



AUSTRALIAN
PRO BONO CENTRE

Access to interpreters in pro bono legal work

Report and Policy Paper
February 2018

ABOUT THE AUSTRALIAN PRO BONO CENTRE

The **Australian Pro Bono Centre** is an independent centre of expertise that aims to grow the capacity of the Australian legal profession to provide pro bono legal services that are focused on increasing access to justice for socially disadvantaged and/or marginalised persons, and furthering the public interest.

While the **Centre** does not provide legal advice, its policy and research work supports the provision of free legal services and informs government of the role that it can play to encourage the growth of pro bono legal services. The **Centre's** work is guided by a board 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 offer practical assistance for pro bono service providers (and potential providers). The **Centre** would play the key roles of facilitating pro bono practice and enabling the collection and exchange of information.”*

The strategies that the Centre employs to grow pro bono capacity include:

1. **Strengthening and promoting the place of pro bono legal work within the Australian legal profession**

Sustaining Commitment: Promoting the pro bono ethos and sustaining the Australian legal profession's commitment to undertake pro bono.

Promoting Growth and Impact: Leading advocacy for continuing growth in the provision of pro bono and enhancing its impact, especially in areas of unmet legal need, and by a broader range of Australian lawyers.

Policy Development and Law Reform: Engaging in policy development, advocacy and law reform with key stakeholders on issues impacting on pro bono services, including the removal of any constraints or barriers to lawyers undertaking pro bono.

Thought Leadership: Leading in the development of new ideas and innovative project and partnership models to build pro bono engagement among all Australian lawyers.

Community Building: Strengthening relationships between members of the pro bono legal community to promote exchange of knowledge and to stimulate and encourage the development, expansion and coordination of pro bono.

Enhanced Public Visibility: Raising the profile of pro bono through a wide range of media and maintaining a strong public presence as a centre of expertise within the legal assistance sector in Australia.

Events and Forums: Convening and supporting events and forums to enhance communication about pro bono practice among key stakeholders and to celebrate the Australian legal profession's commitment to pro bono legal service.

International Relationships: Developing and building networks with international pro bono programs and providers to strengthen research and guide development of pro bono policies and practice in Australia.

2. **Developing expertise and providing practical assistance to facilitate pro bono legal service**

Expertise: Developing and sharing expertise to advance national best practice in the delivery of pro bono.

Practical Support: Providing practical assistance, including practical guides and resource kits, to existing and potential pro bono providers and seekers.

Communication: Communicating news and insights about issues affecting pro bono practice in Australia.

Research: Conducting research to build knowledge of, and expertise about, pro bono.

Reporting: Collecting data and reporting on the pro bono work being undertaken nationally.

Professional Indemnity Insurance: Providing professional indemnity insurance, underwritten by Lawcover, to support eligible lawyers to undertake pro bono work on projects approved by the Centre.

The **Australian Pro Bono Centre** receives financial assistance from the Federal Attorney-General's Department and from the Departments of the Attorney-General in the States and Territories.

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For more information visit the Centre's website at probonocentre.org.au.

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Abbreviations

2016 Survey	Australian Pro Bono Centre, Report on the Fifth National Law Firm Pro Bono Survey — Australian firms with fifty or more lawyers, March 2016, http://www.probonocentre.org.au/wp-content/uploads/2017/03/Report-on-the-Fifth-National-Law-Firm-Pro-Bono-Survey.pdf
AIS	Aboriginal Interpreting Service
ATIS	Automated Telephone Interpreting Service
ATSI	Aboriginal and Torres Strait Islander
ATSILS	Aboriginal and Torres Strait Islander Legal Service
CALD	Culturally and linguistically diverse
CLC	Community legal centre
DHA	Department of Home Affairs
DIBP	Department of Immigration and Border Protection (now DHA)
FVPLS	Family Violence Prevention Legal Service
FIS	Free Interpreting Service
IAA	Immigration Assessment Authority
KIS	Kimberly Interpreting Service
NAATI	National Accreditation Authority for Translators and Interpreters
NPA	National Partnership Agreement on Legal Assistance Services
PBRO	Pro bono referral organisation (also known as pro bono clearing house)
Surveys	Australian Pro Bono Centre, National Law Firm Pro Bono Surveys 2008-2016, http://www.probonocentre.org.au/information-on-pro-bono/our-publications/survey/
TIS	Translating and Interpreting Service (National)
VITS	Victorian Interpreting and Translating Service

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The Centre acknowledges the time and effort generously provided by individuals in 37 law firms, community legal centres, pro bono referral organisations, peak bodies and government agencies whose contributions made this project possible. The full list of research participants appears at Appendix A.

Executive Summary

The Centre's 2016 National Law Firm Pro Bono Survey (**2016 Survey**) identified that large and mid-sized firms in Australia are paying significant amounts for external disbursements in their pro bono legal work,¹ and that interpreters fees are one of the main categories of disbursements incurred.² Over half of this work is conducted in partnership with community legal organisations, most of whom have access to free interpreting services. Yet, for mid-sized firms in particular, the cost of interpreters can be a challenge for the operation of their pro bono programs. This research was undertaken in 2017 to uncover how, when and why this is so.

Understanding the impact of the cost of interpreters in pro bono legal work requires an appreciation of the landscape in which that work takes place, including:

- (a) how telephone and onsite interpreters and translation services (together, **interpreting services**) are accessed by lawyers, law firms and community legal organisations;
- (b) in what circumstances, and how much firms are paying for interpreting services in pro bono legal work; and
- (c) constraints posed by the cost of interpreting services to taking on pro bono legal work.

Access to interpreting services

Law firms and community legal organisations such as community legal centres (**CLCs**), Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) and pro bono referral organisations (**PBROs**)³ use a range of free, paid and volunteer interpreting services. The way in which interpreting services are accessed depends on a number of factors, including:

- funding arrangements, funding streams and fundraising;
- availability of accredited interpreters;
- client demography;
- location of client and legal services provider;
- the firm or community legal organisation's culture; and
- in the case of pro bono firms, the size of the firm and stage of development of its pro bono program.

How much firms are paying

Only a few of the firms consulted were in a position to indicate how much they spend on interpreting services in the pro bono legal work they take on, and the amounts provided varied widely. Some firms are paying nil because their policy is not to undertake pro bono work that requires an interpreter. One firm estimated that in FY2016 it had paid between \$4,000 and \$10,000. One firm estimated that in FY2016 it had paid between \$20,000 and \$30,000 in support of asylum seeker advice clinics, and another firm predicted it would pay a similar amount for the same purpose in FY2017.

Constraints posed by the cost of interpreters in pro bono legal work

The need for an interpreter is a constraint to the provision of pro bono legal services in some contexts, but not in others:

- (a) Access to interpreting services is not usually an issue for pro bono lawyers providing assistance as **volunteers** at community legal organisations, for example, in legal advice clinics. Most (but not all) community legal organisations have access to a free interpreting service which they can extend to their pro bono volunteers.

¹ Australian Pro Bono Centre, Report on the Fifth National Law Firm Pro Bono Survey — Australian firms with fifty or more lawyers (March 2016) 5 and 56, <http://www.probonocentre.org.au/wp-content/uploads/2017/03/Report-on-the-Fifth-National-Law-Firm-Pro-Bono-Survey.pdf>.

² Australian Pro Bono Centre, above n 1, 56.

³ Also known as pro bono clearing houses.

- (b) However, in the context of **pro bono referrals**, the cost of interpreting services can be an issue. The free Translating and Interpreting Service (**TIS**) used by community legal organisations cannot be extended to law firms for the purpose of pro bono referrals. While some firms are in a position to pay for interpreters themselves in every matter, many are not. As a result, matters that require an interpreter are less likely to be referred to a pro bono firm.

Other issues concerning the use of interpreters affect the legal assistance sector more broadly, and present various challenges to community legal organisations and legal aid agencies as well as to law firms undertaking pro bono. These issues include:

- shortages of accredited interpreters in smaller community language groups and in Aboriginal and Torres Strait Islander (**ATSI**) languages;
- shortages of appropriately trained interpreters in courtroom settings;
- the high cost of translation services; and
- the cost of interpreting services in the context of advising asylum seekers.

In summary, there are several issues associated with the use of interpreting services that can directly or indirectly affect pro bono legal work. Of prime concern is the finding that the cost of interpreters can constrain the making of, and the acceptance of, pro bono referrals. Given that referrals are the largest source of pro bono legal work in large and mid-sized firms,⁴ this finding is significant in terms of the provision of pro bono legal services.

Policy

Based on the research findings, the Centre has developed the following policy on the cost of interpreting services in pro bono referrals:

- (a) Pro bono legal service should entail the provision of free legal advice, not the payment of interpreters' fees. This is not to suggest that firms who are willing to pay these costs should not do so.
- (b) Ultimately, relying on law firms to pay for interpreters limits their ability to accept referrals and to do pro bono work for a broader range of disadvantaged individuals with legal problems.
- (c) TIS should allow its free services to be extended to law firms for the purpose of conducting pro bono legal matters.

Moving forward, the Centre will pursue opportunities to advocate for changes in accordance with this Policy.

⁴ Australian Pro Bono Centre, above n 1, 42.

Part A Research methodology

The Centre's research focused on three questions:

- (a) How do community legal organisations, lawyers and law firms access interpreting services support the delivery of legal services and pro bono legal services?
- (b) How much are firms paying for interpreting services in pro bono legal work?
- (c) To what extent does the cost of interpreting services constrain the ability of law firms and lawyers to do pro bono legal work?

This work combined:

- desk research, including a review of the Centre's National Law Firm Pro Bono Surveys 2008-2016⁵ (**Surveys**); and
- interviews and questionnaires completed by members of staff in a range of CLCs, PBROs, government, interpreting services and law firms across five jurisdictions.

In all, participants included:

- 14 CLCs including generalist CLCs in urban and RRR areas and CLCs specialising in immigration, refugees / asylum seekers, employment law, criminal law / fines and family law / family violence;
- one CLC peak body;
- 3 government agencies;
- 4 PBROs; and
- 14 large mid-sized law firms.

The initial round of interviews focused on models of pro bono service delivery that involve partnering with CLCs and PBROs to assist disadvantaged individuals — legal advice clinics, outreach programs, other community legal organisation programs, and pro bono referrals. Pro bono legal work that assists organisations was excluded from the project, on the basis that this work is less likely to require interpreting services.⁶

The information gathered in the initial round of interviews suggested that, while experiences vary, problems consistently arise in the context of pro bono referrals. The Centre then conducted a further round of consultations focusing on how the need for an interpreter affects the ability to make or accept pro bono referrals.

The summary of research findings set out in Part B draws on both rounds of consultation. As the data was sought and provided on a confidential basis, it been de-identified and presented with illustrative quotations. The research participants are listed at Appendix A.

⁵ <http://www.probonocentre.org.au/information-on-pro-bono/our-publications/survey/>.

⁶ The study also excluded large firm pro bono matters that arise from a direct request from the client, on the basis that much of this work assists organisations rather than individuals. In the 2016 Survey, 12 of the 41 firms reported doing over 50% of their pro bono work through “direct assistance”; 11 of these did the majority of their pro bono work for organisations.

Part B Summary of findings

The research provided an understanding of the providers of interpreting services, the ways in which those services are used in the pro bono context, including how they are paid for, and the difficulties experienced.

Section 1 provides an overview of the accredited interpreting services used by legal assistance providers⁷ and in the context of pro bono legal work.

Section 2 outlines the arrangements used by community legal organisations to access these services. Many community legal organisations have access to free interpreting services; others use their funding to pay for services or use volunteer interpreters.

Section 3 focuses on the use of interpreters in pro bono legal work, including:

- how much firms are paying;
- access to interpreters in pro bono work undertaken as a volunteer; and
- access to interpreters in pro bono referrals.

The research also shed light on several other issues concerning access to interpreting services which affect the legal assistance sector more broadly. These issues are discussed in **Section 4**.

1 Accredited interpreting services

Wherever possible, legal assistance providers and pro bono legal service providers use interpreters and translators that are accredited by the National Accreditation Authority for Translators and Interpreters (**NAATI**) so as to ensure the provision of high-quality and reliable interpreting services and to comply with professional standards for the use of interpreting services in legal work.⁸ NAATI interpreters, as part of their ongoing accreditation, must adhere to the Australian Institute of Interpreters and Translators Code of Ethics.

NAATI-accredited services include:

(a) Government-owned community language interpreting services

The Translating and Interpreting Service (**TIS**) is provided by the Commonwealth Department of Home Affairs (**DHA**). TIS offers telephone interpreting (Automated Telephone Interpreting Service or **ATIS**), onsite interpreting and translation services.

The Victorian Interpreting and Translating Service (**VITS**) is funded by the Victorian Department of Justice. It offers telephone, video and onsite interpreting services and translation services.

(b) Privately-run community language interpreting services

Examples of these services include OnCall Interpreters & Translators Australia, Speak Your Language Translation & Interpretation Services and individual interpreters engaged directly through NAATI.

(c) Indigenous language interpreting services

The Kimberley Interpreting Service (**KIS**) is based in Western Australia and offers interpreting services in more than 18 Kimberley and central desert Indigenous languages to clients nationally. KIS receives funding from the Western Australian Government.

The Aboriginal Interpreting Service (**AIS**) provides services in the major indigenous languages in the Northern Territory, which receive funding from state and territory

⁷ Including legal aid agencies.

⁸ See for example Legal Aid New South Wales, Guidelines on interpreting and translation (22 September 2014) <http://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0018/5832/Guidelines-on-interpreting-and-translation.pdf>.

governments. Previously they received funding through the Department of Prime Minister and Cabinet.

2 Community legal organisations

Community legal organisations play a key role in the pro bono community. They are the source of the majority of referred pro bono work undertaken by large and mid-sized firms,⁹ and provide opportunities to individual lawyers and firms of all sizes to undertake pro bono legal work.

This section provides an overview of the various means by which CLCs and PBROs access interpreting services to support the delivery of their legal services, including how these interpreting services are paid for. Understanding this landscape is key to understanding the environment in which much of the pro bono work that requires interpreting services is conducted.

2.1 Free access to TIS

Most community legal organisations¹⁰ have uncapped free access to the TIS telephone and onsite interpreting services, either:

- under the National Partnership Agreement on Legal Assistance Services (**NPA**) funding arrangements, with TIS billing arrangements administered by State and Territory government agencies; or
- under the Free Interpreting Service (**FIS**) arrangements, which are available to eligible service providers and not-for-profit organisations, funded by the Commonwealth Department of Social Services and administered by TIS National.

In the consultations, many of the community legal organisations that use the free TIS service indicated they find it adequate to support the majority of their work.¹¹ Several CLC managers noted that CLCs use the TIS service responsibly, prioritising the highest need clients and using the cost-effective ATIS service wherever possible.

2.2 Free access to VITS

In Victoria, CLCs and PBROs also have free access to VITS up to a pre-allocated annual limit, which is administered by the Federation of CLCs. Many CLCs in Victoria use this service if a TIS interpreter is not available.

2.3 Court-provided interpreters

Free interpreters are available in all Federal courts, and in State courts in most criminal matters including family violence matters. Court-based interpreting services are generally only available in the courtroom, and in some cases, in the court precinct on the day of a hearing.

2.4 Paid interpreting services

In circumstances where there is no free interpreting service available, some community legal organisations pay for interpreting services (including TIS, VITS and other privately-run services), drawing on:

- disbursement funds administered by government (e.g. the Commonwealth Disbursement Support Scheme) or by PBROs (e.g. LawRights's Disbursement Fund);

⁹ Australian Pro Bono Centre, above n 1, 43.

¹⁰ Exceptions include PBROs that access TIS using the FIS arrangements, for example Law Access WA and Justice Connect.

¹¹ However, several CLCs and PBROs reported difficulties engaging interpreters in smaller community language groups and few are able to meet the cost of translation services: see **4.2** Community language interpreting services and **4.3** Community language translating services. Note also that TIS does not provide interpreting services in ATSI languages: see further **4.4** ATSI language interpreting services.

- funds provided through specific government grants (e.g. NSW Legal Aid grants);
- funds provided under government contracts for service (e.g. DHA contracts with CLCs to provide casework and advice under the Immigration Advice and Assistance (IAA) Scheme);
- the community legal organisation's general funds provided by government; or
- funds acquired through fundraising and philanthropy.

2.5 Volunteer interpreters

Some CLCs reported that occasionally circumstances arise where they have no access at all to an accredited interpreter, due to a lack of access to a free service, a lack of funding to pay for services or because there is no accredited interpreter available.¹² In these instances, rather than turning the client away, the CLCs rely on the client's friends or family to interpret, or just 'make do' as best they can. There was concern expressed that these makeshift arrangements could compromise the standard of legal services provided.

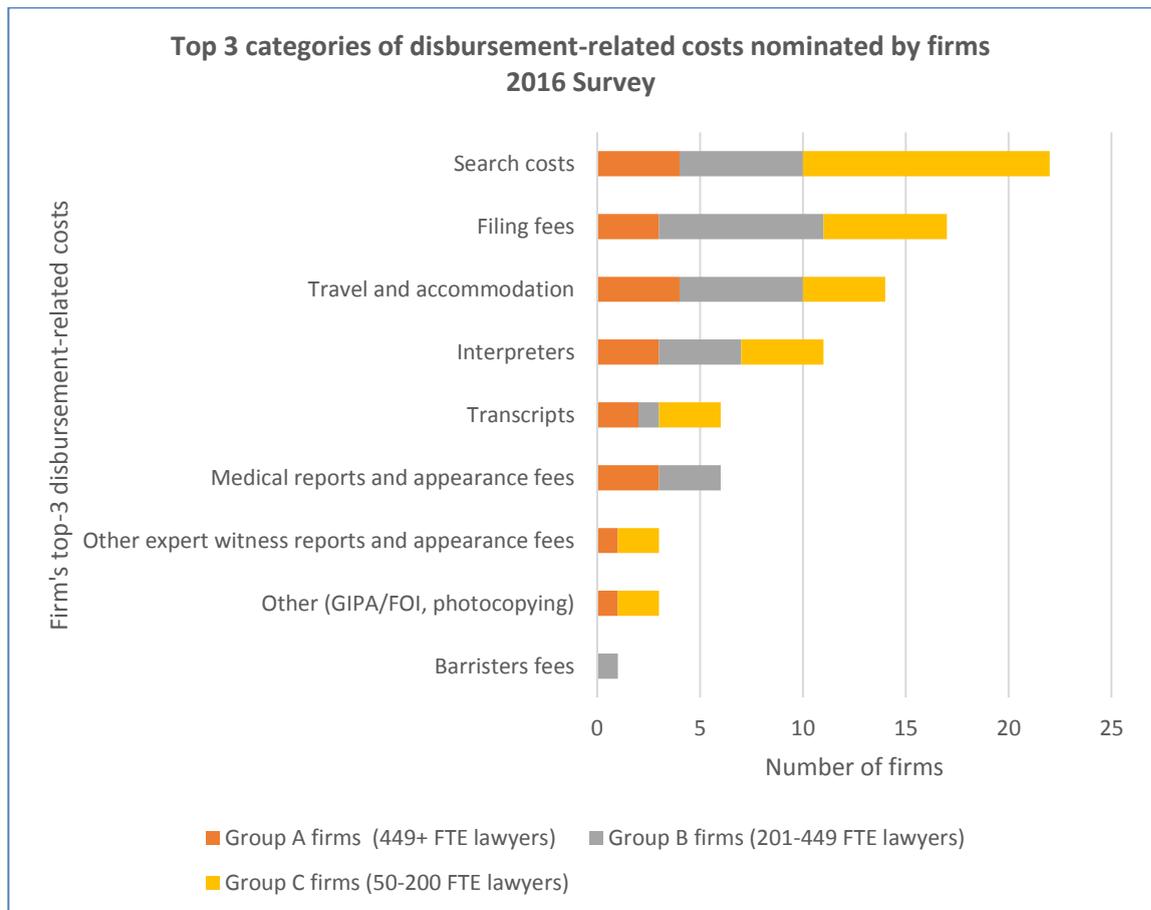
3 Pro bono legal work

3.1 The cost of interpreting services and other disbursements

The 2016 Survey suggests that for some large and mid-sized firms the cost of interpreting services can be a significant expense in their pro bono legal work.. Survey firms were asked to nominate the three categories of disbursements in which they had spent the most in FY2016. Interpreters fees were nominated by 11 of the 41 firms (27%), and Travel and Accommodation expenses (which may be required for use by interpreters) was nominated by 14 firms (34%). See Chart 1 below:

¹² For discussion of the shortages of accredited interpreters in smaller community language groups and in ATSI languages, see **4.2** Community language interpreters and **4.4** ATSI language interpreters.

CHART 1: Top 3 categories of disbursement-related costs nominated by large and mid-sized firms (2016)¹³



The consultations in this project indicated that the amount being paid for interpreting services varies from firm to firm, and not all participating firms could provide this information. When asked how much they spend on interpreter’s fees in FY2016, five of the participating 14 firms responded as follows:

- ‘nil’;
- ‘negligible, as the referring organisation pays’;
- ‘between \$4,000 to \$10,000’;
- ‘nil, but expect to pay \$20,000 to \$30,000 next year’ in support of an asylum seeker clinic; and
- ‘between \$20,000 and \$30,000 per year’ (in support of an asylum seeker clinic).

Firms indicated that the amount spent depends on a range of factors including the type of pro bono work undertaken, the referring organisation’s funding arrangements, the firm’s pro bono policy and its budgetary constraints.¹⁴

3.2 The cost of interpreting services in context

Law firms and individual lawyers undertaking pro bono legal work use interpreting services in a range of contexts. The consultations focused on two types of pro bono legal work:

- pro bono work undertaken as a volunteer; and

¹³ Australian Pro Bono Centre, above n 1, 103.

¹⁴ For further discussion on expenditure on interpreters in the context of pro bono referrals, see **3.2.2 Pro bono referrals**.

- pro bono referrals.

3.2.1 Pro bono work provided as a volunteer

Many lawyers assist community legal organisations as volunteers, undertaking pro bono legal work under the auspices of that organisation. Models of pro bono service delivery in this category include:

- legal advice clinics and outreach programs, where the lawyer assists either as an individual or through their firm's pro bono program; and
- secondment programs or other joint projects arranged with firms.

The research found that the cost of interpreting services is generally **not** a major problem under these types of arrangements.¹⁵ As discussed above,¹⁶ most community legal organisations have uncapped access to the free TIS service, either under their NPA funding arrangements, or under a FIS agreement. A pro bono lawyer assisting as a volunteer or secondee will have the same access to the free TIS service.

If the community legal organisation is not funded under the NPA and does not have a FIS arrangement in place, access to interpreting services is more likely to be an issue for all concerned.¹⁷

3.2.2 Pro bono referrals

This archetypal model of pro bono service delivery is used in most large and mid-sized law firms. The firm accepts a pro bono case referral, usually from a community legal organisation,¹⁸ and the work is generally performed at the firm's office under the firm's own supervision.

The consultations indicated that the need for an interpreter can constrain the ability of community legal organisations to make pro bono referrals, and of law firms to accept them. This section outlines the options available to firms for accessing interpreting services in pro bono matters, the difficulties experienced, and the solutions suggested by firms.

(a) Law firm pays

If a pro bono matter requires the use of an interpreter, and there is no free interpreting service or funding available, the firm will either pay the interpreters fee itself or reject the referral.

In the consultations, only one of the 14 participating firms reported paying for interpreters in every matter. This is consistent with the 2016 Survey which indicates that only 15% of Survey firms have a policy of paying for disbursements in all pro bono matters.

Eleven of the 14 participating firms reported they have limited capacity to pay disbursements, and must consider referral requests requiring an interpreter on a case-by-case basis. Considerations include whether the referring organisation can provide access to a free TIS service, whether it is feasible to make an application to a disbursement fund, the impact that paying interpreters fees would have on the firm's pro bono disbursements budget (in firms that have one), and the flow-on effect for the firm's pro bono program.

"If the referring organisation does not receive funding for interpreters we consider referrals on a case by case basis and pay the fee in certain circumstances. As a matter of practice, we

¹⁵ There are exceptions in the context of, for example, clinics advising asylum seekers (see **4.1** Asylum seekers) and clinics specialising in assisting ATSI people (see **4.4** ATSI language interpreting services).

¹⁶ See **2.1** Free access to TIS.

¹⁷ See, for example, the discussion of advice clinics assisting asylum seekers at **4.1** Asylum seekers.

¹⁸ Referrals may also be made from some legal aid agencies: see Australian Pro Bono Centre, *The Australian Pro Bono Manual* (LexisNexis, 2016) Ch 3.1, <http://www.probonocentre.org.au/aus-pro-bono-manual/part-3/chap-3-1/>.

have usually accepted the referral and paid the interpreter fees. However, this is proving to be untenable on a continuing basis.”

“If the referral organisation or CLC can arrange the interpreter due to their agreements with particular services, we always request they do so. Otherwise we need to know up front if an interpreter will be needed and the costs won’t be covered so we can determine whether we can take on the matter in the circumstances.”

(Law firm pro bono coordinators)

One firm reported that, while interpreters costs would not be a reason to reject a referral, their overall pro bono program is constrained by the need to pay these costs:

“[We would] have more funds to spend on other disbursements in other pro bono matters.”

(Law firm pro bono coordinator)

Another firm has no disbursements budget and cannot accept a referral if it has to pay interpreters fees:

“We don’t accept referrals if an interpreter is required unless the referring organisation arranges an interpreter.”

(Law firm pro bono coordinator)

Another firm was trying to establish a new program with a CLC, but would only be offering clinic or triage work, purely because those models of assistance would provide access to the CLC’s free TIS service.

Nine of the 14 firms could not provide a precise figure on their spend on interpreting services. One pro bono coordinator said they consciously play down the cost of interpreters in their financial records, on the grounds that making the cost too visible internally may jeopardise the firm’s support for the program. Their preferred approach was to record interpreters’ costs as general disbursements. It may be that other firms face similar challenges justifying this expense, and take similar approaches.

(b) Use of disbursement funds and schemes

There are disbursement funds and schemes in most jurisdictions which are available to firms in pro bono matters. In the consultations, firms reported that while these funds and schemes can provide valuable assistance in certain cases, they are not always a feasible solution.

Table 1 below sets out the disbursement schemes available to firms in pro bono matters.¹⁹ The schemes in each jurisdiction are generally restricted to matters in the courts of that jurisdiction, or where the cause of action arises in that jurisdiction. Most schemes have means and merits criteria, and require that the application be approved before costs are incurred. In most cases any monies recovered are to be repaid to the fund in the event of a successful recovery of costs.

TABLE 1: Disbursement funds and schemes

Jurisdiction	Fund or scheme
Commonwealth	Disbursement Support Scheme
NSW	NSW Law Society Pro Bono Disbursement Trust Fund
Victoria	Law Aid
Queensland	Queensland Civil Law Legal Aid Scheme (CLLAS) LawRight Disbursements Fund
Western Australia	Civil Litigation Assistance Scheme (CLAS) LawAccess Ltd Disbursement Fund

¹⁹ Ibid Ch 1.12.

South Australia	Law Society of SA Litigation Assistance Fund
Northern Territory	Contingency Legal Aid Fund (CLAF)
Australian Capital Territory	-
Tasmania	Civil Disbursement Fund

In the consultations, there were several instances reported where a disbursement fund was the only funding option available. In one case, an asylum seeker in detention who was illiterate had provided documents in his language of origin to the Department of Border Protection (**DIBP**, now DHA), believing them to be relevant court documents. The documents were not translated by the DIBP or by the IAA, but were nevertheless discredited by the IAA. On appeal, the pro bono barrister and instructing solicitor successfully sought funding through a disbursement fund to cover translation costs.

However, firms reported that disbursement funds and schemes are not always a feasible option, as the application process and the delays involved can be problematic, particularly in urgent matters. This can also be an issue for small firms operating on a tight cashflow.

(c) Community legal organisations pays

Some CLCs and PBROs reported that if a firm accepting a referral is not in a position to pay interpreters fees, the CLC will pay the fee themselves using their own general funds. Given the general shortage of funds experienced by these organisations, this practice may impact their overall capacity to deliver services.

(d) Client pays

There were no reports in the consultations of firms passing on the cost of interpreting services to their pro bono clients. This reflects that pro bono clients in need of interpreting services are usually disadvantaged individuals with little capacity to pay.

(e) Use of free interpreting services

Law firms generally do not have access to free interpreting services for the purpose of conducting referred pro bono matters. While most CLCs have free access to the TIS service, these arrangements do not extend to pro bono referrals. The terms and conditions of the FIS agreement restricts the use of the service to the TIS client organisation.²⁰ Similar restrictions would seem to apply under the NPA arrangements for accessing TIS, although the position is less clear. The general understanding among community legal organisations and pro bono firms is that the TIS access codes are not to be given to firms.

In Victoria, the issue is mitigated by the fact that most CLCs have capped access to VITS as well as uncapped access to TIS, and will make use of the VITS service if there is no TIS interpreter available. In the consultations, some CLCs reported sharing their VITS allocation with a firm for use in referred pro bono matters.

(f) Matter is not referred

The research showed that the cost of interpreting services in pro bono matters can also have an upstream effect on pro bono referrals. Some CLC managers said they do not refer cases at all if an interpreter is required, preferring to manage these cases themselves as best they can with the help of volunteers. This approach stems from the fact that the TIS free service cannot be extended to referrals:

²⁰ Department of Immigration and Border Protection Translating and Interpreting Service, Terms and conditions of the Free Interpreting Service for non-government organisations, cl 3, <https://www.tisnational.gov.au/en/Agencies/Charges-and-free-services/Terms-and-conditions-of-the-Free-Interpreting-Service-for-non-government-organisations>.

“We only use lawyers acting as volunteers so they can access our TIS code.”

(CLC manager)

Several CLC managers were uncertain about how interpreters might be arranged in referred matters and expressed concern that informal approaches might be taken. One CLC manager said it is difficult enough to manage referrals where there are social or cultural barriers between the client and the firm, and these difficulties can be compounded if there is uncertainty about the interpreter arrangements.

One PBRO manager said they often need to refer immigration matters to smaller firms, as many of the larger firms are conflicted out. They would be less likely to refer a matter if an interpreter was required, given that smaller firms generally have less capacity to absorb interpreters costs themselves.

(g) Suggested solutions

Firms participating in the research were asked what measures would improve their capacity to accept referrals where an interpreter is required. Ten of the 14 participating firms indicated that extending the referring organisation’s TIS code to the firm would be a practical solution. Three of these firms said they would be equally happy to receive funding that came with the case referral, and one firm said they would prefer funding to come with the referral.

4 Other issues

The research also identified several issues concerning access to interpreting services which are experienced in the legal assistance sector generally. These issues are complex, extending sometimes beyond the context of pro bono legal services, but inevitably connected.

4.1 Asylum seekers

The CLCs that specialise in assisting refugees and asylum seekers (Refugee Advice and Casework Service (**RACS**), Refugee Legal, Refugee and Immigration Legal Service (**RAILS**) and the Humanitarian Group) rely heavily on interpreting services. These organisations do not have free access to TIS under the NPA or FIS arrangements. Many pay for interpreting services using other government-sourced funds and through fundraising.²¹

In 2017, these CLCs experienced an urgent and intense need for interpreters to support their work assisting “legacy caseload” asylum seekers to make visa applications. In the lead-up to 1 October 2017 — the deadline for lodging these visa applications — the CLCs worked tirelessly and set up extra legal advice clinics in an effort to meet the increased demand for legal assistance.

During this period the DIBP (now DHA) provided the CLCs with 4 hours’ telephone access to the free TIS service per applicant. This extra assistance, although welcome, fell short of the average 17 hours of client interaction required per application (9 hours to lodge the application and then a further 8 hours of client interaction). The shortfall led to some CLCs asking their pro bono partner firms to fund interpreter services as well as providing volunteer lawyers at the clinics. Although some firms were in a position to assist financially, others were not. CLCs also absorbed much of this cost, with difficulty.

The Centre worked with the CLCs through this period, and advocated to the DIBP to increase the TIS allowance up to 1 October and beyond, as a matter of procedural fairness. The DIBP responded that the decision to allow 4 hours’ TIS access was based on consultation with groups assisting the CLCs, and that it continues to monitor the CLCs’ TIS usage.

²¹ In addition to its general funding RACS receives some funding from Legal Aid NSW specifically for interpreters fees.

Although the 1 October deadline has now passed, the CLCs' need for interpreters continues. Several firms, to their credit, provide ongoing financial assistance for interpreting services, often at the expense of their overall pro bono programs:

"[W]e are currently paying the cost of interpreters as part of our asylum seeker clinic with [a CLC]. However, the cost of interpreters could impact on the financial capacity of our organisation to take on new pro bono matters/clinics for people from culturally and linguistically diverse (CALD) backgrounds."

(Law firm pro bono coordinator)

Access to interpreting services continues to constrain the provision of pro bono assistance in this context.

There is a separate issue affecting community legal organisations that use the TIS free service via the FIS scheme. That scheme's terms and conditions restrict its use to assisting Australian citizens and permanent residents. As a result, the community legal organisations concerned cannot use the scheme to assist refugees and asylum seekers. One PBRO manager reported that this issue affects most of the immigration matters it receives, which form 25% of its caseload.

4.2 Community language interpreting services

Many of the community legal organisations consulted reported that the telephone service provided through TIS adequately supports the majority of their work providing legal services. However, with the increasing diversity of the Australian population there is a greater demand for interpreting services in smaller language groups, resulting in regular shortages of accredited interpreters in certain languages. There were numerous reports of problems engaging onsite interpreters in smaller language groups at short notice, particularly in RRR areas.

If an interpreter in a particular language cannot be sourced through TIS, some CLCs will use their general funds to engage the required interpreter through a paid service. Several CLCs reported, however, that this practice is unsustainable as it impacts their overall capacity to delivery services. For this reason they occasionally resort to engaging volunteers through the client's friends or family, which as discussed above,²² potentially has implications for service standards.

There were also reports of shortages of court-based interpreters in community languages, which can cause unnecessary delays in court proceedings. In some local courts in Queensland, onsite interpreter services are not provided at all.

Some CLCs also reported that at times court-based interpreters are inadequately trained, not well versed in legal language and the Australian legal system, or lacking an appreciation of the need for accuracy and impartiality.

4.3 Community language translating services

Access to translating services was consistently identified by community legal organisations and firms as a problem and it was widely reported that paid services are prohibitively expensive. Poor quality translations of documents involving legal concepts was also reported.

The high cost of translating services means that online fact-sheets, websites and apps that provide legal information are often only produced in English, even where they are targeting CALD communities. One PBRO had spent \$6,000 translating a single fact-sheet into five community languages, and now lacks the funds to translate anything further. In some cases, clients can only request an organisation's assistance via an application form which is only produced in English.

²² See 2.5 Volunteer interpreters.

4.4 ATSI language interpreting services

The research suggests that despite recent government measures to improve access to ATSI interpreting services,²³ there is a persistent shortage of, and funding for, these services.

PBRO and CLC managers reported that trained ATSI language interpreters in Western Australia and the Northern Territory are in short supply. Sourcing a trained interpreter in a particular language, who can travel to a remote area, can be difficult.

Paying for ATSI interpreting services can also be an issue, as CLCs and PBROs receive no dedicated funding for this purpose. CLCs requiring ATSI interpreters will draw down on their general funds, or resort to informal arrangements involving volunteer friends or family.

In this environment, the issues associated with making pro bono referrals²⁴ are particularly acute. One CLC in Western Australia reported that given the scarcity of pro bono assistance in local areas, referrals tend to be made can generally only be made to city firms. However, the scarcity of interpreting services tends to compound the cultural barriers faced by indigenous clients when working with city-based law firms:

“If we’re going to struggle, it’s much better for us to struggle but use the resources we have, than a big firm in Perth with little cultural knowledge. Therefore, we tend to refer matters where clients have a level of English language proficiency.”

(CLC manager)

²³ Between 2006 and 2014, KIS and the AIS received funding under a Commonwealth-State funding agreement. Following the end of that agreement, NAATI entered a funding agreement for FY2016 and FY2017 with the Australian Government through the Department of the Prime Minister and Cabinet’s Indigenous Advancement Strategy, which aimed to increase the number and range of accredited Indigenous languages interpreters in South Australia, Western Australia and Queensland, and to increase the accessibility of interpreting resources available to interpreters. <https://www.naati.com.au/media/1214/iip-detailed-project-summary-180216.pdf>

²⁴ See **3.2.2** Pro bono referrals.

Part C Conclusion and policy position

5 Conclusion

Legal assistance providers and their pro bono partners are experiencing a range of complex problems associated with the use of interpreting services.

There are particular issues concerning access to interpreting services which extend beyond the context of pro bono legal services and affect the legal assistance sector generally.

These include:

- interpreting services for asylum seekers and refugees;
- community language interpreting services in smaller language groups;
- court-based interpreting services;
- translating services; and
- ATSI language interpreting services.

In the **pro bono context**, while the cost of interpreters is not usually a problem for pro bono volunteers and secondees at community legal organisations, in the context of pro bono referrals it can be a significant issue.

A firm that receives a referral request may have access to disbursement funds and schemes or to funding for interpreters via the referring organisation. But in most cases the firm's options are either to absorb the cost itself or to reject the referral request. While some firms are in a position to pay for interpreters in every matter, and willing to do so, most are not. This hampers both the making of, and the acceptance of, pro bono referrals where an interpreter is required. Given that pro bono referrals are the largest source of pro bono legal work in large and mid-sized firms,²⁵ this constraint has implications for the provision of pro bono legal services.

The most practical solution, according to the firms affected, would be to extend the free TIS interpreting services to firms for the purpose of conducting pro bono legal matters.

6 Policy position

Drawing on its research findings, the Centre has developed the following policy position on the cost of interpreting services in pro bono referrals:

- (a) Pro bono legal service is the professional responsibility of every Australian lawyer. However, the responsibility to do pro bono legal work entails the provision of free legal advice, not the payment of interpreters' fees (or of other ancillary costs to legal services). This is not to suggest that firms who are willing to pay these costs should not do so.
- (b) Ultimately, relying on law firms to pay for interpreters limits their ability to accept referrals and to do pro bono work for a broader range of disadvantaged individuals with legal problems.
- (c) The DHA should provide its free TIS service, to the extent that the service is available to community legal organisations under their funding arrangements, to law firms for the purpose of conducting pro bono legal matters.

²⁵ Australian Pro Bono Centre, above n 1, 42.

Part D Further research and advocacy

This research project was conducted on a modest scale. There are opportunities for further research measuring the need for interpreting services in the context of pro bono referrals and scoping the cost of meeting that need.

Further research could focus on assessing:

- the nature of the services required, e.g. telephone versus onsite and translation services;
- the languages in highest demand;
- the locations in which onsite services are required;
- the number of hours of each required in each language; and
- outcomes in terms of facilitating access to justice for disadvantaged people.

There may be opportunities to develop research partnerships with legal profession peak bodies, community legal organisations, interested law firms and the DHA.

Moving forward, the Centre will continue to work with stakeholders and pursue opportunities to advocate for changes to the funding arrangements as they arise.

Appendix A – Research participants

The Centre acknowledges the contribution of the following organisations which participated in this project:

Baker & McKenzie
Canberra Community Law
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Gadens (Melbourne)
Hall & Willcox
Henry Davis York (now Norton Rose Fulbright)
Herbert Smith Freehills
Human Rights Law Centre
Jobwatch
Justice Connect
JusticeNet SA
Kimberley Legal Service
Lander & Rogers
Law Access WA
LawRight
Legal Aid WA
Macarthur Legal Centre
McCullough Robertson
Norton Rose Fulbright
Refugee Advice and Casework Service
Refugee and Immigration Legal Service
Refugee Legal
Sparke Helmore Lawyers
St Kilda Legal Centre
Townsville Community Legal Service
Translating and Interpreting Service
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Victoria Legal Aid
Welfare Rights SA
WestJustice
Women's Legal Service Queensland
Women's Legal Service Victoria
Wotton + Kearney



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