



AUSTRALIAN PRO BONO CENTRE

Sixth National Law Firm Pro Bono Survey 2018

Survey Highlights

The following is a summary of key notable trends in pro bono legal practice identified through the 2018 Survey across respondent law firms of 50 or more lawyers.

Survey Results - Snapshot

The 2018 Survey is the sixth such biennial survey conducted by the Australian Pro Bono Centre. The Survey results indicate a growing dedication to, and maturity in, pro bono legal practice among the largest firms in Australia, with a diversity of disadvantaged groups supported through these practices. An increasing number of firms are continuing to invest in their pro bono practices, with the 2018 Survey results indicating a significant overall rise in dedicated pro bono staff, the appointment of more full-time pro bono managers/coordinators, and an increasing number of firms setting operational budgets for pro bono programs and taking measures to evaluate their programs.

Pleasingly, performance on pro bono matters is now a key component of lawyer appraisals and recognition of pro bono work through internal awards, events and communication is also on the rise, but concurrently there is a declining trend in firms providing full billable hour credit for pro bono work, with a large number of firms treating pro bono legal work as a “special” category of non-billable work.

The top three pro bono client groups nominated by firms (by amount of work done) were asylum seekers, Aboriginal and Torres Strait Islanders (with 15 firms indicating they had Reconciliation Action Plans) and homeless persons (particularly among the largest firms). But there was also great diversity among the top client groups, which included women, young people and children in need, people with a disability, LGBTIQ community members, victims of discrimination, victims of crime, cancer sufferers, abused seniors, self-represented litigants, environmental NGOs and other not-for-profits, charities and social enterprises.

Firms continue to source their pro bono work in a variety of ways. Whilst the largest proportion of pro bono work still comes from direct requests to firms, responses indicate a continuing upward trend in firms sourcing work from community legal centres, with a continuing downward trend in firms sourcing work from referral schemes and pro bono organisations.

With four fewer firms reporting in 2018 (37 firms) than in 2016 (41 firms), total reported pro bono hours nonetheless rose by 0.53% to 390,931 hours. There has also been an overall 7% rise in the number of lawyers working for respondent firms in 2018. Notwithstanding these rises, firm capacity was again identified by firms as the top challenge to their pro bono programs.

Despite fewer firms practising Immigration Law on a pro bono basis, ‘interpreters’ fees’ was nominated as the top category of disbursements incurring the most costs by firms in 2018.

Management and partnership support and leadership continues to be the single most crucial factor to the success of a firm’s pro bono program. It is also evident through the 2018 Survey results that pro bono conditions in government tender arrangements continue to have an important influence on the growth of legal pro bono among firms of 50 or more lawyers.

Key Findings by Topic

Areas of pro bono legal work and clients

Clients

- For the first time Survey firms were asked to nominate the main client groups supported through their top five areas of pro bono practice. The results illuminate both the breadth of pro bono legal assistance provided by the Survey cohort and the range of disadvantaged persons in Australia assisted through that work. The most nominated client group receiving pro bono assistance was ‘asylum seekers’ (16 firms), followed closely by ‘Aboriginal and Torres Strait Islander clients’ (15 firms), ‘women and/or domestic violence survivors’ (10 firms) and ‘homeless persons’ (eight firms) – with a broad range of other client groups identified. (See Report Section 3.2).

Areas of law

- The top five areas of law in which pro bono assistance was provided as nominated by respondents in 2018 were Employment law (20 nominations), Governance (14), Commercial Agreements (13), Corporate Law (including incorporations) (13) and Charity and Deductible Gift Recipient (DGR) Status Applications (13). There was a drop in the number of firms listing Immigration Law (16 to 11), notwithstanding that asylum seekers were the most nominated client group receiving pro bono assistance. There has also been a decrease in the number of firms nominating Commercial Agreements, Housing/Tenancy and Consumer Law. By contrast, there was a rise in firms nominating Intellectual Property, Wills/Probate/Estates, Corporate Law, Environmental Law and Human Rights Law. (See Report Section 3.2).

Reconciliation Action Plans (RAPs)

- Of the 37 Survey firms, 15 firms indicated they had a RAP, 18 did not, and four did not indicate either way. All but one of the RAPs was already in place before the 2018 FY, with one as early as 2007. The large number of RAPs correlates with the focus of work provided to Aboriginal and Torres Strait Islander clients, as indicated above. (See Report Section 3.5).

Work for individuals vs organisations

- There is a continuing upward trend in legal assistance provided directly to disadvantaged individuals and, conversely, a downward trend in firms assisting organisations who provide assistance to people in need or to further the public interest. Notwithstanding this trend, work for organisations still accounts for the majority of pro bono legal assistance provided. In 2018, firms undertook, on average, 47% of their pro bono legal work for individuals, compared to 44% in 2016 and 35% in 2014. (See Report Section 3.1).

Most rejected areas of law and practice

- Continuing the trend in every Survey since 2008, the most rejected areas of law were criminal law (12 firms) and family law (nine firms), reflecting that most firms in the Survey cohort do not commonly retain lawyers with the unique skillsets required to practice in these areas. In 2018, Immigration Law matters were rejected by fewer firms than in 2016 (six firms, down from 11), but as above there was a drop in firms nominating Immigration Law as a top five area of practised pro bono law. (See Report Section 3.3).

Social enterprises

- All of the largest firms within the Survey cohort indicated that they provided pro bono legal support for social enterprises in the 2018 FY. All Group A firms indicated that they included this work in their pro bono programs. Of the nine responding Group B firms, only one did so, and of the 15 responding Group C firms, only two did so. (See Report Section 3.4).

Involvement in pro bono work

Dedicated lawyers and other staff

- There is a growing number of dedicated pro bono staff in firms within the Survey cohort. In 2018, 24 respondents reported an aggregate of 65.35 dedicated FTE staff, compared to 55.25 FTE staff in 2016, representing an 18% increase. There is an increasing number of senior staff dedicated to pro bono work, with 24 respondents reporting an aggregate of 8.4 FTE dedicated partners, 6.3 FTE dedicated special counsel and 16 FTE senior associates (30.7 FTE lawyers in aggregate at this senior level) in 2018 compared to an aggregate of 27 FTE dedicated pro bono senior lawyers in 2016. Concurrently, the number of firms retaining full-time coordinators/managers is continuing to rise. (See 'Pro Bono Coordinators/Managers' below and Report Section 5.3).

Pro bono hours per lawyer

- Whilst there was a 0.53% increase in 2018 in the total number of reported hours of pro bono legal work to 390,931 hours across the 37 Survey respondents, firms reported that they employed 6.8% more lawyers in 2018 compared to 2016. The discrepancy in these increases, as well as the very low average pro bono hours per lawyer reported by a number of Group C firms who may not have completed the Survey previously and who are not signatories to the **National Pro Bono Target (Target)**, served to push down the average pro bono hours per

lawyer in 2018 to 30.5 hours from 34.8 hours in 2016. It is difficult to compare pro bono hours per lawyer through biennial Surveys since firms and lawyers can change considerably in a two-year period and the Survey cohort itself alters every two years with changes in firm sizes, mergers, and different firms opting not to undertake the Survey. *(See Report Section 2.3).*

Partner participation

- The average rate of partners participating in pro bono legal work has reduced slightly from 46% in 2016 to 42% in 2018 across all respondent firms. This decrease is attributable to firms in Group A (with a reduction in average partner participation rates of 53% in 2016 to 49% in 2018), Group B (a reduction from 40% to 32%) and Group C (a reduction from 48% to 43%). *(See Report Section 2.6).*

Billable hour credit

- There is a declining trend in firms providing full billable hour credit for pro bono work (35% of firms in 2018, compared to 38% in 2016 and 40% in 2014), with a number of firms instead treating pro bono hours as billable hours but reduced in value for the purposes of financial targets, or billable but capped at a certain number of pro bono hours per week/month/year. A large number of firms are also treating pro bono legal work as a “special” category of non-billable work. This trend continued to be evident in 2018, with 11 firms overall, including 44% of all Group C firms, reportedly doing so. *(See Report Section 6.6).*

Recognition for pro bono work

- There has been a significant increase in the number of firms (94%, compared to 78% in 2016) recognising pro bono legal work as part of their lawyers’ performance appraisals. Recognition through internal awards, events and communication is also on the rise (85% of firms, compared to 73% in 2016). *(See Report Section 6.6).*

Pro bono service delivery models

Sources of pro bono work

- The proportion of legal work sourced from community legal centres has increased significantly from 20% in 2016 to 29% in 2018. Although the largest proportion of pro bono legal work is still sourced through direct requests to firms, the proportion has decreased from 36% in 2016 to 32% in 2018. There has been a continuing downward trend in pro bono work sourced from referral schemes and organisations, from 31.5% in 2012, to 27% in 2014, 26% in 2016 and 24.5% in 2018. This drop was most noticeable among Group A firms, where the proportion of matters sourced from referral organisations and schemes decreased from 29% in 2016 to only 14% in 2018. *(See Report Section 4.1).*

Secondments

- While the number of pro bono secondments remains similar to 2016, fewer firms are providing full-time or mostly full-time secondments: five in 2018 down from eight in 2016. *(See Report Section 4.3).*

Partnering with in-house lawyers

- There has been a downward trend in the number of firms partnering with in-house counsel on pro bono projects. Only nine firms (26%) indicated that they did so in 2018 compared to 39% of firms in 2016. *(See Report Section 4.4).*

Managing pro bono programs

Pro bono coordinator/managers

- While the proportion of firms indicating that they had a pro bono coordinator or manager remained similar to 2016 (89% for firms in 2018, compared to 90% in 2016), the number of firms retaining full-time coordinators/managers is continuing to rise, with 17 firms (46%) indicating they did so in 2018 compared to 15 firms (41%) in 2016 and 12 firms (34%) in 2014. *(See Report Section 5.1).*
- There is a growing number of dedicated pro bono manager roles with unique titles. Ten firms indicated that they had these unique positions in 2018, compared to four in 2016. Five of those firms are in Group A, one in Group B and four in Group C. Titles include 'Pro Bono Director', 'Pro Bono Manager', 'Head of Pro Bono' and 'National Manager – Pro Bono Services'. Conversely, the number of firms indicating that their pro bono coordinator was a partner decreased from 19 firms in 2016 to 14 firms in 2018. Importantly, these results should be read in the context of the time the coordinator/manager spends undertaking pro bono legal work. In 2018, the time indicated by firms ranged from 9% to 100%, with an average of 41%. Additional context is provided by the numbers of staff reportedly dedicated to pro bono legal work, for which there was an 18% rise in 2018. *(See 'Dedicated lawyers and other staff' above and Report Sections 5.1 and 5.3).*
- A growing number of pro bono coordinators/managers are receiving some measure of payment, fee relief or billable credit specifically for acting in this role (79% in 2018 compared to 70% in 2016 and 34% in 2014). *(See Report Section 5.1).*

Operational budgets

- There is an increasing trend in setting operational budgets for pro bono programs. In 2018, 54% indicated that they had set a budget, compared to only 39% in 2016. Of those firms that set a budget, 44% indicated that their budget had increased in 2018. *(See Report Section 6.4).*

Substantially reduced fee work

- In 2018, only 16% of firms provided any work for substantially reduced fees through their pro bono program, compared to 31% of firms indicating they did so in 2016. The majority of substantially reduced fee work in 2018 was undertaken for organisations. *(See Report Section 2.5).*

Disbursements

- Despite the overall decrease in focus on Immigration Law, ‘interpreters’ fees’ was nominated as the top category of disbursements incurring the most costs by firms in 2018 (16 out of 29 firms, or 55%), followed by search costs (14 out of 29 firms, or 48%) and travel and accommodation (13 out of 29 firms, or 45%). (See Report Section 6.5).

Program evaluations

- Firms are increasingly devising systems to evaluate their pro bono programs. In 2018, 78% of firms reported that they had an evaluation system, compared to 56% in 2016. The top three factors on which those evaluations were based in 2018 were “number of pro bono hours” (76% of firms), “social impact” (71% of firms) and “participating lawyer satisfaction” (62% of firms). (See Report Section 6.7).

Government tender arrangements

- Pro bono conditions in government tender arrangements continue to have an important influence on the growth of legal pro bono among firms of 50 or more lawyers, with 80% of respondent firms indicating they were on the Commonwealth Legal Services Multi Use List (LSMUL), 51% on the Victorian Government Legal Services Panel, 63% on the NSW Government Legal Services Panel and 3% on the South Australia Government Legal Services Panel. (See Report Section 8.1).

Success factors and challenges

Factors key to the success of pro bono programs

- ‘Management and partnership support and leadership’ continues to be the single most crucial factor to the success of a firm’s pro bono program. In 2018, having a broad and diverse range of pro bono opportunities was identified as the second most crucial factor. (See Report Section 6.1).

Key challenges

- In keeping with previous Survey results, ‘firm capacity’ is the top challenge identified by firms (76%), followed by insufficient expertise in relevant areas of law and concern about conflict of interest with fee paying clients. (See Report Section 6.2).