

List of potential research topics

February 2018

The Australian Pro Bono Centre is looking to increase its focus on research into aspects of pro bono legal services in Australia. Through the first half of 2018 the Centre, in consultation with a community of those interested in engaging in this area, is developing a formal research agenda and exploring possible research partnerships.

This list has been compiled as a working document to help the Centre develop its research agenda. It sets out several possible broad areas of research which have been identified by the Centre, and under each area, a number of potential research topics. Unavoidably, there is a degree of overlap across the topics and certain topics could draw from others.

The list is intended to provide a springboard for discussion, both within the Centre and across the community of interest. Further research topics are being added to the document as the consultations progress. A research roundtable in mid-2018 will provide an opportunity for the community of interest as a whole to engage with the Centre on the research agenda, identify one or more specific research project opportunities, and do some valuable networking. The Centre aims to develop one or more research projects through this process.

Interested professionals based at universities, community legal organisations, government agencies and law firms are encouraged to contact the Centre to discuss its research agenda.

1. Measuring the impact of pro bono work in the context of other programs and measures aimed at reducing unmet legal need

What is the impact of pro bono legal work in Australia in the context of other means of reducing unmet legal need, such as government/charity funded legal assistance, government/charity funded non-legal assistance, legal or regulatory reform or reform of legal institutions?

Can the work being done in particular areas of high unmet legal need be evaluated?

What are the factors that influence the provision of pro bono work in these particular areas, for example:

- awareness of and access to disadvantaged clients experiencing legal need
- the need for specialist expertise
- the time and resource commitment required
- geographic location and jurisdictional context
- language and cultural factors
- economic considerations
- preferences or interests
- professional factors such as actual conflicts.

Particular reference is made to approaches in the US that seek to progress the New Measurement agenda (Cummings and Sandefur, 2013).

Possible research topics

1.1. Asylum seekers

An evaluation of pro bono work assisting legacy caseload asylum seekers at primary and Judicial Review level. What other models could work in migration law - e.g. self-representation services.

1.2. Family law

What measures would help to support and grow pro bono work in family law? What work is being done now (profession-wide), how can this work be better supported, what are the barriers, how can new models be developed, what other measures are required?

2. Evaluating existing and emergent models of pro bono service delivery

Little recent work has been done to evaluate the standard models of pro bono service delivery developed a decade ago — referrals, clinics, outreach etc. — in terms of the quality, quantity and impact of pro bono work they produce. How well are they doing? How can they be improved to better serve unmet legal need? How can they be refined to improve their impact?

The changing nature of legal services is bringing new and emergent models of pro bono legal service delivery. Relevant factors may include:

- changing work practices including unbundling, outsourcing and ‘gig’-based services, workflow and document automation, AI, fixed-fee and ‘blended’ fee models
- collaborative service delivery models and multi-disciplinary (a.k.a. ‘wrap-around’) models
- different pro bono cultures in different jurisdictions, or
- different environments and practices in different sectors of the legal profession (e.g. large firms, small firms, in-house, government, barristers)
- an evolving legal assistance sector, and
- evolving legal education.

Specific topics in this area could involve:

- evaluating and refining a particular model,
- adapting the models to better address a particular unmet legal need,
- evaluating the relevance of pro bono models to particular sectors.

Possible research topics

2.1. Unbundling pro bono legal services

Unbundling involves breaking down a legal matter into tasks with a lawyer only providing representation for some or one of those tasks (Legg, 2016). Unbundling is becoming more common in commercial legal practice, and reflects the changing nature of legal representation, with the rising use of technology, the advent of global outsourcing and the increasing amount of consumer-oriented online information available.

In the pro bono context, unbundling potentially enables time-poor pro bono lawyers and those with specialist expertise to assist more clients. It also helps pro bono lawyers to define and control their pro bono commitment.

In what contexts is unbundling most effective? How can lawyers manage the risk of breaching their professional responsibility to clients when their services are limited to part of a matter? How can services be

effectively coordinated? How can lawyers overcome an increased risk of a conflict of interest, given they are advising more clients?

2.2. Pro bono referrals

An evaluation of the traditional pro bono referral model. What barriers or perceived barriers are there to CLCs and PBROs referring matters? How is this model evolving in light of changing legal practice, and how can it be improved? This project could take the form of a pilot study, undertaken with a view to conducting an evaluation of the full range of standard models.

2.3. Health justice partnerships and other multi-disciplinary models

An evaluation of the role of pro bono legal work in health justice partnerships, and/or other multi-disciplinary models, with a view to developing best practice models. A study could focus on particular areas of unmet legal need, e.g.:

- elder abuse
- family violence
- poverty law (debt/fines/consumer/housing)
- disability law.

2.4. Advocacy for systemic change

An evaluation of pro bono work that is focused on advocacy for systemic change. What work has been done and what has its impact been? How is this work best undertaken, and in particular, how can lawyers in firms ensure they have the necessary expertise to do this work?

2.5. Pro bono models in the Asia region

What models of pro bono legal service delivery are emerging in the Asia region? What features have been developed, or need to be developed, to reflect the local context in terms of each jurisdiction's unmet legal need, legal profession, legal and regulatory framework, legal institutions and cultural environment?

Is there an identifiable pro bono 'movement' in Asia that bears resemblance to other civil society movements?

3. Mapping pro bono in Australia

An evaluation of the impact of pro bono legal work in a particular area, or of a particular pro bono model, requires an understanding of the work currently being done.

The Centre's biennial Law Firm Pro Bono Surveys provide a longitudinal study of the work being done by large and mid-sized law firms in Australia. The pro bono efforts of other sectors of the profession, however, are less well documented. Can this work be mapped and analysed? How is pro bono understood, approached, measured and evaluated? What are the areas of focus of this work? Does it vary as between city and RRR areas and across jurisdictions?

Possible research topics

3.1. Small firm pro bono

How much pro bono legal work is being done in firms of less than 50 lawyers? By which firms? Where? Who are the clients? In which areas of law? To what extent is this work focused on areas of high unmet legal need?

How is 'pro bono' understood and what motivates lawyers to do it? What models are used? What barriers are experienced?

3.2. Barrister pro bono

A number of barristers who are National Pro Bono Aspirational Target signatories are making outstanding contributions to the pro bono landscape. How much pro bono legal work is being done by the Australian Bar as overall? Where is this work being done, and who are the clients? To what extent is this work focused on areas of high unmet legal need? How is 'pro bono' understood and what motivates barristers to do it? What models are used? What barriers are experienced?

3.3. In-house corporate lawyer pro bono

The Centre's PI scheme provides a certain understanding of the pro bono legal work done by in-house lawyers and corporate legal teams. The Centre is also working closely with the legal departments of several large corporations to develop and grow their pro bono programs. In due course an evaluation of the work being done in this sector will inform the Centre's work in this area. How much pro bono legal work is being done in this sector? Where? Who are the clients? In which areas of law? To what extent is this work focused on areas of high unmet legal need? How is 'pro bono' understood and what motivates lawyers to do it? What models are used? What barriers are experienced?

3.4. Government lawyer pro bono

Some government departments and agencies have well-established pro bono programs, and again, the Centre's PI scheme sheds some light on this work. What is the nature and extent of pro bono legal work in government departments Australia-wide? In which departments and jurisdictions? Who are the clients? In which areas of law? To what extent is this work focused on areas of high unmet legal need? How is 'pro bono' understood and what motivates lawyers to do it? What models are used? What barriers are experienced?

4. The value of pro bono

Pro bono legal work is primarily seen by lawyers as a professional responsibility, and an opportunity to provide access to justice. It is helpful, however, to understand the practical value of pro bono work to law firms, in-house teams and government departments. What benefits does a structured pro bono program bring to a firm or in-house team?

More broadly, how does pro bono legal work benefit the profession as a whole, e.g. its reputation, its ethical conduct and its makeup?

Possible research topics

4.1. The value of pro bono to large law firms

An evaluation of the benefits of pro bono to law firms in terms of reputation, expertise and productivity. Factors examined include the role of the pro bono program in the firm's marketing activity, recruitment, staff engagement, utilisation and retention. NB: the Centre is currently undertaking a small-scale study on this topic in partnership with Willis Towers Watson.

5. The motivation to do pro bono

What are the reasons for individual lawyers choosing to do pro bono legal work? What influences their decision? What determines the type of work they do? How does this develop through their career?

Possible research topics

5.1. The impact of early-career pro bono experience

What is the impact of early-career exposure to pro bono (e.g. through student or PLT clinic work) on a lawyer's continuing engagement with pro bono, including the amount and type of pro bono work they do, their career trajectory etc.? Does this have implications for the inclusion of voluntary or mandatory pro bono in the student context?

5.2. The motivation to do pro bono

What are the factors that influence an individual's motivation to do pro bono:

- at individual level – e.g. background, education, ethical considerations, values, beliefs, professional legal skills (existing and future), variety of work, professional networks and desired career mobility, capacity?
- at organisational level – e.g. law firm culture, coordination, credit and recognition schemes, training, perceived conflicts, commercial pressures?

Specific studies could focus on sectors of the profession e.g. barristers, mid-size or small firms.

6. Barriers to pro bono

What are the barriers to undertaking pro bono legal work, across the board? Are particular contexts or sectors of the profession affected more than others?

Possible research topics

6.1. Disbursements

What is the extent and nature of the constraint posed by disbursements in pro bono legal work?

6.2. Disbursement assistance schemes

How effective are disbursement assistance schemes in supporting pro bono legal work / providing access to justice? Is a national scheme feasible? This study may extend beyond pro bono legal work into access to justice.

7. Pro bono coordination

In information resources such as the *Australian Pro Bono Manual* and *What is best practice in pro bono?*, the Centre provides guidance on developing a pro bono practice. Approaches to structuring and coordinating pro bono should reflect the changing nature of law firms, legal practice, models of pro bono practice adopted and the pro bono landscape.

Possible research topics

7.1. Managing pro bono

An evaluation of the way pro bono practices are structured and managed in large and mid-sized law firms. What is the impact of the increasing institutionalisation and professionalisation of pro bono in large law firms in Australia, in terms of the amount, quality and impact of pro bono work done by the firm? What lessons can be learned from the different organisational models adopted in different firms?

7.2. Perceived conflicts

To what extent are perceived conflicts (aka commercial conflicts) a barrier to firms undertaking pro bono work? What measures can be taken (within a firm or externally) to overcome this barrier? Research into this issue could triangulate the dynamic between firm, commercial client and pro bono client.

8. The impact of pro bono target schemes

For a decade, the Centre's Pro Bono Aspirational Target Scheme has sought to promote the growth of pro bono legal work in Australia. Comparable schemes operate in the US, the UK and Europe. What work has been done evaluating these schemes and what evidence is there of their effectiveness? What is best practice in running these schemes?

Possible research topics

8.1. Pro bono target schemes internationally

An evaluation of pro bono target schemes internationally, and an assessment of their relevance to Australia.

Reading list

- Australian Pro Bono Centre, National Law Firm Pro Bono Survey Reports, 2008-2016, <http://www.probonocentre.org.au/information-on-pro-bono/our-publications/survey/>.
- Australian Pro Bono Centre, National Pro Bono Aspirational Target Reports, 2008-2017, <http://www.probonocentre.org.au/provide-pro-bono/aspirational-target/#reports>.
- Australian Pro Bono Centre, Pro Bono Legal Work: A Guide for In-house Corporate Lawyers, 2017, http://www.probonocentre.org.au/wp-content/uploads/2017/08/Corporate-Lawyers-Guide-FINAL-PRINT_1707172.pdf.
- Australian Pro Bono Centre, [Pro Bono Partnerships and Models: a Practical Guide to What Works](#) (2nd ed), Sydney, LexisNexis, 2016.
- Australian Pro Bono Centre, [The Australian Pro Bono Manual](#) (3rd ed), Sydney, LexisNexis, 2016.
- Bartlett, F & Taylor, M, Pro bono lawyering: personal motives and institutionalised practice, [Legal Ethics, 19:2, 260-280](#) (2016).
- Coumarelos, C, Clients at the centre: evidence-based access to justice and reshaping legal assistance services in Australia, delivered at *Reshaping Justice: Client-centred service delivery, technology and innovation Research Symposium*, 20 June 2017, Sydney NSW, [http://www.lawfoundation.net.au/ljf/site/templates/pdf/\\$file/Coumarelos_LJF_Clients_A2J_RJ_symposium.pdf](http://www.lawfoundation.net.au/ljf/site/templates/pdf/$file/Coumarelos_LJF_Clients_A2J_RJ_symposium.pdf).
- Cummings, S and Sandefur, R, "Beyond the Numbers: What We Know — and Should Know — About American Pro Bono", [7 Harvard Law & Policy Review 83](#) (2013).
- Legg, M, 'The Financing of Commercial Litigation Into the Future: Alternative Fee Arrangements and Unbundling of Legal Services' (2016).
- McDonald, H, Client legal capability: implications for service delivery, delivered at *Reshaping Justice: Client-centred service delivery, technology and innovation Research Symposium*, 20 June 2017, Sydney NSW, [http://www.lawfoundation.net.au/ljf/site/templates/pdf/\\$file/McDonald_LJF_Legal_capability_RJ_symposium.pdf](http://www.lawfoundation.net.au/ljf/site/templates/pdf/$file/McDonald_LJF_Legal_capability_RJ_symposium.pdf).
- Mirrlees-Black, C, The value of data in client-centred service design, delivered at *Reshaping Justice: Client-centred service delivery, technology and innovation Research Symposium*, 20 June 2017, Sydney NSW, [http://www.lawfoundation.net.au/ljf/site/templates/pdf/\\$file/Mirrlees_Black_LJF_NLAS_RJ_symposium.pdf](http://www.lawfoundation.net.au/ljf/site/templates/pdf/$file/Mirrlees_Black_LJF_NLAS_RJ_symposium.pdf).
- Mosten, F, 'Unbundling Legal Services in 2014: Recommendations for the Courts' (2014) 53 *Judges Journal* 10.
- National Pro Bono Resource Centre (now Australian Pro Bono Centre), [Mapping Pro Bono in Australia](#), Sydney, May 2007.