle’ of assistance from a firm, but this should be clear from the outset.” (Community legal centre coordinator)

A pre-existing strong relationship between the firm and the CLC can be very helpful, especially since planning cannot take every possibility into account.

“There needs to be a relationship that can adapt to changes in circumstances, eg in a case where the firm did not expect to go to trial, the CLC did not do the work that the firm expected them to do so extra resources were required from the firm. A good relationship was maintained between the firm and the CLC, but the project involved more work and stress than expected.” (Large law firm pro bono coordinator)

“Having a pro bono coordinator who understands the approach of both the firm and the CLC and can help to resolve differences.” (Mid-sized law firm pro bono coordinator)

To ensure the best interests of the client are being taken into account, one large firm pro bono coordinator said it was important for the client to be given the choice about whether the firm or the CLC makes decisions where there is a disagreement about an aspect of the case.

“If a client is to be moved from one solicitor to another, there needs to be a ‘handover’ where both the old and the new solicitor meet with the client.” (Large law firm pro bono coordinator)

24.5 CASE STUDIES

24.5.1 Case study: Children in Detention (Public Interest Advocacy Centre and Maurice Blackburn)

The Public Interest Advocacy Centre (PIAC) partnered with Maurice Blackburn (MB) after PIAC identified the issue and clients as part of its advocacy work for children in detention. Civil claims for unlawful search, wrongful arrest, assault and battery were being settled by the NSW State Government as they did not want cases that could be used as precedents. Juveniles were being arrested and held overnight because the police were using out-of-date information about their bail conditions.

PIAC saw that a systemic problem was not being addressed and decided to try a class action in the Supreme Court. They had one lead applicant and seven others in the same position. Clients had the opportunity to opt out and run their own action if they chose to, and would not then be bound by the class action decision. PIAC already had a relationship with MB, as one of MB’s principals is on the
PIAC Board, and had informal discussions with that Board Member. Both PIAC and MB felt it was a natural fit and that a co-counselling arrangement could work.

Challenges

- Uncertainty about how much work might be involved. Once the action commenced there was no turning back but PIAC had limited resources and little experience with class actions. The number of clients has grown to over 30 and will likely grow further.

- Firms often want to be the only ones on the record as they are worried about risk and want full control although there are also situations where firms do not want to be publicly connected with a matter that has political implications or where there is the potential for conflicts (although MB did not take this view).

Features that made it effective

- **Using each partner’s strengths.** PIAC had developed expertise in client management dealing with vulnerable young clients (for example the practicalities of finding clients who change their mobile phone number often) so PIAC is the client contact point. While PIAC understood the law (e.g. the elements required to prove a tort/false imprisonment claim) MB had expertise in running class actions and how to define a class. MB chose the lead applicant and drafted the pleadings. PIAC was clear from the outset about their resource constraints; for example they had much less capacity for administrative support than MB.

- **Planning allocation of tasks.** The planning was carefully thought through before commencing work on the matter, trying to think of everything that could happen. Planning started one year before commencing action. PIAC had to think about what kind of case it could turn out to be, who to partner with and what they would bring to the table. While the partners consulted each other on everything, they made decisions early on about who would do what, for example, drafting the pleadings and correspondence (MB) and collecting transcripts and juvenile justice files (PIAC). PIAC manages files directly so there is no doubling of administrative work between MB and PIAC. Both partners attended court and both had separate costs agreements with the clients (jointly and severally liable). Robust discussions took place to work out a process for communication and resolving difference in approach, including fortnightly meetings and task lists. So far there have been more emails than meetings, but that will change according to what is happening at that time. The partnership works as long as both parties are consulted and happy.

- **Flexibility to adapt to unforeseen circumstances.** For example, when PIAC lost a few staff members, MB agreed to do more of the client work than originally agreed.

- **Respect on both sides of the partnership.** It is a genuine collaborative relationship. Both PIAC and MB are on the record, as they wanted to feel like equal partners all the way through the case. As both are on the record, both partners also take equal responsibility but rely on each other’s expertise. Both are mentioned in media releases and interviews as the exposure helps everyone involved. Note, however, that the judge raised concerns about potential confusion for the respondent and client in relation to having both PIAC and MB on the record, even though the respondent did not originally raise it as a concern, and the parties are awaiting a decision on the issue.
Compatibility of ethos and skills. PIAC wanted to partner with a firm that had the same ethos and assessed MB, given their history of class actions and slogan “fight for fair”, as being a natural fit. Most firms are experienced in defending class actions rather than running them as the plaintiff.

“Think about the type of case, the type of firm and type of arrangements.” (Alexis Goodston e, Principal Solicitor, PIAC)

24.5.2 Case study: Gleneagles (Caxton Legal Centre Inc and Minter Ellison)

Minter Ellison partnered with Caxton Legal Centre Inc (Caxton) in a case involving the eviction of a group of 30 people from the Gleneagles on the River retirement village. It was an urgent matter given that they had been given a notice to vacate.

In early April 2009, Caxton began work on the matter by assisting the residents to lodge an application with the Commercial and Consumer Tribunal (CCT) disputing the notices to vacate. A solicitor at Caxton pitched the matter in a meeting with Minter Ellison which agreed to help run the matter.

Each of the clients entered into a Deed of Authority to Act. In this Deed the clients appointed Caxton Legal Centre as their agent in relation to the application to the CCT, giving Caxton the authority to:

- engage Minter Ellison to act on their behalf in relation to the application
- provide instructions or directions to Minter Ellison in relation to the application
- authorise the deduction of any moneys held on the clients’ behalf in any trust account
- authorise the payment (or incurring) of any invoices, disbursements or related fees and charges
- engage counsel
- provide instructions to settle or compromise the application.

Caxton Legal Centre Inc as duly authorised representative of the clients then entered into a Client Agreement with Minter Ellison.

Caxton managed the day-to-day client contact and sought all instructions from clients, obtained statements and prepared affidavit evidence. They also provided all instructions to Minter Ellison and received drafts of all correspondence sent by Minter Ellison in relation to the matter. The Caxton solicitor running the matter worked full-time on this matter for approximately three months. Other solicitors from Caxton also provided assistance in taking instructions and drafting material as required.

Minter Ellison agreed to assume the conduct of the Application in the CCT. They were the solicitors on the record and the contact point for the other party’s solicitors. They prepared all correspondence to the Tribunal, the clients and the other party. They prepared all Tribunal documents, settled all affidavit evidence, including that of expert witnesses. They also engaged and instructed counsel. Minter Ellison had a senior associate and two solicitors in their litigation team working on the matter, dedicating approximately 675 pro bono hours to the matter.

Senior and junior counsel were also engaged on a pro bono or reduced-fee basis.
Even though the Caxton solicitor running the matter was a law graduate who had only recently been admitted to practice, the lawyers from Minter Ellison quickly assessed her competence, established a relationship of mutual respect and trust with her, and the relationship worked very well.

The Tribunal ordered that the parties attempt to mediate the matter. While the mediation was largely unsuccessful, the other party made a range of settlement offers to the Gleneagles residents and the matter settled out of court the day before the hearing.

**Benefits**

- The clients felt supported by a big team.
- Lawyers from Minter Ellison contributed two months of work to the case, totalling 675 pro bono hours.
- Given they had the considerable resources of Minter Ellison to assist with responding, Caxton’s lawyers were not intimidated by the bombardment of correspondence that came from Phillips Fox (now DLA Piper), the firm that was representing the other party.
- Caxton was able to harness the expertise and resources of a top tier firm while maintaining control of client management.
- Each partner was able to work to their strengths. Minter Ellison was better equipped to manage litigation of this nature and Caxton was better placed to manage a client group of this nature.

**Features that made it effective**

- **Planning and defining the roles of the partners at the beginning.** It was agreed at the beginning of the matter that work would be distributed between the lawyers involved according to the areas of the matter that particular lawyer had responsibility for. For example, Minter Ellison, as solicitors on the record, drafted all documents for the CCT, including the application, subpoenas and documents relating to disclosure. Caxton had responsibility for client management, including collecting and completing the initial drafts of all affidavit evidence. Junior counsel was also heavily involved in settling all documents.

- **Regular communication.** All the solicitors, from both Caxton and Minter Ellison, spoke at the beginning of each day to work out what needed to be done and divide up the work. They communicated via email when necessary during the day to exchange material and information they had obtained, and spoke again at the end of the day to discuss the outcome of the day's work and plan for the following day. The constant contact was necessary given the large group of clients and the speed at which the matter progressed.

- **Relationship of trust and mutual respect.** The lawyers from Minter Ellison, as well as senior and junior counsel, all had experience working on pro bono matters so they understood the clients and trusted the Caxton solicitor, supporting and respecting her opinions/expertise even though she had only recently been admitted to practice.

"The Minter Ellison Pro Bono Coordinator in the Brisbane Office really values pro bono and recognises that CLC lawyers have chosen to work in CLCs because they are passionate about the work." (Klaire Coles, solicitor at Caxton Legal Centre Inc)
“SECONDARY CONSULTS” OR “PHONE A FRIEND” ASSISTANCE

“Secondary consults” or “phone a friend” assistance involves the mentoring of CLC lawyers by pro bono providers. This can occur through formalised arrangements like the provision of community legal education (see section on Community legal education, Chapter 29) or less formal arrangements where advice or an opinion is sought and provided in a particular area of law or in relation to a particular matter.

It was also suggested that a similar mentoring arrangement could work for small firms wishing to become more involved in pro bono work, but who do not have the resources that lawyers in larger firms have to draw on to assist them when they lack expertise (see also section on Small firms, Chapter 11).

“I have developed a good connection with a couple of pro bono coordinators at larger firms who have much more experience than I do. I feel comfortable picking up the phone and asking them what they think about a problem I am having internally with my firm’s pro bono practice and their reassurance gives me confidence to take action.” (Mid-sized firm pro bono coordinator)

25.1 SECONDARY CONSULTS: AT A GLANCE

Benefits
- Boosts the capacity of the CLC while being convenient for pro bono providers.
- Advice can be obtained quickly over the phone.
- Gives the pro bono provider flexibility about how resource intensive the assistance is.
- There is no issue of conflict for the pro bono provider as the request for assistance can be de-identified.

Challenges
- The pro bono provider does not have direct contact with the client, so is reliant on the CLC to provide all relevant facts/information.
- The pro bono provider’s level of commitment to a CLC/matter is not necessarily as great as it would be if there was a formalised co-counselling arrangement.
- The pro bono provider may not be able to respond within the timeframe required by the CLC.
- The pro bono provider may be unable to provide one designated person that can provide advice in all the areas where it is sought, due to the specialisation of its lawyers.

Features of effective secondary consults
- The CLC understands the pro bono provider’s time and resource constraints, and the pro bono provider is honest and upfront about the level and amount of support they can provide.
- The CLC articulates the issue they need assistance with clearly and succinctly.
The Sector Development Manager at the Federation of Community Legal Centres Victoria, Claudia Fatone, said that “secondary consults” are becoming a more significant way for firms to provide assistance to CLCs. “There is a relationship between a firm and a CLC where the CLC can ask for advice about a particular issue without disclosing the client. As the advice is de-identified, there is no issue of conflict for the firm.”

“A more likely approach than co-counselling is where the CLC uses the firm as a sounding board/lifeline, but remains the sole representative on the record, with responsibility for the matter.” (Large law firm pro bono coordinator)

“Mentoring of CLC lawyers is more likely than co-counselling. The CLC tells the firm the facts of the case and asks for an opinion or asks for the firm to review a statement of claim or calls about the matter from time to time to discuss strategy.” (Mid-sized law firm pro bono coordinator)

“We do not have experience of co-counselling but do provide advice on an ad hoc basis to CLC lawyers who call the firm for information or advice in a particular area of expertise or for a precedent.” (Mid-sized law firm pro bono coordinator)

Much of this mentoring takes the form of advice provided over the phone, so it is convenient for both partners and can often be obtained at short notice.

“Increasingly telephone advice is provided to organisations which represent the target client group. These organisations are clients with whom we have had an ongoing relationship so we will understand their issues. It is no different from our interaction with commercial clients.” (Mid-sized law firm pro bono coordinator)

“Telephone advice is also provided by the firm to CLC or legal aid lawyers in areas that they are not so familiar with eg tax, intellectual property.” (Large law firm pro bono coordinator)

“We often use barristers to provide advice over the phone on particular questions of law.” (Community legal centre solicitor)

“We have longstanding relationships with several specialist practitioners who provide detailed advice to our solicitors but do not take over matters. This enhances the capacity of the CLC staff to handle complex matters and is the most common way for pro bono support to be provided.” (Community legal centre solicitor)

Where telephone advice is being provided to a CLC, a firm may be unable to provide one person that can give advice in all the areas where it is sought, due to the specialisation of its lawyers (for example, different people advise on direct tax and indirect tax). One large law firm pro bono coordinator said that CLC lawyers would prefer to deal with just one lawyer at the firm. “There can be frustrations when a CLC lawyer has to speak to many different firm lawyers and explain the matter and the role of the CLC to each.”

“A firm may not be able to respond within the timeframe required by the CLC, so it only works in a relationship where the CLC understands the firm’s time and resource constraints.” (Mid-sized law firm pro bono coordinator)

A Pro Bono Senior Associate at Herbert Smith Freehills, Lara Garfinkel, said that the firm often assists with mentoring of CLCs via community legal education or training and is always open to new relationships and encourages CLCs to ask for assistance. “There is no harm in asking a firm if they are interested in assisting or being involved in a project.”
There are growing opportunities to use technology to deliver pro bono legal services. While the growth of telephone advice services has led to a general understanding, familiarity and acceptance of the idea of providing or receiving legal assistance by telephone, models of pro bono assistance using online technology are still developing. This may be due, in part, to the fact that people who cannot afford to pay for legal assistance are also those least likely to have had the resources to keep up with and feel comfortable with technology.\textsuperscript{110}

Provision of legal information, referral and advice online may involve setting up a website containing relevant legal information and providing advice by email. Pro bono lawyers have supported such online advice services by volunteering to post or check material on the website, and responding to email requests for legal advice.

The use of telephone and online video conferencing facilities in particular are often viewed as a way to address unmet legal need that is exacerbated by lack of physically available/accessible services (for example, where a service is geographically inaccessible to people in regional, rural and remote (RRR) areas, or where a client has limited mobility). However, there may also be some client groups, like children and young people, who do not live in a RRR area but prefer the potential immediacy and anonymity of the online medium. For example, the principal solicitor at Eastern CLC, Belinda Lo, said that the CLC is considering setting up an online advice service at Deakin University, providing advice by Skype and email, and making information resources available over the web.

The Director of the National Children’s and Youth Law Centre (NCYLC), Matthew Keeley, said that video conferencing seems to be the form of online legal advice most commonly associated with the online advice model. “However the opportunities for using new technology to deliver legal assistance services are continually growing and evolving. The definition of online advice services should also be broadened to include mobile internet and smart phones. NCYLC is considering a LawMail app, as well as how to use social networking and YouTube to reach young people.” See case study on NCYLC’s LawMail, Lawstuff and CourtStuff services at 26.5.1.

This section looks at the common features of pro bono models using different types of technology, then examines them individually: telephone advice, video conferencing, website, email advice and a combination of some or all of the above.

26.1 TECHNOLOGY-BASED SERVICES: AT A GLANCE

**Benefits**

- Ability to engage with people who are more comfortable with telephone or online communication (for example, young people).
- Increasing accessibility of legal services to the target clients, especially those in RRR areas or with limited mobility.
- Reduction in time and cost associated with providing in-person legal services.
- Potential to provide advice within a relatively short timeframe.

**Challenges**

- Impact on effective communication
- Loss of networking opportunities for staff in RRR areas.
- Opening the floodgates by making services more accessible, with clients having a stronger expectation of immediate advice when they use telephone or online advice services.
- Reluctance of clients and lawyers to use online services with the general view remaining that face-to-face advice is the best way to communicate.
- Costs of setting up and maintaining technology.
- Quality control and risk management.

**Features that make it effective**

- Appropriate planning to ensure that technology-based services fill gaps rather than replicating an existing service (not using technology for its own sake).
- Developing partnerships with organisations that have face-to-face contact with and the trust of the target client group and can provide support to the client using a technology-based service (in the same way that they currently do in any outreach model).
- Adequate resources and support to local partners which assist them with the set-up, ongoing training and on-site technical support.
- Efforts to increase host organisation, lawyer and client familiarity with the use of new technologies.

26.2 TECHNOLOGY-BASED SERVICES: BENEFITS

The use of technology-based services is often seen as a way to address unmet legal need that is exacerbated by lack of physically available/accessible services (for example, where a service is geographically inaccessible to people in RRR areas, or where a client has limited mobility). The Director at QPILCH, Tony Woodyatt, suggested that online service delivery could potentially work in
RRR areas with the rollout of the National Broadband Network (NBN), for example. “Townsville needs a self-representation service that could perhaps be staffed with solicitors working remotely.” He also suggested that mobile internet technology could have particular benefits in disaster/emergency situations. “The Queensland flood response bought an iPad to use at the reconstruction centre but were not organised enough to use it effectively this time around.”

However, technology-based services may also be used as a way to engage with people who are more comfortable with communicating using these new technologies.

“Young people are comfortable with technology and in many cases prefer using mobile/online forms of communication. There is a trend towards use of mobile networks/smart phones, especially as they become cheaper. Over 90% of young people between 16-18 years of age use mobile phones. The online medium, which young people are generally comfortable navigating, allows clients to obtain legal advice using an anonymous web persona.” (Community legal centre manager)

“Law and Justice Foundation research indicated that young people would go to the internet for legal information before they would visit a CLC.” (Large law firm pro bono coordinator)

Advice can be sought and provided within a relatively short timeframe. For example, Matthew Keeley explained that the national and web presence of the NCYLC via Lawstuff means clients can access information no matter where they are in the country and whatever time of the day, and receive written advice and referrals via its LawMail service within seven days (unless it is an urgent matter that needs to be dealt with even earlier).

From the perspective of those providing legal assistance services, the potential reduction in time and cost associated with providing in-person legal services is very attractive.

“From the firm’s point of view, any model that involves having their staff leaving the office less is a potential positive.” (Mid-sized law firm pro bono coordinator)

(See also case study on Hobart Community Legal Service and DLA Piper for use of technology in the CLE context at 29.1.2.)

### 26.3 TECHNOLOGY-BASED SERVICES: CHALLENGES/LIMITATIONS

Communication can be more difficult without face-to-face contact with clients. Many clients may need support from someone who is physically present, and some may not be comfortable with using technology-based services at all. The Operations Manager at Geraldton Resource Centre, Chris Gabelish, questioned the idea that phone or online advice is better than no advice. “This is particularly relevant for clients who may face cultural and/or language barriers in communicating effectively. The wrong message might be transmitted by either the client or provider, if not conducting the initial client interview face-to-face. Even if there is a delay in making an appointment it is better to have a face-to-face meeting then do follow up by phone. This is of course affected by the seriousness and urgency of the client matter.”

“While IT will be of some assistance, it should not be seen as a panacea, as many clients do not have access to computers and some clients and matters are not amenable to this form of contact. Use of IT should be developed with care.” (A pro bono clearing house manager)
The preference for using technology to deliver community legal education remotely to avoid the costs associated with long-distance travel also has an impact on the networking opportunities for lawyers and community workers in remote communities.

“Firms like the idea of doing more pro bono work via online technology like Skype or podcasts. However, they need to fully understand the loss of interaction and networking opportunities with a web-based seminar (and that a number of RRR organisations are unable to access adequate technology). Their perception is very much of the lawyer imparting information, rather than relationships where there is understanding and contributions on both sides.” (A pro bono clearing house manager)

Given the convenience, ease and accessibility of requesting assistance by telephone, internet or mobile technology for those familiar with it, there is a concern that there will be a flood of requests for assistance accompanied with clients having a stronger expectation of receiving immediate advice. The Director at Queensland Public Interest Law Clearing House (QPILCH), Tony Woodyatt, said he is open to the idea of providing advice by email and already does so to some extent with the Self Representation Service (see case study at 20.5.1) with some advice and documents being transmitted by email. However, given that QPILCH is already working at capacity, he is concerned that publicising an online service will open the floodgates. “It is already difficult to stop clients from repeatedly calling.”

“When clients call our telephone advice service, they sometime express frustration when they are told that they will be called back with an answer. It is important to explain from the beginning the likelihood of the lawyer needing to take time to do research.” (Community legal centre coordinator)

“The CLC was reluctant to advertise the email advice service for fear that they would not have the resources to respond to the deluge of requests for assistance.” (Large law firm pro bono coordinator)

One of the major limitations of technology-based services is the inability to reach people who are not familiar or comfortable with using the technology. Some of those consulted expressed frustration at the slow pace of change to embrace use of technology amongst clients, lawyers, the legal assistance sector and the legal profession generally.

For example, the Coordinator at Shoalcoast CLC, Kerry Wright, explained that the South East region of NSW (particularly the Cooma-Monaro area) really suffers from lack of lawyers doing legal aid and pro bono work, particularly in family law. For family law matters, access to Federal Magistrates Court is another barrier to justice, with Wollongong and Canberra being difficult to access due to travel and related expenses for many disadvantaged people in those regions. “Shoalcoast, along with CLSD partners, wrote to the Federal Magistrates Court about a range of access issues including better use of technology to reduce the number of times that people have to personally attend court, and discussions are ongoing.”

“There needs to be more willingness to push boundaries eg use of technology like Skype to deliver services where distance is an issue.” (Community legal centre principal solicitor)

“There is a general antipathy in the sector towards provision of legal assistance online, with an agenda of maintaining the priority of face-to-face services.” (Community legal centre manager)
The cost of setting up and maintaining the necessary technology (which may include where the client is located, where the lawyer is located, and possibly the host agency), has been an obstacle to the development of such services. For example, the Director at QPILCH, Tony Woodyatt, said he looked at the possibility of using the system that LawWorks in the UK uses to refer matters to lawyers online, but the cost of a similar system in Queensland would require significant funding that may not be cost effective.

“Video conferencing has been cumbersome and expensive to set up and run, but may improve when more people have access to, and are comfortable with, services like Skype.” (Large law firm pro bono coordinator)

Many of those consulted expressed concerns about quality control and risk management in relation to the provision of legal advice using new technologies, depending on the effect they had on the way that instructions were received, the level of communication between the lawyer and client and the client’s expectations of speed and possible anonymity.

“We need to work out how to establish liability for online advice, ensuring that it is properly checked and the risks are properly addressed.” (Mid-sized law firm pro bono coordinator)

“Sometimes young people use pseudonyms or want to remain anonymous. The inability to verify the identity of clients creates challenges for conflict checking.” (Community legal centre manager)

“One of the challenges of the telephone advice or video conferencing model as opposed to the email model is that advice is being given in real time so there either needs to be an experienced lawyer providing the advice or a senior lawyer proximate to the junior lawyers so they can hear what they are saying to clients.” (Community legal centre manager)

26.4 FEATURES OF EFFECTIVE TECHNOLOGY-BASED SERVICES

In the rush to establish technology-based services, it is important not to forget to assess whether there is actually a gap in legal services that a technology-based service can address to ensure that it is not duplicating an existing service, and that the need is one that is appropriate for use of a technology-based service.

For technology-based services that are used as a form of outreach (see section on Outreach, Chapter 21), the importance of having a partnership with a local community organisation, CLC or legal aid is as crucial for the success of the service as it is for other forms of outreach.

“Particularly if online advice is to address unmet legal need in RRR areas, there would need to be a person acting as a filter for matters who could ensure that all the relevant background information on the client’s matter is obtained.” (Mid-sized law firm pro bono coordinator)

However, support also needs to be provided to staff members working in these “intermediary organisations” who are more likely to promote new technology-based services and facilitate communication between clients and lawyers if they feel comfortable with using it and can see the benefits themselves. The principal solicitor at the North Australian Aboriginal Justice Agency (NAAJA), Jonathon Hunyor, said that lawyers in NT are accustomed to using phone and video link facilities to communicate given the necessity of using these in remote areas.
To address the concerns about how to meet the demand that opening up the floodgates of technology-based services might unleash, there needs to be appropriate planning and an understanding of the resource requirements which may include the cost of setting up and maintaining the infrastructure (at the client, lawyer and host organisation locations), ongoing training and support for the host organisation staff, providing local professional support to clients using technology-based services, and the work associated with the provision of advice which goes beyond the initial telephone or online advice to file-noting and case management.

26.5  CASE STUDY

26.5.1  Case study: Lawmail, Lawstuff and Courtstuff (National Children’s and Youth Law Centre, King & Wood Mallesons, Telstra, ASIC and Sparke Helmore)

Background

The National Children's and Youth Law Centre, which was established in June 1993, has played a fundamental role in the provision of legal advice to young people. In April 1997, NCYLC developed an innovative facility for providing these services online. Its use of website, email, phone advice and more recently, social media, has radically transformed NCYLC’s ability to offer legal advice nationally.

“The model has potential application for RRR areas and is inevitable as society becomes more comfortable with the technology. Young people already prefer this medium.” (Jane Farnsworth, Special Counsel, Pro Bono and Community, K&WM)

The multi-jurisdictional website, “Lawstuff”, is regularly updated to include comprehensive information on a diverse range of topics for children living in different states and territories. It also has an interactive animation feature, “CourtStuff”, which provides valuable insight in a visual form about what young people can expect when going to court. NCYLC posts relevant legal information via Facebook and Twitter, and currently has over 1,500 likes on its Facebook page, including young people and organisations.

LawMail is an interactive internet-based legal advice and information service, aimed at children and young people, which was added to the Lawstuff website in October 1998. The LawMail service is supplemented by occasional telephone advice and minor casework assistance.

During the financial year from 1 July 2011 to 30 June 2012 the Centre provided responses to 968 LawMails. Over the past five years, the topics of most concern to young people have included:

- a child's own family relationship issues
- issues about leaving home
- police powers and criminal law
- school powers
- age of consent.

NCYLC’s capacity to respond to LawMails and run its other services, including research projects, has been greatly increased with the contribution of pro bono resources that its pro bono partners have made. In early 2007 the Centre built on its existing relationship with the law firm King & Wood Mallesons (K&WM) to pilot the Cyber Volunteers Project in the Brisbane K&WM office. Following the
success of the pilot, the Project was rolled out nationally and is now operating in each of the capital cities where K&WM has offices (Brisbane, Melbourne, Sydney, Canberra and Perth). In 2010, K&WM asked two of its clients, Telstra and the Australian Securities and Investments Commission (ASIC) to join the Project. Another law firm, Sparke Helmore, also assists NCYLC with the website.

**How it works**

The LawMail service operates with the assistance of five to six “cyber volunteers” at a time. They sit in a technology training room within K&WM and log in to the LawMail service to access emails from young people requesting assistance. The volunteers work in pairs so they can support each other's work.

NCYLC lawyers conduct an initial assessment of the requests for assistance, making notes on the matter to assist the volunteers who will be responsible for providing the advice. Before providing the advice, the volunteer will dial in to speak with a NCYLC lawyer, draft an answer which is checked and settled by a lawyer at NCYLC, then emailed to the client.

K&WM would like to see the further development of precedents to increase the efficiency of the service, while respecting the views of NCYLC (particularly the former director) that are cautious about relying on precedents and stress the need to consider each client's circumstances individually.

There are around 80 volunteer lawyers from K&WM on the roster which is organised by coordinators in each K&WM office. K&WM has also provided assistance (contributions of both money and time) to allow the service to grow, including three-day-a-week funding for a solicitor dedicated to the project, a secondee for six months full-time on a rotating basis, and an additional secondee for the Child Rights Taskforce Project who compiled a report for a child rights project. With K&WM support, the Children's Law Awards (which were discontinued due to cost) were resumed as a biennial event in 2010. The event is branded as a NCYLC event, which helps to raise its profile nationally.

**Benefits**

- **Use of technology makes legal services accessible to young people.** The Director of NCYLC, Matthew Keeley, explains that “Young people are comfortable with technology and in many cases prefer using mobile/online forms of communication. The trend is towards the use of mobile networks/smart phones, especially as they become cheaper, with over 90% of young people between 16-18 years of age using mobile phones.”

- **Clients have the option of remaining anonymous while using the service.** “Many young people are concerned about confidentiality and would prefer to remain anonymous. The online medium, which young people are generally comfortable navigating, allows clients to obtain legal information using an anonymous web persona.”

- **Provides early intervention and referral without competing with the casework of other CLCs.** NCYLC works on the assumption that the advice that they provide is preliminary in nature and they are unlikely to obtain all the details of the young person's matter via the LawMail service (although they may take on a test case on an ad hoc basis.) NCYLC often refers young people to their local CLC, legal aid or youth service which can give advice specific to the relevant jurisdiction. When making referrals, NCYLC will call the organisation to ensure that the client will be accepted by the service and not end up on the referral roundabout.
Advice is provided within a relatively short timeframe. NCYLC’s national and web presence via its Lawstuff website means that clients can access information no matter where they are in the country and what time of the day it is, and can obtain advice via LawMail within seven days. Where a matter is considered as urgent, it will be dealt with even earlier.

Email advice is highly accountable. The LawMail service provides written advice in email form to all its clients.

Easier data collection for the CLC. The LawMail portal asks young people requesting assistance to enter information in an online form which can readily be used for the CLC's data collection purposes. Most clients fill in all the fields, for example, those relating to their ethnicity or whether they have a disability.

The nature of the pro bono work that the cyber volunteers project involves is attractive to law firm and in-house lawyers. Legal Counsel at Telstra M&A Legal Services, Fiona Robson, who coordinates Telstra's involvement with the Project explained that the “Cyberlaw Project is the perfect project for in-house counsel as it involves a relatively small time commitment and the work can be done via the internet, but is extremely interesting and important work.” (For more information about Telstra's and ASIC's experiences of being involved in the project see the sections on In-house/corporate lawyers, Chapter 15, and Government lawyers, Chapter 16.)

Challenges

Email advice can easily be altered to change or misrepresent the advice. Given this risk, some lawyers prefer to send advice in a PDF attachment rather than text in an email.

Provision of advice with incomplete instructions. Given that the emails requesting assistance often contain incomplete instructions, NCYLC always preface email advice by saying that it is preliminary information or advice, stating the assumptions that have been made, and telling the client that if the assumptions are incorrect they should contact NCYLC again for further advice.

Risk of conflicts. The inability to verify the identity of clients, for example where young people use pseudonyms or want to remain anonymous, creates challenges for conflict checking. Matthew Keeley said that he saw parallels with women in domestic violence situations who may provide pseudonyms to protect themselves. He explained that NCYLC manages the risk rather than allowing it to be a barrier to providing advice to vulnerable clients. NCYLC have been able to effectively check for conflicts by using information other than the client’s name or date of birth. For example, it may use the date of the incident along with the client’s school or postcode, knowing that it is highly unlikely that there would be two unrelated events on the same date in the same school/postcode given that the NCYLC service is national.

Providing advice in a written form can be more time consuming than it is on the phone or in person. Advice provided via LawMail is usually quite lengthy (around two pages) as a number of alternatives and assumptions need to be explained given that the clients’ emailed instructions are often incomplete. Special Counsel, Pro Bono and Community at K&WM, Jane Farnsworth, explained that “very few clients return to the service for additional assistance so the initial advice needs to be as comprehensive as possible.”

Creating and maintaining quality content for the website. NCYLC is considering linking to other quality sites and resources, like the Legal Information Access Centre, as a less onerous way of providing content.
• **Technical glitches, support and maintenance.** There is a proposal to update the LawMail software to fix issues such as the inability to attach documents in the LawMail system. Matthew Keeley said that NCYLC could use extra support from firms with web-design, social media and other technical support.

• **Controversial subject matter of website material.** The nature of some of the material on the Lawstuff website, for example abortion, age of consent or tattoos, is considered by some in the community as unsuitable for children/young people, so there is a risk of complaints.

• **Resistance to the use of technology in the legal assistance sector.** Matthew Keeley has observed a “general antipathy in the sector towards provision of legal assistance online with an agenda of maintaining the priority of face-to-face services, although in the last year or two, this appears to be shifting.”

**Features that make it effective**

• **Strong web presence.** The strength of NCYLC’s web presence is helped by the fact that it is a national centre, meaning that it often ranks higher than other CLCs do in a Google search.

• **Community legal education and promotion of the service.** NCYLC visits schools to talk to students about issues such as sexting, cyberbullying and online law, and seeks input from young people on law reform and policy issues. It is also supported by those who work with young people, for example legal studies teachers who tell students about the Lawstuff website.

• **Flexibility in responding to the needs of individual clients, especially clients in crisis.** For example NCYLC will call the local legal or other support service before referring a distressed young person to ensure that they will accept and respond to the person. Matthew Keeley explained that “five percent of requests for advice are about leaving home and the legal right to do so, often in circumstances where there is abuse, neglect, damaging breakdown of relationships. In these circumstances the young person does not need any barriers to be put between them and the service so information will be provided, even if NCYLC does not have full details.”

• **NCYLC does some of the early triage, merits assessment and information provision** and tells the young person to take the advice with them when referring them, which saves time for the local service they are being referred to. It is the online equivalent of the telephone information service provided by LawAccess in NSW (See case study on LawAccess at 26.11.3).

• **Support for the project within K&WM at a senior management level.** (See also section on the Importance of developing a strong pro bono culture, Chapter 4.)

• **An equal relationship between NCYLC and K&WM** has been developed over time. NCYLC is now in a position to assist K&WM with its other pro bono projects by taking on or referring clients, or providing direct support.

• **Regular communication between all project partners.** NCYLC is in contact with the cybervolunteers at least four times a week, with the Principal Solicitor at NCYLC calling the designated office within K&WM where the volunteers are working on LawMails to provide a 15-minute brief on the LawMails they have received. All of the project partners catch up quarterly to discuss how the project is going and what can be improved, and to hear feedback from NCYLC about the results of client surveys in a quarterly report.
• **Training and close supervision of volunteers.** All LawMails are checked by the Principal Solicitor at NCYLC before they are sent to clients.

• **Having lawyers working in pairs** enhances both the quality of the work and the enjoyment of the lawyers drafting the advice.

• **Systems for addressing the challenges of providing advice online** have been developed by NCYLC, for example, conflict checking using the place and date of incident rather than always having to verify identity of client, and being clear about the assumptions being made in advice given the incomplete nature of the instructions received via LawMail.
26.6 TELEPHONE ADVICE

Telephone advice services can take various forms. For example, a law firm in partnership with a CLC or community organisation may take referrals from those organisations. They are provided in advance with a list of clients to call after they have done conflict checks. Several large law firms participate in the telephone advice service run by the Arts Law Centre of Australia, for example, where the Centre sets up the call and the pro bono lawyer will then call the client and provide advice (see the case study on the Arts Law Centre's Document Review Service and Advice Service at 19.5.2). Pro bono providers may also roster lawyers to staff telephone advice services organised on site at a CLC or community organisation (see the case study on TARS/Sparke Helmore partnership at 22.5.5, or case study on QAI at 26.11.1).

26.7 TELEPHONE ADVICE: AT A GLANCE

Benefits

- For many people living in remote parts of Australia, telephone advice currently remains the only way for them to access legal help without travelling a long distance.
- The reduction in time and cost associated with face-to-face service delivery.
- From the perspective of pro bono providers, the convenience of their lawyers being able to provide assistance without leaving their desks.
- Firms who might otherwise not do outreach work, may be willing to take on telephone advice work.
- Possibility of dealing with a higher volume of cases using telephone advice.

Challenges/limitations

- Communication and establishing a relationship of trust with clients can be more difficult without face-to-face contact especially for profoundly disadvantaged clients.
- Finding the resources to meet the demand for telephone services which goes beyond the provision of the initial telephone advice to file-noting and case management.
- Working with inadequate phone systems; for example clients are frustrated when they either have to wait or leave a message because there are only a small number of incoming lines.

Features of effective telephone advice

- The service is staffed with people who possess the appropriate skills to deliver telephone service effectively, such as plain language, listening and conflict resolution skills.
- A partnership with a local community organisation that has face-to-face contact with clients, and can identify those who would benefit from telephone advice and provide them with support if necessary.
- Clients having some initial face-to-face contact with either the local partner organisation or the pro bono provider, before obtaining advice by telephone, to help to develop rapport and trust.
26.8 TELEPHONE ADVICE: BENEFITS

For many people living in remote parts of Australia, telephone advice currently remains the only way for them to access legal help without travelling long distances. However, this situation may change with the rollout of the National Broadband Network (NBN) and the growth of online services. The convenience for the client of being able to obtain advice over the telephone also means that they are more likely to attend an appointment than if they had to travel to another location.

“Telephone advice services provide the firm with access to clients where there are no other services available.” (Large law firm pro bono coordinator)

“Clients are less likely to ‘not turn up’ to telephone advice (around one third of clients may not turn up to a face-to-face appointment at a clinic).” (Large law firm pro bono coordinator)

Given the reduction in time and cost associated with face-to-face service delivery, it is an attractive option for firms. Lawyers do not necessarily need to leave their desks to provide the advice, so firms who might otherwise not do outreach work may be willing to take on telephone advice work. There is also the possibility of dealing with a higher volume of cases using telephone advice.

“Advice can be provided more quickly using the phone (meaning actual legal advice, not just legal information).” (Large law firm pro bono coordinator)

“We don’t regularly do telephone advice, but if there are only two or three clients arranged for an outreach session we might provide the advice by telephone rather than travelling a long distance for only a few clients.” (Mid-sized law firm pro bono coordinator)

“The CLC has done the screening work and can provide a brief of the matter so the lawyer has time to research the matter and write up advice before making the call to the client.” (Large law firm pro bono coordinator)

The Director of QPILCH, Tony Woodyatt, explained that one of the particular advantages of using a mobile phone for telephone advice is that calls do not have to go through the firms’ switch and it can be passed to other staff members if the allocated volunteer is busy. “One Homeless Persons Legal Clinic (HPLC) clinic has a mobile phone that is passed around staff members of the firms. Clients call the mobile from the host organisation and can also fax documents through to the firm.”

26.9 TELEPHONE ADVICE: CHALLENGES/LIMITATIONS

While telephone advice may be easier to obtain than advice in person, many of those consulted warned that there are limits to what can be done over the phone. Communication and establishing a relationship of trust with clients can be more difficult without face-to-face contact, especially for profoundly disadvantaged clients or where sensitive issues need to be discussed. For example, the team at Queensland Advocacy Incorporated (QAI) said it is difficult to build rapport with someone over the phone, particularly for people with disabilities.

“There are obvious limitations eg you can’t point to a document or see that the client is holding a bundle of documents, but it is better to have telephone advice than no advice at all. Video conferencing is better than telephone advice as you can see the client.” (Mid-sized law firm pro bono coordinator)
“There is a reduction in nuanced, high-quality communication. Face-to-face meetings make it easier to ‘read’ your client.” (Large law firm pro bono coordinator)

“Linking Aboriginal women with private solicitors over the telephone did not assist in furthering the trust within the community. A WLS [Womens Legal Service] FVPLS [Family Violence Prevention Legal Service] solicitor suggested that a lot of her clients would have difficulties discussing a sensitive family law matter with a solicitor, whom they hadn’t met, over the telephone.”

It may also be more difficult to adequately supervise lawyers providing telephone advice, given that expectations of obtaining an immediate response may be higher amongst clients using telephone advice services.

“More ‘on the spot’ advice is provided over the phone compared to face-to-face interviews. While face-to-face advice usually involves the collection of facts in a face-to-face interview, the legal advice is often provided in writing later, and there is supervision of that work eg drafts of letters are checked.” (Large law firm pro bono coordinator)

The National Pro Bono Manager at the Australian Government Solicitor, Geetha Nair, said that in her discussions with certain CLCs that on the one hand it seemed to be difficult to promote and raise public awareness of the existence of telephone advice services amongst those most in need, but that it was also challenging to find the resources to meet the demand for such services. “The pro bono work goes beyond the initial telephone advice to file-noting and case management.” Queensland Advocacy Incorporated (QAI) had a telephone advice service, staffed by volunteer solicitors, which has been temporarily discontinued due to lack of resources (although the QAI staff solicitor will still provide telephone advice if resources allow).

26.10 FEATURES OF EFFECTIVE TELEPHONE ADVICE

The Legal and Information Service Manager at LawAccess NSW, Trina Robinson, who manages a high-volume telephone-based legal information service, said that it was essential to ensure that the staff of the service had appropriate skills to deliver telephone service effectively. “The need for skills like plain language, listening and conflict resolution skills becomes more pronounced because people are often calling when they are desperate (30% of LawAccess calls are urgent) and it is harder to gauge how the customer is reacting and whether they are understanding the information/advice.” (See case study on LawAccess NSW telephone advice service at 26.11.3.)

One large law firm pro bono coordinator expressed the view that those with strong face-to-face communication skills are generally effective telephone communicators, and that there were not necessarily any special telephone communication skills that needed to be acquired. However, the team at QAI said that the person who was running their telephone service (when it was still funded) conducted a whole day/evening training session for volunteers and provided a detailed list of the steps they go through when training lawyers to provide telephone advice: “We go through 1) walking the client through the advice, 2) explaining that the lawyer is taking notes, 3) checking for understanding, 4) asking the client to repeat the information back, 5) calling back with extra or

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amended advice, and 6) sending a follow up letter of advice, especially if it is a complex issue. This can be very time consuming, as the assistance does not stop when the phone call ends. This reflects the needs of QAI clients who may have an intellectual disability, cognitive impairment or mental illness.”

“There need to be protocols in place for the conduct of telephone advice. Lawyers providing the telephone advice know when to take a break and ask a question or do other research before giving the client the advice.” (Large law firm pro bono coordinator)

In the context of telephone advice being used to provide outreach, it is important to have a community organisation as a local partner that has face-to-face contact with clients, and can identify those who would benefit from telephone advice and provide them with support if necessary.

“It is helpful to have a local partner who can sit with the person on the other end of the phone and assess the client’s capacity. For example, in a guardianship matter in Wagga involving a client who is a teenager with a mild intellectual disability, a legal aid solicitor in Wagga sat with the client while he was receiving telephone advice and provided support and was able to check for visual cues.” (Large law firm pro bono coordinator)

Having some initial contact in person with either the local partner organisation or the pro bono provider before providing telephone advice can help to develop rapport and trust. For example, the Pro Bono Partner at Clayton Utz, David Hillard, explained that at the Family Violence Prevention Legal Services (in Walgett and Bourke), while victims compensation work is done over the phone, initial meetings are held at the partner organisation’s office. “The partner organisation also assists the firm to find clients if they lose contact. The firm sends lawyers every three to four months to talk to clients face-to-face, and the partner organisation assists in organising clients to attend.”

“Having a combination of face-to-face and telephone advice can alleviate some of the difficulties with establishing rapport and trust with clients (initial face-to-face contact followed up with telephone advice).” (Mid-sized law firm pro bono coordinator)

26.11 CASE STUDIES

26.11.1 Case study: Telephone Advice Service (Queensland Advocacy Incorporated)

Queensland Advocacy Incorporated (QAI) had a telephone advice service, staffed by volunteer solicitors, which has been temporarily discontinued due to lack of resources (although the QAI staff solicitor will still provide telephone advice if resources allow).

When the service was operating, individual lawyer volunteers, as well as lawyers from firms like Sparke Helmore, provided advice over the phone. They worked in four-hour shifts, with two shifts a day, running one day a week. They provided a broad service including advice in property and family law, human rights and guardianship.

Benefits

- Telephone advice is better than no advice.
Challenges

- Advice sessions had to be cancelled when volunteers were unable to attend due to competing priorities.
- Lawyers who were inexperienced in the areas of law had to be closely supervised by QAI which created a lot of additional work for the Principal Solicitor. It was important to select appropriate volunteers who were interested in, and committed to, the work.
- It is difficult to build rapport with someone over the phone, particularly for people with disabilities.
- Clients have a stronger expectation of immediate advice when they call a telephone advice service and sometime express frustration when they are told that they will be called back with an answer. It is important to explain from the beginning the likelihood of the lawyer needing to take time to do research.

What features made it effective

- The person who was running the service (when it was funded) conducted a whole day/evening training session for volunteers.
- The training specifically covered telephone advice skills. “We go through 1) walking the client through the advice, 2) explaining that the lawyer is taking notes, 3) checking for understanding, 4) asking the client to repeat the information back, 5) calling back with extra or amended advice, and 6) sending a follow up letter of advice, especially if it is a complex issue. This can be very time consuming, as the assistance does not stop when the phone call ends. This reflects the needs of QAI clients who may have an intellectual disability, cognitive impairment or mental illness.”

26.11.2 Case study: Telephone Advice Service (Macarthur Community Legal Centre)

Macarthur CLC provides a telephone advice service on Tuesday evenings and Thursday afternoons. The service is staffed by CLC lawyers along with volunteer private solicitors who come from government departments such as the Department of Family and Community Services and the Department of Corrective Services, large law firms and small local firms.

Benefits

- Ability to reach clients that would otherwise never receive any legal advice.
Challenges

- Inadequate phone system, due to budgetary restrictions. The current phone system only has two incoming lines, which means that clients are frustrated when they either have to wait or leave a message.
- Ensuring consistent quality of advice.
- Responding to all clients that call in one advice session with a small number of solicitors in a difficult to access area of high unmet legal need (the Centre covers a large geographical area from Macquarie Fields to Goulburn and Yass).
- Avoiding the referral roundabout from LawAccess to CLCs.

Features of effective telephone advice

- **Skills in the provision of telephone advice.** Given the remoteness of the area, most of the volunteer solicitors have developed the communication skills required to provide advice effectively over the phone.
- **Information resources to support the lawyers providing advice** in areas of law that they are not familiar with. The volunteers rely heavily on the Redfern Legal Centre Law Handbook. The Principal Solicitor at Macarthur CLC, Prue Gregory, has also produced a telephone advice manual with all statutory limits on the front and one page on each of the legal issues that arises most frequently during the advice sessions.
- **Supervision of volunteers.** Prue Gregory listens carefully to ensure that the advice being provided over the phone by volunteer solicitors is of an acceptable quality and to ensure that none of the private solicitors refer matters to themselves (they must refer matters to at least three practitioners). Where volunteers have been unsuitable, they have not been rostered again. She also checks the client sheets carefully and calls the client back if the advice is incomplete or incorrect.

26.11.3 Case study: LawAccess NSW

The LawAccess NSW model is a service provided by the government in New South Wales to provide one-off telephone advice. This works particularly well for some matters (e.g., Prescribed Content Alcohol (PCA) offences and debts). The service may provide assistance in multiple phone calls where it is appropriate due to the complexity of the matter, for example, where there are multiple legal issues that need to be dealt with in stages, like car accidents involving a fine, insurance claim, and property damage. Multiple calls may also be made in response to the needs of the client (e.g., where they have issues with literacy, a disability, or some other complex disadvantage).

Customer Service Officers (CSOs) and Customer Service Assistants (CSAs) answer calls in the first instance and provide “legal information”, but not “legal advice”. CSOs work to a target of 50 to 60 calls a day with an average talk time of approximately 5-7 minutes per call. If a customer requires further assistance, the CSO will decide whether to refer the call to another service or “log” the call so that legal advice can be provided by one of LawAccess’ in-house solicitors. Around 100 calls are logged each day, with a summary of each advice recorded on a database. The lawyers work to a target of 10 advices for each full day on the phone. If the matter is not suitable for one-off advice or
requires additional expertise and assistance, lawyers will refer the matter, for example, to legal aid, CLCs or private lawyers via the NSW Law Society Referral Scheme.

Note that because LawAccess' primary role is to provide telephone advice, it is well resourced to provide a high level of training and supervision of its telephone advice service in a way that many other organisations are not.

Benefits

- **The service is accessible to a broad range of people and is available to take urgent calls.** Currently 30% of calls are urgent calls from people who need advice on the same day, for example, people in custody. (If LawAccess has a conflict in an urgent case, it can be difficult to refer the customer to another service that has capacity to deal with the matter immediately.) This indicates that it is addressing a gap in services.

- **Legal aid and CLCs can benefit from the information resources produced by LawAccess,** particularly now that they can apply for access to LawPrompt, which is a newly established resource providing updates on the law, media alerts, factsheets and answers to FAQs. This resource is not available to the public and is only for internal use, as it is written for staff that have skills and experience to identify legal issues.

Challenges/limitations

- **Access to client documents.**

- **The service cannot help people to fill in forms.** In some circumstances the Legal Officers will tell people what to write on the forms, and the service's LawAssist website provides samples which CSOs can people to use, but the service does not include filling in forms.

- **Need for staff with appropriate skills to deliver telephone service effectively.** When the people calling LawAccess are desperate, the need for skills like plain language, listening and conflict resolution skills becomes more pronounced as it becomes harder to gauge how the customer is reacting and whether they understand the information/advice.

- **Using the Telephone Interpreter Service (TIS) to communicate with clients who come from a culturally and linguistically diverse background can present particular challenges.** Training in managing TIS calls is provided as part of induction.

- **It is challenging to continue delivering information and advice with empathy when there is a high volume of repetitive work.** While there are very few complaints about the LawAccess service, any complaints usually relate to the delivery of the advice rather than the substance or content of the legal advice.

- **There is a high turnover of CSOs,** especially given the clerkship program and the nature of the work which involves providing discrete pieces of information to customers rather than managing and seeing an outcome to an entire “case” (although they often interact with the lawyers and learn more about broader legal issues).

- **Keeping up to date with changes and developments in the law** over a broad range of issues and responding to particular spikes in customer interest on issues that feature in the media.
The service is limited by its operating hours, which are during working hours, so there is still a great unmet legal need with few services available to take urgent calls out of hours, like custody calls.

Features that make it effective

- Competitive recruitment process targeting required skills. LawAccess is able to recruit high-calibre staff members who already possess strong communication and customer service skills because there is a lot of competition for the advertised positions and the selection criteria emphasise these required skills.

- Well-resourced, extensive induction and training programs. For example, there is an extensive three-week induction program covering policies like Code of Conduct, flexible service delivery and all aspects of the role, with LawAccess lawyers providing induction training on a number of legal topics. CSOs also watch training videos on customer service and general skills such as cross-cultural communication. Staff are supported to undertake a Customer Contact/Call Centre Certificate III course with modules on communication and complaint handling. Training needs are considered as part of achievement planning for all staff members.

- Established procedures to ensure best practice. For example, CSOs and lawyers check in with customers at the end of the call to ensure that they know what to do next and in some cases will make follow-up calls to customers.

- Inclusion of other support services in the provision of advice. Aboriginal CSOs are available to speak with clients who identify themselves as Aboriginal or to sit in on a call with a lawyer who identifies the need for their support.

- Supervision and feedback to ensure quality control. Team leaders are able to monitor CSOs as they are seated in close proximity and can overhear each other and will listen in on one call each month to ensure that procedures are complied with. CSOs are encouraged to have strong working relationships with lawyers and feel comfortable asking them for guidance.

- Effective evaluation of the service. An annual independent Customer Satisfaction Survey is conducted over a two-week period with all staff asking customers to participate. While there is an element of self-selection given the customers that choose to provide feedback are generally happy with the service, the results indicate a very high level of satisfaction.

For more information on using the Telephone Interpreter Service, see “Interpreter services”, section 4.6 of the Australian Pro Bono Manual.
26.12 VIDEO-CONFERENCING

The definition of video conferencing and audiovisual links (AVL) used by the Law and Justice Foundation in its 2011 report, Legal Assistance by Video Conferencing: What is Known? ("The LJF review"),\(^{112}\) refers to all synchronous (two-way) communication with audiovisual interface, whether via integrated service digital network (ISDN), satellite or internet protocol (IP) with video conferencing technologies. These technologies include videolink, video conferencing and web-based technologies such as Skype and WebEx.\(^{113}\) The review focused primarily on video conferencing by ISDN, as the researchers had only been able to locate one program which used Skype to provide legal assistance.

The LJF review found that the volume and quality of available research into the use of video conferencing for the provision of legal assistance is very limited, with no studies able to provide conclusive evidence about the “effectiveness” of video conferencing compared to telephone and “in-person” services for legal assistance.\(^{114}\) However, it did draw some insights from the material received during the course of the research that are referred to in this section.

Since the LJF review was released, the Commonwealth Government has provided grants to several community legal centres to improve access to legal assistance services through the National Broadband Network (NBN) for people living in regional Australia,\(^{115}\) one of which is discussed in the case study below on the Connecting country to city legal clinic service (26.17.1). The National Pro Bono Resource Centre, in partnership with Hobart Community Legal Service (HCLS), is also managing one of the funded pilot projects to provide legal advice using Skype to connect pro bono lawyers from DLA Piper with clients at HCLS’s outreach office in Sorell. More will be known about the use of web-based video conferencing in the legal assistance sector when the evaluations of these NBN-based projects are completed. (See also case study on HCLS and DLA Piper in the section on Community Legal Education at 29.1.2)

Video conferencing has been used for the provision of pro bono legal assistance as a form of outreach to community organisations or other services in RRR areas that hosted a video conferencing facility. For example, the Executive Director of the Arts Law Centre of Australia, Robyn Ayres, said that the CLC had used Skype occasionally to facilitate communication between lawyers and clients in remote communities. It is usually the first contact the lawyer has with the client, but not the first contact the lawyer has with the matter. “The Arts Centre manager is usually aware of the matter and supports the client through the video call. Some of the clients may be very traditional and speak English as a second or third language. The solicitors at Arts Law only have positive things to say about the experience and feel it is a good way for clients to see who they are speaking to when there is no other alternative.” Arts Law is also planning to deliver a webinar from the Judith Wright Contemporary Arts Centre in Brisbane to artists regionally in Queensland, which will be the first time that it has used live web video to deliver community legal education. Arts Law has also

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\(^{113}\) WebEx is a company that provides on-demand collaboration, online meeting, web conferencing and video conferencing applications. See www.webex.com/overview.


recorded some of its CLE sessions and made these available through its website. (See also section on Community legal education, Chapter 29.)

This section focuses on the use of video-conferencing for the delivery of legal services directly to clients. However, video-conferencing has also been used to provide pro bono legal advice or assistance to lawyers working in a remote office of a legal firm or public/community legal service, using that agency’s internal video conferencing facilities (sometimes called a “hub and spoke” model). For example, part of the HCLS/DLA Piper pilot project in Sorell involves the use of the NBN-based video-conferencing facilities to deliver training and mentoring support to the solicitors at HCLS. DLA Piper and HCLS found that with a high-speed internet connection, the training worked very well, allowing for high quality sound and video and the instantaneous opening of web pages that were referred to in the training. “The speed and reliability of the connection allowed us to engage in an interactive session, with real-time two-way question and answer style sections of the training, in addition to one way information provision.” (See case study on Hobart Community Legal Service and DLA Piper at 29.1.2.)

### 26.13 VIDEO-CONFERENCING: AT A GLANCE

<table>
<thead>
<tr>
<th>Benefits</th>
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</thead>
<tbody>
<tr>
<td>• From the perspective of lawyers, the ability to observe client responses, to better engage with their clients and to exchange documents in a way that is not possible over the telephone.</td>
</tr>
<tr>
<td>• Costs savings compared to provision of in-person legal services, particularly in terms of reduced time and costs in travelling to remote locations.</td>
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<table>
<thead>
<tr>
<th>Challenges/limitations</th>
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</thead>
<tbody>
<tr>
<td>• From the point of view of clients, concerns about convenience and privacy.</td>
</tr>
<tr>
<td>• Reluctance of everyone involved to use video conferencing and a general preference for in-person meetings.</td>
</tr>
<tr>
<td>• Potentially high costs of setting up and maintaining a video conferencing service, particularly where there is a need for professional support at both ends, and low uptake of video conferencing services potentially resulting in a higher cost per occasion of service.</td>
</tr>
<tr>
<td>• Technological difficulties reducing the effectiveness of communication by video conference and contributing the reluctance to use the technology, including the picture freezing, having a picture but no sound and vice versa, and the connection dropping out.</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Features of effective videoconferencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Appropriate planning to ensure the video conferencing service fills a gap rather than replicating an existing service.</td>
</tr>
<tr>
<td>• Partnering with local community organisations who are “problem noticers”, and who facilitate</td>
</tr>
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contact between clients and lawyers.

- Adequate resources and support to local partners who assist them with the set up, ongoing training and on-site technical support.
- Careful triage and assessment of matters before using video technology, to ensure that the matter/client is suitable and there is no other more suitable alternative such as telephone advice.
- The video conferencing facilities are located in a place that is convenient for clients and where they can speak confidentially with their lawyer.
- Ensuring high-quality and reliable video-conferencing technology (ie choosing and testing an application that avoids drop-outs, picture quality).
- Willingness of clients, lawyers and the host service at the client end to use this form of technology for legal assistance.

### 26.14 VIDEO-CONFERENCING: BENEFITS

The LJF review found that when compared to the telephone, lawyers reported the advantage of being able to observe client responses, to better engage with their clients and to exchange documents.\(^\text{117}\) This is a sentiment that was echoed by some of those consulted for this research.

> “The use of video conferencing is more useful than phone or email, as at least people's faces and body language can be part seen.” (Community legal centre coordinator)

> “Video-conferencing is better than telephone advice as you can see the client.” (Mid-sized law firm pro bono coordinator)

A number of the studies that the LJF review referred to, attributed savings to the use of video-conferencing compared to provision of in-person services, particularly in terms of reduced time and costs in travelling to remote locations. However, the LJF review cautioned that until studies also factor costs such as technology, set-up and maintenance and support costs at two locations (the lawyer and client end) and the level of service usage, it is not possible to say whether video-conferencing provides a more cost-effective alternative to face-to-face legal assistance in RRR areas.\(^\text{118}\)

### 26.15 VIDEO-CONFERENCING: CHALLENGES/LIMITATIONS

The LJF review found that in contrast to the generally positive experience of lawyers with video conferencing, clients appeared to focus more on issues of convenience and privacy, some preferring

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to speak to a lawyer by telephone from their own home rather than seeing a lawyer face-to-face by video-conferencing.\footnote{Law and Justice Foundation, \textit{Legal Assistance by Video Conferencing: What is Known?} (2011) p 2, at www.lawfoundation.net.au/ljf/site/articleIDs/B0A936D88AF64726CA25796600008A3A/$file/JI15_Videoconferencing_web.pdf.} This was a view again echoed in the consultations for this research.

“\textit{Video-conferencing has not had its intended effect of bringing some of the benefits of face-to-face communication to telephone communication. In fact it does not add anything to telephone advice. There is a loss of the intimacy of telephone conversation, without gaining the intimacy of face-to-face conversation or any additional visual communication (the interface is a distraction and gets in the way of the exchange of information and building rapport).}” (Large law firm pro bono coordinator)

“There were repeated technical problems. For example, in Broken Hill, video-conferencing was abandoned after three months as people would rather talk on the phone. This was not just due to technical problems. People felt video-conferencing did not add anything to the meeting with the lawyer so it was easier just to ring from home than go to the location where the video-conferencing was held.” (Large law firm pro bono coordinator)

A clear theme in the LJF review was that although video-conferencing was generally acceptable to clients and lawyers and quite functional, both groups preferred in-person meetings.\footnote{Law and Justice Foundation, \textit{Legal Assistance by Video Conferencing: What is Known?} (2011) p 11, at www.lawfoundation.net.au/ljf/site/articleIDs/B0A936D88AF64726CA25796600008A3A/$file/JI15_Videoconferencing_web.pdf.} There were strong indications that where offered, legal assistance by video-conferencing, particularly in Australia, has been used far less in RRR areas than had been expected by the service providers.\footnote{Law and Justice Foundation, \textit{Legal Assistance by Video Conferencing: What is Known?} (2011) p 10, at www.lawfoundation.net.au/ljf/site/articleIDs/B0A936D88AF64726CA25796600008A3A/$file/JI15_Videoconferencing_web.pdf.} Given the potentially high costs of setting up and maintaining a video-conferencing service, particularly where there is a need for professional support at both ends, low uptake potentially results in a higher cost per occasion of service.\footnote{Law and Justice Foundation, \textit{Legal Assistance by Video Conferencing: What is Known?} (2011) p 11, at www.lawfoundation.net.au/ljf/site/articleIDs/B0A936D88AF64726CA25796600008A3A/$file/JI15_Videoconferencing_web.pdf.}

Across the legal assistance studies reviewed by the LJF, technological difficulties were commonly reported and these were seen to reduce the effectiveness of communication by video-conference. Technical problems included the picture freezing, having a picture but no sound and vice versa, and the connection dropping out. These were reported to be frustrating for both parties, to reduce the quality of the interface, and at times to result in the need for extra appointments (including by telephone) to complete the assistance.\footnote{Law and Justice Foundation, \textit{Legal Assistance by Video Conferencing: What is Known?} (2011) p 12, at www.lawfoundation.net.au/ljf/site/articleIDs/B0A936D88AF64726CA25796600008A3A/$file/JI15_Videoconferencing_web.pdf.} The LJF review referred to health sector studies that noted that the impact of technical difficulties on the quality of the interface may have less effect on the
successful implementation of video conferencing than how well practitioners and patients adapt to the technology and integrate it into routine use.\textsuperscript{124}

26.16 FEATURES OF EFFECTIVE VIDEO-CONFERENCING

The LJF review concluded that if video-conferencing was to be considered for the provision of legal assistance services in RRR areas that particular attention should be paid to the following factors potentially affecting the uptake and ongoing use of this mode of assistance:

- the convenience, privacy and confidentiality of video-conferencing compared to other available modes of assistance
- whether video-conferencing offers services or benefits that are not already available through existing legal services, including services available by telephone, such as access to specialist services or more timely assistance
- the quality and reliability of the video-conferencing (ie drop outs, picture quality)
- the willingness of clients, lawyers and the host service at the client end to use this form of technology for legal assistance.

The LJF review also concluded that if video-conferencing was to be used as a form of outreach, then all the factors that affect the success of outreach services generally, needed to be taken into account - particularly with regards to supporting and building relationships with the intermediaries who are “problem noticers”, and who facilitate contact between clients and lawyers.

The case study on the Connecting country to city legal clinic service (26.17.1) highlights the need to carefully assess matters and what needs to be done before rushing to use the video technology, and suggests that video technology should only be used for issues that need an in depth face-to-face interview. “If an issue can be dealt with over the phone, it is preferable to use the phone. Clients don’t like being dragged in to a host organisation for a one-minute simple issue that could have been dealt with over the phone. Often clients will be difficult to track down and may not turn up to a video meeting if they do not think that it is serious enough to need a face-to-face meeting.”

26.17 CASE STUDY

26.17.1 Case study: Connecting Country to City Legal Clinic Service (Welfare Rights Centre South Australia and Minter Ellison)

The Connecting Country to City Legal Clinic Service which is run by Welfare Rights Centre South Australia (WRCSA) has been established to increase access to justice for people in regional, rural and remote (RRR) areas of South Australia by using video-conferencing to connect lawyers from Minter Ellison in Adelaide with disadvantaged clients in these areas.

Following the success of the Welfare Rights Centre SA (WRCSA) homeless persons’ legal service, the Housing Legal Clinic (HLC), which takes lawyers in Adelaide city to welfare organisations where clients are located, a similar model was discussed for lawyers to assist clients in country towns. The major difference was the fact that it was too difficult for volunteer city lawyers to travel in order to conduct legal clinics in country towns. To overcome this obstacle, the service decided to try video-conferencing.

The service has been providing legal advice to clients in Port Pirie and Whyalla since 2011. Pro bono lawyers from Minter Ellison provide the advice, with around two to three video client meetings scheduled per week. WRCSA has also partnered with welfare organisations that host the service from the “country end” and provide additional support to clients. Uniting Care Wesley SA have six centres which act as referral and host organisations, each with a computer set up with a webcam. Clients are referred by the host organisation, then supported by a social worker or case worker while they attend the video meeting.

The areas of law that commonly arise are tenancy, police and family law issues. The service is being expanded to areas where the National Broadband Network is being rolled out, namely Victor Harbour, then Port Augusta. WRCSA has recently partnered with Anglican Community Care which also has about half a dozen Centres, but are not yet set up to provide the service.

As the project expands, the other law firms that already assist with the HLC plan to join the project. The HLC can now offer the same services to disadvantaged people in country towns as it does currently to people in Adelaide. The service is cost-effective, in that the pro bono lawyers provide the service from Adelaide, without the need to travel to country towns.

The coordinator of the service, Bill Manallack, explains that by “using computers and a webcam, clients can see the lawyers, and the lawyers can see the clients in real time.”

The Service has been using WebEx as the platform for the video conferencing. During the set-up phase of the project, WebEx was installed on each of the host organisation’s and Minter Ellison’s computers by the National Association of CLCs’ WebEx trainer, who also provides ongoing technical support with its use. Some of the host organisations also have a laptop loaded with WebEx that they can take with them if they engage in outreach work away from the office. There is a staff member in each host organisation who helps with the technical support.

Bill Manallack explained that an early obstacle for the service was the resistance of host organisation staff to using the technology, “but they are becoming more comfortable with it the more they use it. Clients have been initially nervous about using the service, but quickly become comfortable with it once the video meeting starts.”

“The service has provided lawyers who want to do pro bono work, but would prefer not to attend a clinic, with a comfortable way to participate in a pro bono project.”

Some tips from the WRCSA experience are:

- Place a lot of emphasis on triage/assessing the issue and what needs to be done before rushing to use the video technology.

- Only use the video technology for issues that need an in depth face-to-face interview.

“If an issue can be dealt with over the phone, it is preferable to use the phone. Clients don’t like being dragged in to a host organisation for a one minute simple issue that could have been dealt with over the phone. Often clients will be difficult to track down and may not turn up to a video meeting if they do not think that it is serious enough to need a face-to-face meeting.”
Think of the video conference as replacing a first face-to-face meeting, then conduct all the follow up by phone or email.

26.18 WEBSITE

Pro bono assistance may be provided to assist in the development or maintenance of a website which provides legal education or information. The assistance might include the preparation of content for web pages, fact sheets, instructional videos and guides.

“Firms prepare material for the website and PILCH edits/reformats/rewrites it (if required) to maximise its accessibility to clients. Sometimes we write it and the firm checks the content for accuracy.” (A pro bono clearing house manager)

Benefits

In areas where the pro bono provider has expertise, drafting and checking content for websites is a relatively easy way to provide pro bono assistance that can also reach a broad audience. The skills required to provide assistance with website development and maintenance can broaden the pool of people at firms who can be involved in pro bono work.

“Some firms are interested in using their non-legal staff to do pro bono work to encourage a firm-wide contribution eg IT staff help with the website and podcasts.” (A pro bono clearing house manager)

“Community legal education materials that are made available online via a website have the potential to reach many more people than individual casework and can be a strategic use of pro bono resources for NFPs (where there is a match between the NFPs' need and the firm’s expertise).” (A pro bono clearing house manager)

Challenges

One of the challenges with providing legal information resources on a website is the need to keep the website material current. The Director of the National Children's and Youth Law Centre (NCYLC), Matthew Keeley, suggests that linking to other well resourced services, for example the Legal Information Access Centre might be helpful.

Features that make it effective

A website will only be successful if it can be found and is used, so promotion of the website service is vital. For example, staff from NCYLC visit schools to talk about sexting, cyberbullying and online law, and seek input from young people on law reform. It also has support from people who work with young people (eg legal studies teachers who tell students about the website). NCYLC also has a strong web presence. “Being a National Centre means that it often ranks higher than other CLCs would in a Google search.”
Many legal assistance services accept requests for assistance by email but only a few of those consulted respond with legal advice by email, and only in limited circumstances, preferring to call the person back and discuss the matter by telephone or make an appointment to see the client in person. For example, the Executive Director at the Arts Law Centre of Australia, Robyn Ayres, explained that the CLC accepts inquiries online, but follows up by having a volunteer take instructions over the phone, then referring the matter via the usual procedures for their telephone advice service (see case study on Arts Law Document Review Service and Advice Service at 19.5.2). “Legal advice will only be emailed by Arts Law if the client has a hearing impairment or there is another compelling reason to provide the advice by email.”

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**EMAIL: AT A GLANCE**

**Benefits**
- Having an online form for email assistance requests can streamline the process of taking instructions and collecting client data.
- Written advice is highly accountable.

**Challenges**
- Quality control and risk management.
- The lawyer providing the advice cannot gauge the reaction of the client and whether they have understood the advice.
- The advice may be too general when there is a lack of context and incomplete instructions.
- Email advice can easily be altered to change or misrepresent the advice.
- Time consuming nature of providing advice in a written form rather than on the phone or in person.
- “Opening of the floodgates” without the necessary resources to meet the demand.

**Features of effective email advice**
- Emailed advice that explicitly identifies the assumptions that have to be made to take into account the risk of incomplete instructions provided in the email requesting assistance.
- The email advice contains referral and contact information where the client can obtain further assistance if they do not understand the emailed assistance.
26.21 EMAIL: BENEFITS

Receiving requests for assistance by email can actually make the intake and data collection process easier for the organisation accepting the request. Robyn Ayres at the Arts Law Centre of Australia finds that having clients fill in an online form actually streamlines the process of taking instructions and in some ways would prefer inquiries to be made this way (although she adds that telephone advice is always made available to cater for those who are not comfortable filling in an online form, especially if they have low literacy skills or English is a second language).

The Executive Director of the National Children’s and Youth Law Centre, Matthew Keeley, explains that requests for assistance using their LawMail service is via a portal that asks the young person to enter fields, which makes data collection much easier for the CLC. He also makes the point that written advice is highly accountable.

26.22 EMAIL: CHALLENGES/LIMITATIONS

Much of the reluctance to broaden the use of email as a model for providing pro bono legal assistance is related to concerns about quality control and risk management, especially given that the lawyer providing the advice cannot gauge the reaction of the client and whether they have understood the advice. For example, Robyn Ayres explained that Arts Law is reluctant to use email to provide legal advice due to risk management issues, and the fact that the advice tends to become very general when there is a lack of context and incomplete instructions. “The email essentially becomes more like a fact sheet.”

“There is a risk that email advice can easily be altered to change or misrepresent the advice. Some lawyers prefer to send advice in a PDF attachment rather than text in an email.” (Community legal centre manager)

Others were concerned about the time-consuming nature of providing advice in a written form rather than on the phone or in person, and the ease and accessibility of email leading to an “opening of the floodgates” without the necessary resources to meet the demand.

26.23 FEATURES OF EFFECTIVE EMAIL ADVICE

To address the risk that advice will be provided without knowing all the relevant facts due to incomplete instructions, it is important to be explicit about the assumptions being made. Matthew Keeley said that NCYLC always preface email advice by saying that it is preliminary information and is based on assumptions that have to be made because there are usually incomplete instructions provided in the email requesting assistance. The advice also states the assumptions that have been made and tells the client that if the assumptions are incorrect then they need to contact NCYLC again for further advice.
26.24 CASE STUDY

26.24.1 Case study: LawAccess NSW

Several years ago, LawAccess NSW (See also case study on LawAccess telephone advice service at 26.11.3) trialled responding to requests for advice that were received by email. The practice was discontinued due to the risks associated with providing advice in response to instructions that were often incomplete and the fact that requests were infrequent.

Other challenges with the provision with email advice were:

- the time delay between receiving requests for assistance and responding (and vice versa) and the effect of the time delay on the quality of the communication and advice provided (such as any time limitations that might apply)
- compared to phone communication, there were even less clues for the information/advice provider about whether the customer has understood the information/advice and less scope for providing support to the customer (which is especially concerning where they are receiving advice they may not like)
- providing email responses to requests for advice is very time-consuming, especially if a number of assumptions need to be addressed due to incomplete instructions from the client.

If a customer emails LawAccess for assistance, they will be asked to call the service. LawAccess has provided advice in writing on rare occasions where there are special circumstances (for example, where the client was deaf).

The number of requests that LawAccess receives for assistance by email has not indicated a strong demand for that service, but LawAccess is flexible and open to revisiting the idea if the need is demonstrated.

See also the case study on the email advice service offered by the National Children’s and Youth Law Centre at 26.5.1.
27 LAW REFORM AND POLICY WORK

This model aims to address unmet legal need by directing pro bono resources towards lobbying for change to an aspect of the law or its administration that is a source of injustices, or that a new law or policy should be introduced. The ways in which pro bono lawyers can use their expertise to assist organisations undertaking public advocacy include: engaging in targeted casework and/or strategic litigation to highlight an unjust aspect of the law, contributing to law reform submissions and proposals, commenting on other proposals (including government proposals), letter writing and participating in inquiries and campaigns.

Many of the consulted pro bono coordinators expressed a preference for doing pro bono legal work that has some law reform aspect to it (See section on Where pro bono resources should be directed, Chapter 5). However, others warned that while a change in the law can mean that people will have better access to justice, it is important that strategic litigation is not seen as an end in itself and that additional legal assistance resources are needed to ensure that people can exercise and assert the rights that have been won through a favourable decision.

“Law reform is an important aspect of pro bono work. This should include efforts not just to change the law (eg via a test case), but also to advocate for resources to ensure that rights that are achieved can be exercised and that there is access to legal aid or pro bono lawyers for this.” (A pro bono clearing house manager)

27.1 LAW REFORM AND POLICY WORK: AT A GLANCE

Benefits

- There is the potential to assist a much larger number of people by changing an unjust law than by assisting individuals on a case-by-case basis and avoids pro bono becoming a substitute for legal aid.

- It uses the strengths of all partners to a law reform project. The community legal sector knows the issues and the clients, and law firms bring litigation experience and significant resources.

- It provides CLCs with the additional expertise and resources to pursue a law reform agenda while minimising the impact on their casework resources.

- By partnering with CLCs/community organisations, firms can become involved in law reform that they would not otherwise undertake publicly.

- The involvement of law firms who are not normally involved in law reform can add strength and legitimacy to a law reform proposal and draw attention to an issue.

- A project involving casework may be easier to “sell” within the firm when it is limited to a law reform goal rather than being an indefinite use of resources.

- A wider variety of lawyers within the firm can be employed to undertake law reform and policy work since they may use more general rather than specialist legal skills (eg legal research, analysis, and writing skills rather than specialist knowledge of tax law).

- Lawyers enjoy law reform work and are very engaged by it.
**Challenges/limitations**

- Pro bono providers may not have sufficient experience with the client base to fully understand the effect that law reform will have on that client base.

- It is very difficult to undertake law reform as an academic exercise in isolation from casework, especially because much of the legitimacy of law reform proposals comes from casework experience of the issue. (Discrete research tasks may be possible but it is difficult for firms to usefully contribute to submission writing when they do not have any practice experience in the area).

- Continuing coordination and support for law reform activities can be challenging over what can be a long period before there is an outcome, if any.

- Evaluating the success of law reform/policy work that does not lead to any concrete change can be difficult.

**Features of effective law reform**

- Well planned and coordinated strategy for law reform activities.

- Arises out of casework so that the lawyers have genuine knowledge of the law and the way the law operates.

- Articulating the goals of each party at the outset.

- High level support for the project and supervision from within the firm.

- Having a manageably small group of committed project partners.

- Sharing of knowledge, precedents and training.

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**27.2 LAW REFORM AND POLICY WORK: BENEFITS**

Law reform projects have the potential to make particularly good use of the strengths of its project partners. For example, the Pro Bono Partner at Clayton Utz, David Hillard, said that the Sexual Assault Communications Privilege (SACP) project partners contributed an effective combination of experience with clients and issues (CLC) with “hard-nosed litigation skills” (firms). (See case study at 27.5.1.)

“It is an effective way for the community legal sector (which knows the issues and the clients) and law firms (which have the resources) to work together.” (Large law firm pro bono coordinator)

By partnering with CLCs and community organisations, firms can become involved in law reform that they would not otherwise undertake publicly. For example, one large law firm pro bono coordinator said that their firm provided training and research assistance to community organisations involved in identifying problems with Centrelink income management pilots. “The firm would not otherwise publicly criticise income management.”

“From the firm’s perspective, potential conflicts can be avoided by doing work to support the law reform efforts of a partner organisation, work which may or may not
be attributed to the firm depending on the situation.” (Large law firm pro bono coordinator)

From a CLC perspective, the additional expertise and resources that firms can bring allows them to pursue a law reform agenda while minimising the impact on their casework resources.

“Law firms have significant resources they can bring to bear.” (Large law firm pro bono coordinator)

In addition to providing substantial resources, there are other advantages to having firms involved in law reform who would not normally be involved in these issues. For example, David Hillard said that during the SACP project, the firm’s lawyers were working outside their usual jurisdiction, which meant that that “they were less constrained about advocating strongly for novel submissions which met some initial resistance from the bench, than other advocates may have felt comfortable doing with judges before whom they regularly appear.” (See case study on SACP at 27.5.1.)

“Having law firms involved provided additional strength and legitimacy to the law reform proposal.” (Community legal centre solicitor)

“Having a law firm involved in law reform can draw more attention to the issue because law firms aren’t usually involved in making submissions in that space.” (Large law firm pro bono coordinator)

Law reform and policy work is attractive to pro bono providers as there is the potential to assist a much larger number of people by changing an unjust law than by assisting individuals on a case-by-case basis. Pro bono providers, who are concerned about avoiding pro bono legal assistance becoming a substitute for legal aid, are keen to do more law reform work.

“Pro bono work which has a law reform element or at the least the potential for supporting systemic change goes beyond an individual client’s immediate problem.” (Mid-sized law firm pro bono coordinator)

“A project involving casework is easier to ‘sell’ within the firm when it is limited to a law reform goal rather than being an indefinite use of resources.” (Mid-sized law firm pro bono coordinator)

From a firm’s perspective, law reform work provides lawyers with interesting work that broadens their skills and experience. For example, David Hillard said that the SACP project (see case study at 27.5.1) was a great experience for the firm’s lawyers who were experienced with subpoenas but not in a criminal jurisdiction. “It was very satisfying for them to be successful when facing very experienced criminal barristers.”

“A wider variety of lawyers within the firm can be employed to undertake law reform and policy work since it uses more general rather than specialist legal skills (eg legal research, analysis, writing skills rather than specialist knowledge of tax law).” (Large law firm pro bono coordinator)

27.3 LAW REFORM AND POLICY WORK: CHALLENGES/LIMITATIONS

It may be difficult for pro bono lawyers to contribute to law reform and policy work in subject areas where they have little practice experience and expertise. This means that firms may not be doing as much law reform work as they could or would like to.
“It is very difficult to undertake law reform as an academic exercise in isolation from casework.” (Mid-sized law firm pro bono coordinator)

“The legitimacy and credibility of the law reform work undertaken by CLCs comes from their casework experience of the issue.” (Community legal centre solicitor)

“Pro bono service providers may not have experience in the policy context or with the particular vulnerability of the CLC’s client base. This may mean that the pro bono service provider’s most important contribution to a CLC’s law reform process is in a legal context, rather than a policy context. It is our view that submissions on policy should be drafted by the CLC as they have a better understanding of the effect law reform will have on their client base.” (Community legal centre principal solicitor)

However, some of those consulted suggested that it is possible for firms to take on discrete tasks in the law reform process, rather than having to be immersed in casework to identify problems in the law and the way it operates (and without taking on resource-intensive strategic litigation).

“One way for firms to be involved in law reform work is by partnering with a CLC which has identified the problem and can provide examples of casework that illustrates the issue, but doesn’t have the time to write the submission. The firm can provide the resources (time, drafting/editing skills) to write the submission. The CLC signs off on the submission so the firm avoids conflicts/risk.” (Mid-sized law firm pro bono coordinator)

However, it may also be difficult to maintain support for a law reform project where the work does not necessarily lead to any certain outcome in the way that strategic litigation does, or to coordinate law reform activities over what can be a long period before there is an outcome. While not suggesting that pro bono work should necessarily be done for governments, one large law firm coordinator explained that governments are an example of a pro bono client that actually has the capacity to do something with research that is done for them on a pro bono basis. For example, research work for the Mongolian Government, on how judges are appointed, led to a bill being passed by Mongolian Parliament. (See also section on International pro bono, Chapter 31.)

“It is difficult to evaluate the success of law reform/policy work that does not lead to any concrete change. Often the pro bono work is done to assist an organisation that does not have the power to effect change.” (Large law firm pro bono coordinator)

### 27.4 FEATURES OF EFFECTIVE LAW REFORM AND POLICY WORK

Project partners need to be able to articulate their law reform goals at the outset. Having a well planned and coordinated strategy for law reform activities can help project partners to stay focused on their goals and ensure that they have the necessary skills and expertise to support the project.

“CLCs/NFPs are good at identifying what the problem is, however they often look to the firm to come up with the idea for a law reform proposal. Firms are good at facilitating a law reform idea that has already been formed and needs the CLC/NFP to have the idea before approaching the firm.” (Large law firm pro bono coordinator)

“It is important to have someone who is a real expert (whether that is the firm or the CLC)... Often CLCs want firms to write submissions that they can put their name to, but this does not work unless the CLC have formed an opinion/position.” (Large law firm pro bono coordinator)
Many of those consulted said that the best law reform is undertaken after a firm has built up its expertise in an area through casework. For example, the Partner for Pro Bono Services and Corporate Responsibility at Gilbert + Tobin (G+T), Michelle Hannon, said that lawyers from G+T have done a lot of domestic violence/Apprehended Violence Order work at Redfern Legal Centre and are therefore well informed to do research as they understand how the law works in this area.

Partner and National Pro Bono Manager at Ashurst, Anne Cregan, explained that the firm has developed expertise on the law as it relates to people with cognitive impairment and mental illness as they have been a focus of the firm’s pro bono program since 1999, and the firm has acted in numerous matters for individuals over that time. As a result of the firm’s good understanding of the issues, it was able to make informed submissions to Parliamentary Inquiries on, among other issues, alternative decision-making, people with cognitive impairment and mental illness in the criminal justice system and foetal alcohol spectrum disorder. The recommendations in their submissions on recognising foetal alcohol spectrum disorder as a disability for the purposes of welfare benefits and in the criminal justice system were a unique contribution to that Inquiry and the Ashurst recommendations were adopted in full. “Given the firm’s experience in the subject area, we could understand how people with FASD constantly fell outside the definitions of cognitive impairment across most areas of law and policy.”

“Effective law reform and policy work arises out of casework so that the lawyers have genuine knowledge of the law and the way the law operates. Law reform doesn’t work in the abstract.” (Large law firm pro bono coordinator)

Many of those consulted said that it was particularly important with law reform projects to have high level of ownership, support and supervision from within the firm.

“As there is not as much immediate risk in law reform work compared with case work, the work may not be as closely supervised, eg there may be the temptation not to assign a partner to supervise the work, submissions may be proofread rather than settled, and timelines can blow out if they are not closely managed.” (Large law firm pro bono coordinator)

Given that law reform work might take a long time to yield results, some of those consulted suggested that it is best to have a small, manageable group of committed project partners who have a good working relationship and, where appropriate, can share knowledge, precedents and training.

“Cancer patients' legal service initially suffered from having too many partners involved, without establishing which ones were making a real commitment.” (Large law firm pro bono coordinator)

27.5 CASE STUDY

27.5.1 Case study: Sexual Assault Communications Privilege Pilot Project (Womens Legal Service NSW, Herbert Smith Freehills, Ashurst, Clayton Utz)

In November 2011, the NSW Government strengthened laws that protect the confidentiality of sexual assault victims’ counselling records in the criminal trial process, and committed $4.4 million for an independent service to assist victims in protecting the confidentiality of their records, as a result of the Sexual Assault Communications Privilege (SACP) Pilot Project.

The SACP project brought together a strategic and unusual partnership comprising Womens Legal Service NSW (WLS), the Office of the Director of Public Prosecutions, law firms Ashurst (formerly
Blake Dawson), Clayton Utz and Herbert Smith Freehills, and the NSW Bar Association. The Project partners provided free legal assistance in the Downing Centre courts to victims asserting the sexual assault communications privilege, which aims to limit the use of counselling records made by, to, or about a victim of a sexual offence. Data collected during the project revealed the extent and nature of legal need, identified problems with the operation of the privilege, and demonstrated how a victim’s advocate model of legal service delivery could work.\(^{125}\)

The policy behind SACP is to protect the confidentiality of sexual assault counselling, so as to encourage sexual assault victims to seek and stay in counselling, and to make victims feel more confident about being able to report sexual assaults. The legislative reforms ensure that the victim is made aware of her or his right to oppose the production of their counselling records in Court, and that the Court recognises SACP as an essential element in the criminal trial process.\(^{126}\)

Until the SACP project, most victims had no knowledge of their SACP rights, and no capacity to enforce those rights before the Court. From February 2009, the SACP project team represented more than 90 victims of sexual assault on a pro bono basis before the District and Local Courts. The Project demonstrated that legal representation for victims makes a significant difference in preventing the disclosure of privileged documents. In 91% of cases where documents returned under subpoena contained protected confidences, the complainant was able to assert the privilege successfully.\(^{127}\)

David Hillard, Pro Bono Partner at Clayton Utz said in December 2010 on behalf of the SACP Project partners:

> “these reforms have been secured through the perfect example of a pro bono project - an identified legal access problem has been tackled collaboratively, reformed through legislation, and with the State now picking up responsibility for future representation of victims. Our organisations started this project to highlight why SACP was not working properly, to get those problems fixed, and to ensure that government-funded services were available for victims to assert their rights. It is so pleasing to see collaboration between private lawyers working pro bono, the community legal sector and the DPP, bring real change to this issue.”\(^{128}\)

How the project came about

WLS was involved in advocacy on this issue at least as far back as 1996, participating in the working party on SACP and providing assistance to counsellors before that time.\(^{129}\) However, it had not done much casework around the issue, until a couple of matters involving SACP arose in 2007 and 2008, which highlighted the gap between the intention of the law to protect counselling records and the reality of what was actually happening in cases. A barrister, Louise Goodchild, assisted with both those matters.

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\(^{129}\) WLS produces *Counsellors and Subpoenas: A Practical Guide for Counsellors Served with Subpoenas* (3rd ed., Women’s Legal Services, NSW, 2004) and also does community legal education around NSW on the issue.
An informal connection that a WLS solicitor had with someone working at the NSW Attorney-General’s Department (AGD) led to interest from AGD in the issue, and in having their policy work informed by relevant casework. WLS made submissions to AGD that informed the Standing Committee of Attorneys-General (SCAG) working party on the Uniform Evidence Act.

Ashurst had worked on SACP matters via regular pro bono referral and suggested involving additional pro bono firms as they could not keep up with the referral demand. A secondee to WLS from Herbert Smith Freehills, Jacqueline Wootton, also suggested using pro bono resources in a more structured way, emphasising the benefit of having a clear referral cycle. After discussing the possibility with several firms that had a strong background in reaching out to CLCs and were interested in being involved (Herbert Smith Freehills, Ashurst and Clayton Utz), preliminary meetings were held so that all partners could discuss what needed to be done, and who else needed to be involved. WLS had a meeting with the Director of Public Prosecutions (DPP) about the proposed referral system. Tasks were allocated to partners according to their strengths and capacity. For example, the training was organised by WLS and the media strategy and launch (where the DPP and the Attorney-General made speeches) was organised by Herbert Smith Freehills and Ashurst. The firms organised their lawyers to participate in the project, including partners to supervise their work. WLS solicitors also participated in the project.

The intention of all partners from the outset was to highlight the unmet legal need, and the difference that representation made. There was a defined timeframe of 12 months with an expectation that reform proposals would be generated at the end of the period, with a view to obtaining funding for a legal service. Continuing with the provision of pro bono legal services was never considered to be a sustainable response to the problem. The expectation was that the SACP project partners would provide representation in approximately 30-40 cases, but that the project would be successful when reforms around how the privilege worked were achieved, making it available to more people.

**How it worked**

The pilot project ran for 12 months. It was limited to matters before the Sydney Registry of the District Court (then subsequently expanded to Parramatta), and representation was made available for every relevant matter in that registry.

To staff the service, the firms invited people within their firm to participate, as well as partners to supervise the work. Around 30-40 lawyers attended the original training (which was provided by WLS, DPP, and the NSW Rape Crisis Centre).

When the DPP was made aware of a subpoena being issued, it sent an email to four contact points in the partner organisations and they worked out between them who had the capacity to take the case on at that time.

Where there were differences of opinion about how the project was working or how the law operated, the project partners met in person to discuss them. However, as each of the project partners was taking instruction from individual clients, they were not bound to follow any particular group decisions on how matters were conducted.

WLS took all the data from the case work, analysed it, and were able to demonstrate that the privilege was upheld in 91% of matters where there was legal representation. They made further submissions to AGD, along with the project partners, and met with AGD to develop the legal and policy changes.
Benefits

“The unusual and broad nature of this coalition assisted greatly in strengthening the case for change.”¹³⁰

- **The project worked to the strengths of all partners.** The project would not have worked as well if only one of the partners involved had tried to do the work on their own, as they would not have had the same capacity. It helped WLS to be able to say they had the big firms behind them, and it helped the law firms in their dealings with, for example, legal aid and shelters, to be partnered with WLS. The partners contributed an effective combination of experience with clients and issues (on the CLC side) with “hard-nosed litigation skills” (on the firm side). WLS also brought expertise in legal policy work, and could effectively liaise with AGD.

- Having law firms involved provided additional strength and legitimacy to the law reform proposal.

- Solicitors at WLS further developed their capacity in the law reform process and have increased confidence when calling AGD about other issues.

- Engaging firms increases the capacity of the CLC to do a much bigger pool of casework, as they bring litigation skills and the significant resources of firms (especially the way they pooled resources in this project).

- **Relationships/contacts** developed through the project can now be leveraged for other law reform work. A WLS solicitor now attends the sexual assault review committee convened by the ODPP.

- The firms’ volunteers enjoyed the work and having direct contact with clients, and the firms were excited about being involved in policy work.

- Pairing of lawyers with barristers developed the skills of the firms’ volunteers, who were experienced with subpoenas but not in a criminal jurisdiction.

- The firms’ lawyers were working outside their usual jurisdiction, which David Hillard explained meant that that “they were less constrained about advocating strongly for novel submissions which met some initial resistance from the bench, than other advocates may have felt comfortable doing with judges before whom they regularly appear.”

Challenges

- It is easy to underestimate the time it takes to coordinate a collaborative project of this nature (including phone calls, urgent placing of matters, organising meetings, and arranging training, all on top of usual casework load). Solicitors at WLS said that “in future WLS will have a more realistic idea about the time/funding that should be allocated to coordination.”

- There were some disagreements about substantive legal and legal policy issues that were discussed but not always resolved. In the future it would be helpful to have an MOU that sets out what is expected of each partner and clearly delineates different roles (eg casework and policy) and agreement on standard precedents, consent forms and evaluation process.

Features that made it effective

- WLS was able to think about what it wanted as an end goal and effectively sell the project to pro bono partners and government (CLCs often struggle to find time to do this on top of day to day casework).

- **All project partners were receptive to the project idea**, including the DPP which was open to trying out something new.

- A **manageable number of project partners**. WLS learned from the experience of the Walgett Family Law Affidavit Project\(^\text{131}\) which overestimated the demand and ended up with too many trained solicitors with not enough casework to build their expertise. This is another reason that the pilot was limited to the Downing Centre.

- All partners involved had an **equal level of commitment** (if another firm wanted to join the project it not have worked unless they were prepared to contribute as much as the others).

- **Strong pre-existing relationship** between the firms and WLS and a cooperative relationship between the firms.

- There were **no public egos**. The firms were happy to share the limelight with each other and with WLS.

- **Support and supervision** from within the firms, with several law firm partners supervising the work.

- **Sharing of knowledge**, precedents and training.

- Victims of sexual assault are a **sympathetic client group**. Solicitors from WLS explained that “nobody likes to be mean to sexual assault victims.”

- WLS provided **training for lawyers** who volunteered to participate in the pilot.

- WLS’s feminist approach to the project and **emphasis on the needs of victims**. WLS strongly advocated for the need to involve the NSW Rape Crisis Centre in training volunteers, especially since firms’ lawyers would have direct contact with clients.

- The WLS solicitors suggested that in future it might also be helpful to provide training and tips from AGD in law reform process for those unfamiliar with how it works.

\(^\text{131}\) The Family Law Affidavit Project was developed through a partnership between Women's Legal Service NSW (WLS) and the Law Society of NSW with a grant from the Law and Justice Foundation of NSW (LJF). Volunteer solicitors based in Sydney were trained to draft affidavits for family law matters, with instructions taken over the telephone. See Law and Justice Foundation, *Family Law Affidavit Project Evaluation Report* (2009), at www.lawfoundation.net.au/jf/app/?id=96A5E275C9519729CA257544000FFA9C.
### 28 ASSISTANCE TO NON-LEGAL NOT-FOR-PROFIT ORGANISATIONS AND CHARITIES

By assisting not-for-profit or community organisations, pro bono providers are supporting organisations so they can use their resources to assist those in need rather than paying for legal services.

Pro bono providers assist NFPs with advice on areas such as governance, deductible gift recipient (DGR) applications, commercial agreements and incorporations. They may also provide training to NFPs on legal issues affecting them.

See also section on Non-legal not-for-profit organisations and charities (Chapter 13).

### 28.1 ASSISTANCE TO ORGANISATIONS: AT A GLANCE

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<th>Benefits</th>
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<tr>
<td>• There is a match between the legal issues faced by NFPs, which are familiar to lawyers working with commercial organisations (eg tax, intellectual property, insurance) and the skills and experience of lawyers available to do pro bono work. This means that pro bono providers do not need to invest many additional resources in training lawyers to acquire the skills needed to assist.</td>
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<td>• Pro bono assistance can often be easier to obtain for NFPs than for individuals.</td>
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<td>• Assisting NFPs gives pro bono providers an opportunity to work with an existing or potential commercial client.</td>
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<td>• From the perspective of pro bono providers, it is often easier to deal with the professional staff of NFPs, who are accustomed to asking for help in order to survive and can clearly articulate their needs, than it is to deal clients who are profoundly disadvantaged individuals with complex problems outside the normal experience of many lawyers.</td>
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<th>Challenges/limitations</th>
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<td>• Non-legal NFPs may be very unfamiliar with the law and therefore may not recognise that a problem is a legal issue or seek legal assistance.</td>
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<td>• NFPs may also have unrealistic expectations about the timeframe for completing pro bono work as they are unfamiliar with how law firms work.</td>
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<td>• It can be difficult for pro bono providers to assess the merits of assisting a NFP organisation, especially where it is a little known or new organisation.</td>
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<th>Features of effective assistance to not-for-profit organisations and charities</th>
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<tr>
<td>• Firms developing best practice guidelines for assessing/prioritising which organisations they will assist (see sample questions at 28.4).</td>
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• Providing NFPs with information and training which informs their requests for assistance. NFPs with specific questions, clear instructions and examples of what they would like to achieve, are easier to refer to a firm (see case study on PilchConnect at 28.5.1).
• There is a match between the goals of the NFP and the pro bono strategy of the pro bono provider.
• Agreeing on letters of engagement or a MOU.
• Designating a contact point within the NFP who can identify legal issues and provide clear and timely instructions.
• Firms providing a realistic timeframe for the completion of pro bono work.
• Developing and maintaining good relationships between the NFP and firms, especially so that the pro bono lawyers fully understand the context of the work/instructions.

28.2 ASSISTANCE TO ORGANISATIONS: BENEFITS

By assisting organisations, law firms use their core skills to support organisations whose core business is assisting those in need. The legal issues faced by NFPs are familiar to lawyers working with commercial organisations (e.g., tax, intellectual property, insurance), and match the skills and experience of many lawyers available to do pro bono work. Assistance to NFPs also provides good opportunities for in-house corporate lawyers to become involved in pro bono as the issues that arise are commonly in their area of expertise (for example, corporate governance). See also section on In-house/corporate lawyers (Chapter 15).

For pro bono providers, the match of skills and experience means that they do not need to invest any additional resources in training lawyers to acquire the skills needed to assist NFPs. It also provides them with an opportunity to work with a client who is or potentially could be a commercial client. For NFPs, this means that obtaining assistance can often be easier than for individuals. The results of the Centre’s National Law Firm Pro Bono Survey revealed that over 60% of the pro bono work undertaken by large law firms is for organisations rather than individuals.

From the perspective of pro bono providers, it is also often easier to communicate with the professional staff of NFPs, who are accustomed to asking for help in order to survive and can clearly articulate their needs, rather than with clients who are profoundly disadvantaged individuals with complex problems outside the normal experience of many corporate lawyers.

132 Of the firms that responded to the National Law Firm Pro Bono Survey: Australian firms with fifty or more lawyers, the areas where they provide the most pro bono services were governance, deductible gift recipient (DGR) applications, employment law, commercial agreements and incorporations. See National Pro Bono Resource Centre, National Law Firm Pro Bono Survey: Australian firms with fifty or more lawyers (2012) p 11, at wic041u.server-secure.com/vs155205_secure/CMS/files_cms/National%20Law%20Firm%20Pro%20Bono%20Survey%202012%20-%20Final%20Report.pdf.

“The kind of pro bono assistance that NFPs need is usually well within the range of skills and expertise that law firms possess as part of their day to day practice, and NFPs are easier clients to deal with than other disadvantaged client groups, so at least in theory NFPs should be attractive to firms as potential pro bono clients.” (Not-for-profit organisation manager)

28.3 ASSISTANCE TO ORGANISATIONS: CHALLENGES/LIMITATIONS

Non-legal NFPs may be very unfamiliar with the law and therefore may not recognise that a problem is a legal issue or seek legal assistance. Those that do seek legal assistance, especially NFPs that are smaller or recently established, may not have a dedicated or consistent contact point for a pro bono relationship, let alone a lawyer that can effectively communicate about the legal issues.

“We have had some disastrous relationships with NFPs that are non-responsive. By the time they respond to correspondence or requests for instructions, the law might have changed.” (Large law firm pro bono coordinator)

“It is sometimes difficult to establish that the person calling us has the authority to speak on behalf of the NFP (rather than being a rogue employee or member asking for advice without the knowledge of the NFP’s Board).” (A pro bono clearing house manager)

Many not-for-profit organisations may also be unfamiliar with how law firms work and may therefore have unrealistic expectations about the timeframe for completion of the work.

“‘Just look at it’ or ‘ASAP’ is not a helpful timeframe and 24 hours is not fair. We try to educate our clients about how firm processes work. If the matter is very urgent, the organisation may need to pay for the advice.” (Large law firm pro bono coordinator)

It can be difficult for pro bono providers to assess the merits of assisting a NFP organisation, especially where it is a little known or new organisation, so firms may be reluctant to allocate limited pro bono resources to assisting these organisations.

“The status of an organisation as a NFP or charity (how it is structured and whether it has DGR status etc) can be obtained without any assessment of whether the organisation is good or bad.” (Large law firm pro bono coordinator)

“We generally steer away from new set ups and advice on DGR applications, preferring to work with existing NFPs and charities that are already established. Our teams are too small to take on DGR matters.” (Large law firm pro bono coordinator)

The level of demand for assistance on particular issues can make it difficult to meet the need. For example, firms provide a substantial amount of assistance with deductible gift recipient (DGR) applications but also reject many requests for assistance with this issue. Nathan MacDonald at PilchConnect explained that firms will occasionally say “no more DGR” because their tax teams are too busy. PILCH in Victoria has tried to address this by providing more training for NFPs on DGR, however given the complexity in this area, this has arguably encouraged more NFPs to seek DGR status and increased the need for legal assistance. PILCH is also advocating for law reform to simplify the DGR application process.
28.4 FEATURES OF EFFECTIVE ASSISTANCE TO ORGANISATIONS

From the perspective of pro bono providers, it is important to develop guidelines for assessing and prioritising which NFPs they will assist to ensure there is a match between the goals of the NFP and the pro bono strategy of the pro bono provider. Best practice guidelines may have regard to the mission, management and financial resources of the organisations.

Given the short life expectancy of many new NFPs, Head of Pro Bono and Community at Herbert Smith Freehills (HSF), Annette Bain, explains that it is particularly important to assess new or start-up organisations.

Sample questions used by law firms to assess requests for assistance from not-for-profit organisations:

Herbert Smith Freehills

- Have you done research into whether anyone else is already doing this kind of work?
- Who will be on your board?
- How will the organisation be funded?
- Do you have an auditor?
- Are you experienced in this type of work?
- Do you have the time required to build and run a NFP organisation?
- Do you have a business plan with goals for three to five years?

DLA Piper

- What experience and/or expertise do you have in running a charity or non-profit?
- What expertise do you have in the proposed area of activity?
- Please provide a copy of the business plan.
- Please advise how the non-profit will be funded.
- Who will be the directors of the non-profit, and have these individuals given their consent to be appointed as directors?
- What existing non-profits are active in this area, and have you consulted with existing organisations in relation to your proposal?
- To what extent does your proposed non-profit duplicate existing services organisations or compete for funding with existing organisations?

Clayton Utz

- What are your activities (or proposed activities)?
- Where are those activities carried out (ie which State or Territory, or overseas)?
- What other organisations are already providing services in the area of your activities? Have you considered supporting an existing organisation instead of establishing a separate one? Why does a new organisation need to be established?
- Do you have a business plan or strategic plan for the next 12 months?
- How much will you need to fund your activities each year (including administration costs)?
- Where will your funding come from? In which States or Territories will you be seeking funding? Will you be able to fund your administration as well as your projects?
- Do you already have the funds to pay for disbursements relating to your incorporation?
- What sort of legal entity are you planning to establish?
- Who will be on your Board? What skills do they have that will benefit the organisation?
- Who will manage the day to day operations of the organisation?
- Are you going to employ staff, or are you relying on volunteers? How many employees or volunteers will you need?
- Will your accounts be audited (or required to be audited)? Who will carry out the audit?

For existing and more established NFPs and charities, law firms may apply other criteria. For example, Annette Bain explained that HSF will not assist political or religious organisations (with the exception of their welfare services) but notes that their guidelines are constantly under review as needs change. For example, in addition to assisting individuals and not for profit organisations on a pro bono basis, HSF changed its guidelines to enable it to assist Indigenous for profit start-up businesses as part of its Reconciliation Action Plan (RAP) strategy.

NFPs are better able to articulate their legal needs and obtain legal assistance if they understand legal issues that are potentially relevant to them. Nathan MacDonald at PilchConnect explained that NFPs with specific questions, clear instructions and examples of what they would like to achieve, are easier to refer to a firm. (See case study on PilchConnect at 28.5.1.)

Once a decision has been made by a pro bono provider to assist an organisation, having letters of engagement or a MOU that formalises the relationships and clearly sets out the roles, expectations and responsibilities of both parties can help to avoid misunderstandings and problems arising. This might include a discussion about realistic expectations for the quality and timeframe for the completion of pro bono work by a firm, and instructions from the NFP. The Asia Pacific Pro Bono Manager and Pro Bono Counsel at DLA Piper, Dan Creasey, explained that the firm uses a referral form that includes key dates and limitations and a description of “who, what needs to be done and why” to avoid requests with vague instructions and timeframes.

“Both the pro bono provider and the organisation need to have a general understanding that they are moving in the same direction. This agreement can even be verbal if they know each other well enough.” (Large firm pro bono coordinator)

Developing and maintaining the relationship between the NFP organisation and pro bono provider is especially important given that the organisation may not have lawyers who can easily identify legal issues and provide clear instructions, and the work of the organisation may be quite different to what corporate lawyers are familiar with. To provide effective assistance, lawyers acting pro bono...
need to fully understand the context of the work/instructions (for example, understanding how MOUs need to be drafted in an international development context - see Fred Hollows Foundation case study at 28.5.2).

“It is ideal to have a contact point within the NFP, preferably a lawyer, who is senior enough and available to respond as issues arise. There needs to be business continuity in both the NFP and the relationship. The firm now states that it will not continue to act for a NFP if they lose contact after reasonable effort to maintain contact.” (Large firm pro bono coordinator)

28.5 CASE STUDIES

28.5.1 Case study: PilchConnect

PilchConnect is a specialist legal service set up by PILCH Victoria to provide free and low-cost legal assistance to not-for-profit community organisations and to advocate on their behalf.

PilchConnect provides a legal information web portal with comprehensive information about the legal issues involved in setting up and running a NFP. It also organises training sessions to build the capacity of the not-for-profit sector by improving the legal literacy of those working in NFP community organisations and those who advise them. It engages in advocacy and law reform work focused on improving the legal framework for the not-for-profit sector.

A telephone advice service was established in 2010 to respond to simple “one-off” legal queries from NFPs, and has been a successful addition to the services PilchConnect offers to NFPs. The telephone advice service is a call-back service primarily staffed by three lawyers, who also assist in a range of other functions within PilchConnect (pro bono referrals, trainings, website content and law reform). Once a call is taken and assessed as appropriate for telephone advice, further instructions are sought (where necessary), and a lawyer undertakes research and drafts an advice which is checked and signed off on by the supervising solicitor. The client is then called back with the legal advice or information. Telephone advice ensures that PilchConnect’s pro bono referrals are reserved for eligible NFPs who have complex matters requiring specialist assistance from law firms.

The website, training and telephone advice aspects of PilchConnect’s work complement pro bono referrals to provide an integrated service delivery model for NFPs. For example, after browsing the PilchConnect web portal or attending a training seminar, it is hoped that NFPs calling the legal enquiry line will have a basic appreciation for the legal issues and can better articulate the assistance they are seeking. This helps PilchConnect lawyers to determine which form of assistance is most suitable for the NFP in its particular situation, and generally develop legal literacy and practical capacity to deal with legal issues within the NFP sector.

134 For current examples of legal training run by PilchConnect see www.pilch.org.au/legaltraining/.
Firms currently assist PilchConnect by:

- providing pro bono legal advice for NFP clients referred by PilchConnect
- delivering trainings on niche issues for NFPs, like intellectual property, governance, insurance and OHS. Firms will often provide the room, facilities and lawyers to run the training. PILCH manages the registrations, and works with the firm to ensure content is relevant to NFPs
- drafting legal material for the website (PILCH checks the content for readability. Sometimes PILCH drafts material and a firm checks for content accuracy)
- assisting with policy/advocacy work such as submissions to parliamentary inquiries impacting on the NFP sector
- providing secondees and other in-kind support (shared between PILCH programs).
- For current examples of legal training run by PilchConnect see www.pilch.org.au/legaltraining.

28.5.2 Case study: Fred Hollows Foundation

The Fred Hollows Foundation (the Foundation) is an international development organisation, focusing on avoidable blindness prevention in the developing world, and Indigenous health improvements in Australia. The Foundation is independent, not-for-profit, politically unaligned and secular.

The Foundation is relatively well resourced and has recognised the need for more robust procedures and processes to protect it from risks as it expands its operations. It has become increasingly reliant on pro bono legal assistance (either free or at a reduced rate), which it has received from firms including Clayton Utz, Gilbert + Tobin, Ashurst and the Australian Government Solicitor.

In addition to assistance with contracts and information management related agreements, pro bono assistance has also been provided in matters involving bequests (where money has been left to the Foundation in a person’s will). The Foundation would like to make 10 pro bono requests a year for small- to medium-sized tasks but is currently only receiving assistance with half that number.

Benefits

- **Boosting the capacity of the NFP.** Pro bono assistance allows the Foundation to use its funds for its core business activities, ie eye health project work rather than legal bills. Each document that is done with pro bono resources saves the Foundation around $10,000-$20,000.

- **Legal firms are keen to be associated with the Foundation.** The firms that have provided pro bono support have indicated they are keen to be associated with a well-known and uniquely Australian organisation that has a track record in addressing social justice issues. Firms are keen to maintain this relationship.

Challenges

- **Non-legal NFPs do not necessarily identify legal issues.** NFPs are not well resourced to identify and act upon legal risks, and do not protect themselves as much as they could, for example, with tight contracts. It is helpful to provide case scenarios to explain what can go wrong.
• **NFPs move quickly.** They are inherently ambitious in their overall goals and strategies, and may be trying to do things quickly which exposes them to risk.

• **Pro bono work often takes longer than expected.** Pro bono work can sometimes take a long time to turn around, even though the firm has the best of intentions to provide it in the stated shorter time frame. If the NFP knew how long it was actually going to take, they might find an alternative.

• **The quality of pro bono work is sometimes low.** This is particularly evident when the work carried out is done by junior lawyers. Adequate supervision by senior lawyers would be helpful. Issues can arise where work is carried out by interstate offices of firms (eg the inclusion of jurisdictional clauses by the NT office of a firm that only apply to the NT and are not applicable to the matter). NFPs may not feel like they are in a position to complain, since they are not paying for the work.

• **The Foundation works in developing countries which have complex legal and jurisdictional environments.** Local legal representation is critical in interpreting legislation and applying it effectively against a fluid judicial system. Some pro bono providers may underestimate the complexity of seemingly straightforward tasks in this context.

**Features that make it effective**

• **The Foundation has an experienced lawyer who can act as a point of contact.** The Foundation's lawyer can identify legal issues and provide clear instructions in a way that other NFPs may not be able to if they do not have a lawyer on staff.

• **Provide more realistic turnaround times for pro bono work.** It is helpful when firms provide a realistic timeframe for the completion of pro bono work.

• **Understand the context.** It is important for firms to take the time to fully understand the context of the work, especially when drafting MOUs between overseas partners. This may take a phone call or even a face-to-face meeting between the firm and the NFP. Some agreements have been drafted with very simple terms that do not fully protect the organisation, while others have gone out of their way to ensure that the agreement is appropriate for the circumstances and includes all necessary clauses.

**28.5.3 Case study: Amnesty International Australia and DLA Piper**

For more than five years, DLA Piper has helped to ensure that Amnesty International Australia's (AIA) governance, strategy, policy and operations are conducted based on robust legal advice. This has allowed AIA to focus on its mission of ending systemic injustice around the world. AIA and DLA Piper were nominated for a Law and Justice Foundation of NSW Justice Award in 2012 for their pro bono partnership.

Most of the pro bono work has been done in partnership with the Sydney office of AIA and includes providing advice on corporate matters, tax, wills and bequests, employment matters and contracts, and also work on particular court appeals and projects, merits advice, freedom of speech and strategic litigation, and reviewing legislation which has a human rights impact.

DLA Piper recently seconded one of the firm’s lawyers to AIA on a full time basis for five months. The secondment worked extremely well for AIA. It provided AIA with "legal expertise on hand" where
matters did not require formal legal advice, as well as additional capacity in the form of a lawyer to lead a research project with volunteers on Indigenous rights. DLA Piper has since provided a new secondee to AIA.

**Benefits**

- Obtaining top quality free legal advice from top tier firms.

**Challenges**

- It can be a challenge to provide NFPs with non-legal staff with enough knowledge of legal issues to help them do their work, without panicking them about issues that are unlikely to be problematic. For example, if a firm explains all the possible risks in relation to defamation, a NFP may be reluctant to publish anything controversial, even though it is not realistically going to be a problem (this is not an issue for AIA).
- Managing perception of risks to ensure that NFPs do not spend money to address issues that are unlikely to be problematic.
- Ensuring there is no conflict of interest, especially if the legal matter is connected to campaigning work which includes government advocacy.

**Features that make it effective**

- **There is a match between the interests of pro bono practices and AIA's work**, which centres on promoting, upholding and protecting the international legal framework for human rights. The Legal and Governance Manager at AIA, Katie Wood, explained that AIA's work attracts a lot of interest and support from the legal profession because it is based in human rights law and the rule of law. “When AIA was seeking to appear as amicus curiae in a high profile legal case, AIA was told by its pro bono lawyers that there had been 20 applicants for three junior lawyer positions working on the case.”
- **AIA attracts volunteers and supporters who often have legal qualifications and skills** so it is generally in a better position than some other NFPs to identify and address legal issues that arise. Katie Wood, who coordinates the pro bono relationship, is a lawyer with a background in commercial litigation so she is able to provide clear instructions.

  “I understand the way that firms operate, and the constraints that may impact on pro bono work. I expect that pro bono work, like any other work that a firm does, will be allocated according to the level of seniority required for the tasks involved, and understand that it will often be junior lawyers who are allocated to pro bono work. However my experience is that junior lawyers are highly passionate about social justice issues and the standard of work AIA has received from DLA Piper has been excellent. I have never needed to pay for work to be re-done.”

- **AIA has built strong relationships with several pro bono providers** over a long period of time. Most of these relationships have developed organically, often through personal relationships. For example, a former member of the AIA Board was from a law firm and was therefore able to initiate a pro bono relationship with that firm. Also, a former AIA intern facilitated a relationship with a firm where she subsequently worked.
“I maintain strong relationships with the individuals within firms who can advocate for pro bono more generally. This may not always be the pro bono coordinator and one of my strongest connections is with a corporate commercial partner.”

- Positive working relationships have been developed between the AIA and the lawyers doing the pro bono work which facilitate **good communication, useful instructions and ultimately, great legal advice.**

  “I encourage firms to be honest about providing a realistic timeframe for the completion of pro bono work. I explain when the work needs to be done and that I need to be able to re-allocate it elsewhere if they can’t do it in time.”

- DLA Piper’s pro bono program is genuine about **wanting to make real impact on human rights and social justice.**

  “It is not about drumming up more business or creating an image for stakeholders. DLA Piper has a different attitude from some other firms, and this is very apparent in the pro bono work they do.”

- **The provision of a secondee for 5 months.**

  “The secondee can gain a full picture of the work of the organisation and this helps both the secondee and the firm to provide quality advice with an understanding of the context. Tasks that might normally need to be ‘farmed out’ can be done by the secondee.”
Pro bono providers may partner with community organisations to deliver community legal education either to a particular target group or to boost the capacity of a community organisation.

For example, the Asia Pacific Pro Bono Manager and Pro Bono Counsel at DLA Piper, Dan Creasey, explained that in Victoria, DLA Piper is developing modules that are aimed at educating prisoners directly (eg for debts, housing) and toolkits that prisoners can access and use to learn about their rights, but is also developing modules on particular topics as resources for lawyers working with prisoners (eg parole, mental health). DLA Piper is also providing training and mentoring to lawyers at Hobart Community Legal Service via video-conferencing in specific subject areas where they lack expertise, to help build the capacity of the CLC to provide advice and assistance to their clients in those areas of law. (See case study at 29.1.2 and the section on Technology-based services: Video-conferencing at 26.12)

Public interest law clearing houses have arranged seminars on corporate governance issues for not-for-profit organisations. (See section on Assistance to non-legal not-for-profit organisations and charities, Chapter 28.)

**Benefits**

- **Community legal education (CLE) can potentially reach many more people** than individual case work.

- When it is delivered to community lawyers and other service providers, it empowers them by helping them to better understand the legal problems faced by their clients, which in turn improves outcomes for clients in terms of timeliness, and the ability to identify and address all issues and avenues for redress.

- The **time and resource commitment** of pro bono providers can be contained to the time it takes to prepare and deliver the CLE.

- In some cases CLE can be a **good way of promoting a pro bono practice**, encouraging quality referrals and enhancing relationships with partner organisations which can develop a better understanding of legal issues and how the pro bono provider can help by participating in CLE.

- It is a model of pro bono assistance where **conflicts of interest are less likely to be an issue** than pro bono work involving the provision of advice or representation.

- It is a way for **Australian lawyers to contribute in jurisdictions overseas** where they do not have the necessary certification to practice law. For example, DLA Piper is running a two-day intensive contracts workshop for non-lawyers from three of its NGO clients in six overseas jurisdictions that will cover issues such as fundraising and human resources, and the firm is planning to do more CLE in Singapore. (See also section on International pro bono, Chapter 31.)

- It appeals to many lawyers who are keen to **enhance their skills in training and public speaking**, and enjoy delivering training, especially to a large group where they feel that they are making a large impact.
Challenges/limitations

- **Finding ways to reach the target audience.** Pro bono providers generally need to partner with a community organisation that can provide a link to the need.

- **Pitching the CLE at the right level for the audience/target group.** CLE participants may, for example, have different levels of understanding or literacy. Dan Creasey explains that “even when pro bono providers partner with community organisations or social workers, they may have limited information on the course participants.”

- **Ensuring that the CLE is well attended.** There is a risk that the time and effort that pro bono providers invest will be wasted if only one or two people turn up. Dan Creasey explains that this is especially true of CLE that is delivered overseas. “For example, the Head Office of an NGO may push for training to be organised at a local field office, while the trainees who are the staff of the local office of that NGO may not recognise the need.” (See also section on International pro bono, Chapter 31.)

- **Managing expectations of the CLE participants.** Training that is interactive in nature is an effective way of encouraging learning, but brainstorming can also lead to discussion about the legal needs of the individual participants which the pro bono provider may not be able to address in that forum.

Features of effective community legal education

- **Engage in effective consultation** with the community organisation and/or target group for the CLE to ensure that the content and style of the training is tailored to the needs of the target audience.

- **Think about how to ensure attendance,** and not just on the content of the CLE. Dan Creasey explained that the content of the DLA Piper contracts workshop was broadened to include governance in order to make it more appealing to the attendees (although this made the course more appealing there is also the risk that the content could become too diluted).

- **Ensure that lawyers delivering CLE have the necessary skills.** This may involve providing “train the trainer training” to presenters. The Law Reform and Policy Solicitor and Clinical Supervisor at Kingsford Legal Centre, Edwina MacDonald, explained that “delivering CLE requires specialised skills.”

- **Use a solicitation process to identify the most appropriate staff to deliver CLE.** It is important that those delivering the CLE have skills in presenting and training. DLA Piper’s solicitation process involves an email calling for expressions of interest. Dan Creasey explains that “those interested are required to fill in a two-page form detailing their relevant experience, for example, working with people from different cultures and overseas, lecturing experience, previous pro bono experience. Much of the need for CLE overseas is for basic drafting and trial preparation skills.” (See also section on International pro bono, Chapter 31.)

- **Flexibility in delivery mode** which should be designed to maximise the engagement and “absorption” of information by participants. Modes of delivering CLE could include workshops, traditional lectures or even online using Skype and other telepresence technologies (See also section on Technology-based services, Chapter 26.)

- **Set parameters for the training** to avoid having a quasi-clinic at the end of the training session, and have a "back up plan" in case there are requests for ongoing assistance. For example, be
29.1 CASE STUDIES

29.1.1 Case study: Phang Legal and Harris Park Community Centre

Ern Phang, the Solicitor Director at Phang Legal, a small firm based in Western Sydney, was involved in delivering CLE as part of a community forum organised by the Harris Park Community Centre in response to concerns in the Indian community around Harris Park following reports in the media of violence against Indian students.

Ern Phang was invited to participate in the presentation, along with the police and several other community service providers, as he had served as a director on the board of a youth services organisation that was closely related to the Centre.

Most of the community questions that were directed at Ern were about the rights of individuals, rule of law, powers or involvement of the justice system to protect individuals, and perception of the police.

Benefits

- Preparation for the CLE did not involve a large time commitment. “The community forum was an immediate reaction to address the perceived need to address the Indian community’s concerns so there wasn’t a set topic or issue to present on or prepare for.”

Challenges

- Reaching people who need legal assistance the most. “Many people have questions and seek answers about law and justice - but for the most part, they're probably asking the wrong people or getting the wrong information. I think they're intimidated by the thought of seeing a lawyer if they have an issue (possibly because of the perception of cost).”

- Defining the parameters of the CLE. “Lots of questions were really requests for specific legal advice but I generally used the question as a basis to answer in general terms, and invited individuals to consult me independently if they required specific legal advice.”

What made it effective

- Understanding and addressing the legal needs of the participants. Ern explained that he thought the major issue was actually the community perception and understanding of the law and justice system in Australia.

“We needed to address the preconceived impressions of the participants, which could be based on their experiences in their country of origin, and reinforced by ‘rumours’ within their local community. For example, there was a perception that the police would not assist them, that they would also be racially discriminated against by the police, general mistrust of the ‘government’ being the local council and
various services, fear/uncertainty and anxiety of going to court or being involved in court proceedings. I'd have to say, this is not limited to the Indian community only but I think is something that a lot of migrant communities (or even just a certain segment of the socioeconomic demographic of the population) share.”

29.1.2 Case study: Hobart Community Legal Service and DLA Piper

Hobart Community Legal Service (HCLS) is a community legal service providing specialist and generalist legal services to the southern Tasmanian Community, particularly the socially disadvantaged and vulnerable members of the community. HCLS receives a significant number of requests for assistance with industrial relations matters, but has found it difficult to obtain training/mentoring assistance locally, given that there are few practitioners in Tasmania with the requisite level of expertise in this area of law, and the actual and perceived risk of conflicts within a small jurisdiction. (See section on Size of jurisdiction at 6.1.)

HCLS has partnered with DLA Piper to provide a National Broadband Network (NBN)-based legal assistance service at its outreach office in Sorell as part of a pilot project funded by the NBN Regional Legal Assistance Program. Part of the project involves using the NBN-based video-conferencing facilities for DLA Piper to deliver training and mentoring support to the solicitors at HCLS.

A professional development training session was successfully delivered using Skype video in December 2012 by two lawyers from DLA Piper to update lawyers at HCLS on changes to industrial relations law that were introduced on 1 January 2013.

The 90-minute training presentation included some interactive question and answer time as well as formal training. In preparation for the training, a solicitor at HCLS sent an email to DLA Piper listing the basic areas in which they needed information. DLA Piper then tailored the training to cover the identified areas of need.

Benefits

• Boosting the capacity of HCLS to identify possible causes of action and deliver effective and timely legal services to their clients.

“The three solicitors who took part in the training said that the session worked very well and all of them found the training immediately useful to their ongoing case work. They reported that when the changes to the Fair Work Act came into force in January 2013, the training had increased their confidence and ability to deal with the influx of requests for assistance that followed because the content of the session had effectively prepared them for the changes and the interactive nature of the training had allowed them ask questions about anything they were unsure about.” (Jane Hutchison, Manager, Hobart Community Legal Service)

Features that made it effective

• Planning and consultation to ensure that the subject matter covered would address the needs of the solicitors at the CLC.

• The style of the training presentation was suited to the target audience i.e. there were opportunities for interactive “question and answer” parts of the session.
“The intimate nature of the Skype session made it a less threatening environment in which to ask questions and discuss real examples being experienced by the legal service.” (Katie Sweatman, Lawyer, DLA Piper)

The use of video-conferencing technology meant that the lawyers involved did not have to leave their desks. (See also the section on Video-conferencing at 26.12)

“It was logistically easy for both the trainers and trainees who were able to simply sit in front of the computer screen and deliver or receive the training with minimal inconvenience to their busy working day.” (Katie Sweatman, Lawyer, DLA Piper)
In addition to pro bono legal assistance, many firms have well-established programs offering a wide variety of non-legal assistance to their community partner organisations, including use of meeting rooms, library or research assistance, catering or other facilities, printing or publications assistance, administrative assistance, information technology, public relations and marketing, assistance with fundraising, donation of equipment (eg desks or computers) and financial donations. In many cases this support is provided with the assistance of the non-legal staff at law firms.

While this type of assistance is not included within the definition of pro bono legal work, this type of support offered to community organisations (particularly those that provide legal services themselves) is an important adjunct to many firms’ pro bono programs.

“Firms provide non-legal support to boost the capacity of CLCs, such as assistance with human resources, recruitment and retention strategies (which is a real concern for CLCs), training, events management, access to legal research resources, administrative assistance, typing etc.” (Community legal centre manager)

“An administrative secondment of an afternoon a month at a legal centre occurred over 18 months. This enabled four non-legal staff to attend on a roster and provide good support to the centre including typing, filing and attending meetings and taking notes on laptop which could then be circulated immediately.” (Mid-sized law firm pro bono coordinator)

The non-legal assistance model can be used as a way to develop a pro bono culture throughout a firm, and provide non-legal staff with opportunities to become involved in pro bono.

“Some firms are interested in using their non-legal staff to do pro bono work to encourage a firm-wide contribution eg IT staff help with the website and podcasts.” (A pro bono clearing house manager)

However, one pro bono clearing house manager warned that it is important to ensure that increasing non-legal assistance does not become a way of reducing the amount of legal assistance provided by a firm without affecting overall pro bono hours.

“Some firms are trying to engage more non-legal staff ... While it is a positive idea to have a whole of firm approach to pro bono, overall it has the potential to reduce the number of hours of legal work done which is where the greatest need lies. It may also be a way for some firms to make up their pro bono hours without losing lawyers’ billable hours.” (A pro bono clearing house manager)

“Some firms may limit the amount of pro bono support provided in cases where substantial assistance (such as client representation) is necessary, on the grounds that they have provided administrative assistance in a number of occasions.” (Community legal centre principal solicitor)

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The Coordinator at Footscray Community Legal Centre (FCLC), Denis Nelthorpe, said that firms could really assist CLCs with more administrative assistance and that CLCs needed to be more upfront about their weaknesses in this area. “CLC administrative processes may be 20 years old with open files stored numerically rather than alphabetically and appointments kept in books rather than electronically.” A law firm provided FCLC with an administrative assistant for a month when the CLC was short-staffed.

30.1 CASE STUDY

30.1.1 Case study: Employment Law Centre of Western Australia Inc

The Employment Law Centre of WA (ELC) receives pro bono assistance valued at between $400,000 and $800,000 a year, which includes a substantial amount of non-legal assistance in the form of administrative support. This support includes:

- sponsored places at legal seminars and conferences
- providing free venues and catering for staff training
- IT support and expertise
- donated law reports
- journal articles from law firm libraries
- grants for office supplies
- creation of ELC templates
- provision of archive space.

The services that the ELC offers in-house are improved by having the opportunity to increase their knowledge and training. The non-legal assistance that ELC receives makes these opportunities possible, for example, by providing a suitable venue to train ELC staff on employment law, providing ELC staff with the opportunity to develop their expertise by attending seminars and providing access to legal content such as journal articles and law reports.

Administrative support can be provided by a firm without a large investment of time or putting a lot of strain on a company's resources - for example, free venue hire and catering takes no time from a law firm's fee-earners and has minimal impact on the firm's resources. Similarly, sponsoring an ELC staff member to attend a seminar or conference requires only a small fee (or may be cost neutral where a firm lawyer is offered a guest spot at a seminar he/she is presenting) which makes little impact on the firm's profitability and requires no time from fee-earners.

ELC staff are in a better position to advise clients as a result of pro bono assistance providing software to capture ELC's clients' information and templates for communications with clients. ELC received pro bono support from a law firm's IT expert who created a set of ELC document templates, and also received pro bono support from a software engineer who created the ELC client database. This has been the most time-intensive administrative support received by ELC which, if not provided pro bono, would have cost ELC a significant amount of money.

Using the creation of ELC templates as an example of an effective project, the following features contributed to its success:
• the firm ELC approached to design the template had in-house staff with the requisite skill set
• an agreement was made on the amount of work involved in the project and the timeline it should adhere to
• the staff members responsible for the project from both the pro bono firm and ELC were in frequent contact to ensure the templates fit ELC's needs
• the administrative costs to both ELC and the pro bono firm were minimal.

“This pro bono assistance contributes significantly to ELC. Through this type of administrative pro bono support, we are able to expand our resources, train our staff effectively, improve our office equipment and software and attend events we would otherwise not be able to afford to attend.” (Toni Emmanuel, Principal Solicitor, Employment Law Centre of Western Australia (Inc))
INTERNATIONAL PRO BONO

International pro bono work is generally considered to be legal work that is focused outside of the country where the lawyer is based. However, this still means that much of the legal work is carried out in the country where the lawyer is based, as is the legal work done for organisations whose focus is on programs in developing countries but which are often based in the same country as the lawyer.\(^\text{136}\) The results of the National Law Firm Pro Bono Survey: Australian law firms with fifty or more lawyers revealed that very little international pro bono work is actually conducted outside of Australia with all but one firm reporting that less than five percent of their international pro bono legal work is conducted outside Australia.\(^\text{137}\)

There is a diverse range of international pro bono work. Clients may be individuals, charities, development or aid organisations, other NGOs or governments. Legal work might include training, preparation of legal information/summaries of legislation, legal research, advising, negotiation, drafting, representation or advocacy. International pro bono work also includes in-country volunteering programs where individual lawyers take on opportunities to provide pro bono legal work with a government or NGO in a particular country for period of months.

Large international firms are undertaking rule-of-law development work involving ambitious and cutting-edge pro bono legal representation in post-conflict situations, emerging democracies, and emerging markets.\(^\text{138}\) Counsel have also appeared pro bono in international courts and tribunals and the appeal courts of overseas countries, particularly in “public interest” cases, including those involving Australians facing the death penalty in a foreign court or an issue of constitutional law in the European Court of Human Rights. Counsel have also provided important verbal and written legal advice as part of pro bono projects and programs.\(^\text{139}\) (See case study on barristers’ involvement in Trial advocacy workshops at \textit{31.5.1}, and the section on Barristers, Chapter \textit{14}.)

International pro bono clearing houses such as \textit{A4ID}, \textit{PILnet} and \textit{Trustlaw}, have been established to refer international pro bono matters. Within Australia, Public Interest Law Clearing Houses (PILCH) provide brokering services for a small number of international matters, and Australian Volunteers International established Lawyers Beyond Borders in 2009 to facilitate individual lawyers volunteering to work in developing countries.\(^\text{140}\)


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The International Pro Bono Advisory Group was established in July 2009 by the Commonwealth Attorney-General and the Minister for Foreign Affairs, to promote international pro bono work by Australia’s legal profession, and identify linkages with the Government’s international development assistance programs. The Advisory Group brings together a range of private sector lawyers, Government and non-government agencies with expertise in international pro bono and development assistance work.\(^{141}\) In July 2011, the Law Council of Australia and the International Pro Bono Advisory Group secured funding from the Commonwealth Attorney-General's Department to establish a clearing house to coordinate requests for pro bono legal assistance from the Asia-Pacific region to Australia: The Centre for Asia-Pacific Pro Bono (CAPPB), which is housed within the Law Council of Australia Secretariat. The CAPPB seeks to match requests from the Asia-Pacific region for international pro bono legal assistance with Australian legal practitioners and law practices.

“I think that the amount of international pro bono will increase with Australian firms merging with international firms and developments like the Asia Pacific Centre for Pro Bono.” (Government pro bono manager)

### 31.1 INTERNATIONAL PRO BONO: AT A GLANCE

**Benefits**

- Using the considerable skills and resources of the Australian legal profession to assist those with considerably less resources.
- Low cost of living in some developing countries means that a small investment from a pro bono provider can achieve significant outcomes.
- Interesting work providing professional development opportunities for lawyers at all levels.

**Challenges/limitations**

- Defining a strategy for international pro bono work that fits with a pro bono provider's existing/domestic pro bono strategy.
- Finding reliable sources of referrals and coordination of international pro bono work.
- High cost of travel, accommodation and other expenses associated with working remotely, as well as the time involved.
- Australian lawyers may not be permitted to practise in the jurisdiction (but may still be able to deliver community legal education).
- Involving international offices in the growth of a firm's international pro bono practice when their pro bono culture is not as developed as it is in Australia.
- Political sensitivities may restrict the scope of international pro bono work that a pro bono

provider can undertake.

- Managing client perceptions when they are a pro bono client in Australia, but a fee paying client in another country (or vice versa).

**Features of effective international pro bono**

- Defining the strategy for international pro bono with focus areas or signature projects.
- Highlighting the benefits of international pro bono in a way that appeals to the interests and culture of the relevant office of the pro bono provider.
- Developing relationships with the legal profession in countries where pro bono work could potentially be focused and organisations that could provide direct client referrals.
- Selection of lawyers to undertake international pro bono work that have the appropriate skills - not just legal skills, but cultural sensitivity and the ability to present information in a manner that it will be understood by people who may have very different perspectives or level of education.
- Focusing pro bono resources on assisting organisations that are well known and can be a trusted partner, such as established international NGOs, UN agencies and their trusted local partners.

### 31.2 INTERNATIONAL PRO BONO: BENEFITS

The allocation of pro bono resources in the international context can have a significant impact, especially given the level of disparity that can exist between the skills and resources of lawyers in Australia compared with those being assisted. This disparity can be much greater than it is domestically. Much can be achieved with a small investment since the Australian dollar can go a long way in developing countries. For example, in partnership with Bridges Across Borders Southeast Asia CLE (BABSEA CLE) (an international access to justice legal education organisation), Herbert Smith Freehills has helped to fund CLE clinics.

International pro bono work can provide a firm’s lawyers with interesting work which can contribute to staff development at every level. For example, Head of Pro Bono and Community at Herbert Smith Freehills, Annette Bain, explained that two of the firm’s Sydney partners have delivered training in negotiation skills in Laos and Vietnam.
31.3 INTERNATIONAL PRO BONO: CHALLENGES/LIMITATIONS

To effectively engage in international pro bono, pro bono providers will need to define their strategy for this work, and some firms may not be looking to expand in this area as it does not fit with their pro bono strategy which is more domestic in focus.142

Finding a reliable source of referrals for international pro bono may be difficult, especially since the infrastructure for the coordination of international pro bono is in the early stages of establishment and development. For example, the Centre for Asia Pacific Pro Bono was established in July 2011. However, 50% of the firms that responded to the National Pro Bono Resource Centre’s 2012 National Law Firm Pro Bono Survey anticipated that they would not undertake any work through CAPPB in the next 12 months, with one of the reasons for this being “lack of suitable referrals.”143

“When international clearing houses (such as A4ID and Trust Law) are trying to place a matter they will call for expressions of interest by emailing a number of firms, which creates a kind of tender process where lawyers are disappointed if they are unsuccessful. There are also other teething problems, for example their website content is often out of date, or has insufficient content, so they have not been a reliable source of referrals.” (Large law firm pro bono coordinator)

“When PILnet, A4ID and Trust Law all have a European focus, referring very few matters in the Asia Pacific region where Australian firms are largely focused. A4ID’s ‘bid model’ does not work well for us either, with work sometimes going to firms that have not done work in that area before, rather than the firm that is best placed to do the work.” (Large law firm pro bono coordinator)

While the in-country costs of undertaking pro bono work within the country that the work is focused on might be relatively low, the cost of relocating lawyers from Australian offices to the countries where the work needs to be done can be very high, especially in developing countries where adequate accommodation and other services, like internet access, are very expensive. The National Pro Bono Manager at Australian Government Solicitor, Geetha Nair, explained that AGS undertakes legal training on a pro bono basis. Even where these projects might be funded by AusAID or other parts of the Commonwealth, AGS still needed to consider whether they could bear some of the incidental costs which were not covered by the funding. This challenge is reflected in the very small amount of international pro bono work that is actually conducted outside Australia.

“It can sometimes be more cost effective to donate money, for example, we donated money to Médecins Sans Frontières after the earthquake in Haiti, than to send our lawyers.” (Large law firm pro bono coordinator)

Where a pro bono provider would like to assist by sending its lawyers to undertake pro bono work outside Australia, they may be restricted by not having practising certificates in the areas where they want to work. One way that large international firms may be able to overcome this obstacle is by


involving lawyers from their overseas offices in the pro bono work. However, including overseas offices of a firm in the growth of its international pro bono practice may be challenging when the pro bono culture in those offices is not as developed as it is in Australia.

“While international travel might be seen by Australian lawyers as a positive, many of the staff in our Asia offices travel for work all the time and may not be so keen to travel for the purposes of undertaking pro bono work.” (Large law firm pro bono coordinator)

Political considerations and sensitivities may also limit the kind of work and clients that can be assisted. For example, Geetha Nair explains that as the legal service provider for the Commonwealth Government, AGS must consider whether pro bono work is aligned with the government’s policies and programs.

Client perceptions may need to be carefully managed when they are a pro bono client in Australia but are a fee-paying client in another country (or vice versa). The Asia Pacific Pro Bono Manager and Pro Bono Counsel at DLA Piper, Dan Creasey, explained that the firm tries to reduce or offset the fee to manage that situation when the need arises.

31.4 FEATURES OF EFFECTIVE INTERNATIONAL PRO BONO

One way of defining the strategy for international pro bono is with focus areas or signature projects. For example, Dan Creasey explained that DLA Piper has 10 signature projects which were selected following an assessment of what other firms were not focused on, and where the firm has expertise to contribute, such as micro-insurance and microfinance. The firm also focuses its pro bono resources on assisting the top 20 international NGOs, UN agencies and their trusted local partners.

Where there is variation in the strength of the pro bono culture between Australian and overseas offices of a firm, it helps to highlight the benefits of international pro bono in a way that appeals to the interests and culture of the relevant office of the firm.

“In offices with a less developed pro bono culture, international pro bono work can be sold as a way to broaden the skills of the lawyers involved and an opportunity to network with organisations that are, or will potentially become, commercial clients.” (Large law firm pro bono coordinator)

Relationships are as important for international pro bono as they are domestically. Successful international pro bono projects have involved the forging of direct relationships with the professional associations in the countries where assistance could potentially be directed. This allows pro bono providers to fully understand what the needs are, and assess what they can do to address the need.

For example, Herbert Smith Freehills (HSF) has developed a relationship with the Pro Bono Services Office of both the Singapore Law Society and the Laos Bar Association. Australian lawyers from HSF have assisted in providing seminars for the Laos Bar Association on topics such as legal ethics, intellectual property, negotiation skills and how to run a practice. HSF also assisted by paying for the training premises and catering.

Dan Creasey explained that DLA Piper also prefers direct referrals that come from its existing relationships and clients. “DLA Piper has a 48-hour turnaround time for assessing requests for assistance which is much faster than the bid process that some referral agencies use.”
It is particularly important in the international pro bono context to have people with a strong cultural awareness and sensitivity managing the relationships. For example, Geetha Nair explained that the language used for legal training sessions in the international context needs to be pitched in terms that will be understood in the cultural context.

"Much of the need for CLE overseas is for a very basic level of drafting and trial preparation skills." (Large law firm pro bono coordinator)

Community legal education may be a way of delivering pro bono assistance in a jurisdiction overseas that overcomes the obstacle of Australian lawyers not having the necessary certification to practice law in that jurisdiction (See section on Community legal education, Chapter 29). For example, DLA Piper is running a two-day intensive contracts workshop for non-lawyers from three of its NGO clients in six overseas jurisdictions that will cover issues such as fundraising and human resources, and the firm is planning to do more CLE in Singapore. Geetha Nair also explained that a substantial amount of the pro bono that AGS does is international pro bono work related to training (with some legislative drafting). AGS has worked with the Attorney General's Department in Papua New Guinea, providing two training sessions of one to two weeks in duration, with new courses such as “train the trainer training” being developed for the future. AGS is also in discussion with the Solomon Islands to deliver training on Freedom of Information.

31.5 CASE STUDIES

31.5.1 Case study: Trial advocacy workshops

Dan O’Gorman SC has been involved in organising intensive trial advocacy workshops for over 15 years in Bangladesh, Cambodia, Nepal and the Solomon Islands. The program started when the President of the Bangladesh Bar Council met an Australian QC at a Law Asia Conference and requested Australia to provide assistance.

The training is in advocacy techniques rather than substantive law. Each workshop runs for four days with a team of nine people delivering workshops to four groups of around 15 to 20 people (two trainers per workshop, with one extra in case someone falls ill). The workshops comprise general sessions which involve all participants, followed by workshops in small groups where the information dealt with in general sessions is practised by each “student.” For example, the trainers outline and demonstrate cross-examination techniques, then the course participants role-play to practise their newly developed knowledge and skills relating to cross-examination.

In recent years, the training has been extended to include additional training on other topics. For example, UNICEF requested training on children's rights for the Bangladeshi police and corrective services officers.

Since 2004, Dan has also organised fundraising for a charity in Bangladesh that provides basic education to children living in slums. Each year, he sends letters to approximately 1,200 judges and barristers in Queensland seeking donations, raising between $30,000 to $40,000 annually.

Benefits

- Sharing the expertise of Australian legal professionals to build the capacity of the legal profession in a developing country.
• Developing and maintaining relationships between legal professions in different countries that facilitates further cooperation and sharing.
• Broadening the professional and life experience of the trainers involved in the workshops and their overseas colleagues with whom they work.
• Providing the legal profession with a direct link to a charity to which it can feel confident about donating funds.

Challenges
• **Identifying trainers who are genuinely interested** in capacity building and social justice, rather than simply having a paid trip overseas. Dan has largely overcome this challenge by requiring interested trainers to purchase their own airline ticket out of their own financial resources before the decision relating to the possible funding for the tickets and accommodation has been made. The risk that they might need to pay the necessary travel and accommodation costs out of their own pocket with no guarantee of a reimbursement “weeds out the people who are not genuinely committed to the work.”
• **Identifying trainers who are suitable to work in the difficult environment** of these developing countries in a situation where they will basically need to be able to live with each other for the duration of the trip. The program is well known after 17 years of operation, so Dan has no difficulty recruiting volunteers, as he can directly approach potential suitable people who have earlier expressed an interest to him.
• **Securing funding for the project with changing donor priorities.** There have only been three out of the past 17 years where some funding has not been provided by either the Australian Bar Association or AusAID (either directly or via the international pro bono scheme).

Features that make it effective
• Working in partnership with, and in response to, the **invitation of the local bar association.** Dan would not work in a country where he had not been invited to work, and where the local profession was not there to understand and explain what their needs are.
• The **support of the Australian Embassy/Australian High Commission in the relevant country.** In Bangladesh the Australian High Commission organises a function each year for the Australian trainers and invites senior Bangladeshi politicians (including the Attorney-General) and senior judges. The Australian High Commission also assists with monitoring the work of the children’s charity that is supported by the Queensland judges and barristers’ donations, and this assistance contributes to the success of the fundraising as this demonstrates due diligence in ensuring that 100% of the donations go to the charity and are used effectively.
• Most of the people who are interested in being involved as trainers have travelled and developed some level of **cross-cultural awareness.** Dan and others also provide basic training either before or during the flight (sometimes when there is a stopover on the way there), which includes “stories of embarrassment” as well as tips about what works well.
• **Self-evaluation and development of the program** by asking for feedback from participants about what was useful and what could be improved.
• Dan’s PA organises all the administration of the charity, including sending out the letters seeking donations and keeping detailed records of donations. “A reliable travel agent is also very useful.”

Other lessons learned

• Fiona McLeod SC has participated in several of the trial advocacy workshops that Dan O’Gorman has organised in Bangladesh and the Solomon Islands. She stresses that it is important to have a **rigorous process for assessing which programs add value and build long-term capacity** in the local profession (with some accountability and deliverables), and target the right recipient group so the training will be well received and effective. For example, a training session organised in Nepal was not as successful as other sessions because the participants did not speak English and interpreters had not been organised. This wasted the time of everyone involved. The barristers from Australia ended up paying their expenses for the workshop rather than accepting AusAID funding for their expenses because the value of the program could not be demonstrated.

• It is also important to invest time in **finding an appropriate partner organisation for international pro bono work**. For example, during a juvenile justice workshop organised by UNICEF near the Bangladesh/Burma border, some of the course participants did not appear to understand why they were participating in the training. Also the financial arrangements were not made clear at the outset and UNICEF did not end up funding the program after it was delivered, so the Australian barristers paid for the expenses associated with that workshop as well.

• Fiona explained that “we need to be targeting ‘capacity building’ with the advocacy and judicial training programs as well as the basic skills themselves, and always include ethics components.”

31.5.2 Case study: A4ID

A4ID is a global charity based in the UK that runs an **international pro bono broker service** linking legal partners with development organisations which require their particular expertise.

A4ID’s process for the allocation of international pro bono work involves circulating available projects to legal partners every Monday, giving them one week to check conflicts and source a team with expertise. Projects are then allocated on the basis of which lawyers are best placed to assist. The intention of the “opt-in” model is to enable lawyers to take on pro bono work as and when they have capacity, and to provide a flexible and attractive structure for A4ID’s legal partners to suit their availability and other commitments.

A4ID’s Projects Officer, Elisabeth Baraka, who previously worked at Homeless Persons Legal Service in Sydney (see case study at 21.5.2) and is now responsible for A4ID’s international pro bono service, has observed that a strong driving force motivating firms to do international pro bono is competition between the firms. “The strong pro bono culture in Australia has had a positive impact on the pro bono culture in the UK, providing advocates of pro bono work with statistics showing the amount of pro bono work that is done and examples of the types of projects/models that work.”

She explains that the same issues arise in international pro bono as they do domestically, with firms more likely to be interested in work that is:

• a discrete task within a defined timeframe
• within their area of expertise (anything that a finance lawyer can do - leases, loan agreements, microfinance, employment, IP, contracts)
• can be done within the office and does not require travel.

Challenges
• The quality/reliability of work can suffer when pro bono work is not given the same level of priority as other work. Elisabeth Baraka explained that “some firms only use pro bono to provide staff development opportunities for their lawyers, and may not have adequate supervision in place. Some client organisations find pro bono too unreliable and have given up on using pro bono assistance. A4ID sometimes needs to play an intermediary role and push firms to perform.”
• Firms are increasingly reluctant to contribute to the cost of travel for international pro bono work that requires it. For example, UNDP paid for the accommodation and travel costs associated with a recent training project involving five days in Rwanda. However, only one firm was willing to provide lawyers to do the work out of the office for five days.
• Cultural differences in the way law firms and development organisations work. (See also section on Assistance to non-legal not-for-profit organisations, Chapter 28.)

Features that make it work
• Where a large task can be broken up into smaller pieces of discrete work, A4ID will do so to make it more attractive to firms - for example, comparative research that involves analysis of 20 countries.
• Having a partner from a firm involved (rather than a more junior coordinator) to oversee and supervise the work. Some firms have a system of checking whether time has been recorded for pro bono matters as a way of ensuring that pro bono matters are receiving adequate attention. Even though work is allocated to lawyers who have the skills to undertake the task, A4ID expects partners to oversee the work.
• A4ID provides training to skill up development organisations on the information that lawyers need from them and how to present that information to them. (See also section on Assistance to non-legal not-for-profit organisations, Chapter 28.)