

What does *pro bono publico* mean to lawyers?

A report on the findings of the Pro Bono Values Project



UQ Pro Bono Centre
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EXECUTIVE SUMMARY

In 2014, the UQ Pro Bono Centre based at TC Beirne School of Law, University of Queensland, undertook an empirical study to examine lawyers' motivation for undertaking pro bono work. The *Pro Bono Values Project* sought to examine the personal values and private motivations of legal practitioners who regularly engage in the provision of legal services *pro bono publico*: for the public good. The study hoped to reveal a deeper insight into lawyers' personal reasons for engaging in pro bono work and also their perceptions of pro bono in the context of recent trends and debates, such as the rise of international pro bono work and broader philanthropic activities.

The UQ Pro Bono Centre is an initiative of the Law School that seeks to create meaningful opportunities for law students to participate in pro bono legal work alongside their formal studies. Its mission is to inspire students to understand the value and importance of access to justice, and for them to graduate with a lifelong professional commitment to pro bono legal service. UQ law students were involved in all stages of this project, including project design, interviews with lawyers and survey analysis.

From August to November 2014, law students interviewed 55 lawyers across a range of practice areas about their pro bono legal work. Lawyers across the profession participated in the study, including those from small, medium and large law firms, community legal centres, in-house counsel, Legal Aid and the private bar. The interviews were conducted by telephone as a semi-structured conversation, which allowed for nuanced discussion and greater flexibility in answers.

This report analyses the findings of the study in a thematic format. Quotations are widely used throughout the report to illustrate lawyers' personal views. Statistics are used primarily to identify trends and observations. The report also draws on relevant scholarship about pro bono motivations to inform its discussion of survey findings. A summary of key thematic findings and observations is listed on the following page. It is hoped that the findings of this study will help to contribute to a better understanding about why lawyers engage in pro bono work. This may in turn assist organisations that design pro bono schemes to reflect on their models of service delivery and to consider ways to improve or increase the contribution of lawyers to clients in need. Despite the project having an Australian (specifically Queensland) focus, it is hoped that the findings may also be of broad interest and relevance to stakeholders outside the jurisdiction.

FINDINGS AND OBSERVATIONS

The study makes some key observations about lawyers' motivation for doing pro bono work and the way in which this work is conducted in institutional settings. Thematic observations (not listed in order of priority) arising from discussions with lawyers are as follows:

- A clear majority of the lawyers we spoke to connected with community legal centres as part of their pro bono work in Queensland. CLCs are major conduits through which pro bono work is administered.
- The lawyers in this survey revealed a high degree of legal professionalism, propelled by an abiding commitment to access to justice through the donation of their legal skills.
- Many lawyers we spoke to were motivated to do pro bono work because of their personal values and life experience. A 'moral calling' was a surprisingly higher motivational factor than anticipated and was equal first to claims of professionalism.
- Lawyers understood the concept of pro bono as deriving from a service ideal and not 'charity' as they perceived that concept. Lawyers' perception of charity related to a broader set of activities that did not involve the provision of legal skills.
- Workplace settings strongly influence and impact individual involvement in pro bono. Lawyers from small and medium firms have fewer incentives to do pro bono than their large law firm colleagues. The 'community of practice' experienced by small firm and sole practitioners is more intertwined in relationships, both between lawyers and their clients, and lawyers themselves in line with law firm 'values'.
- The majority of lawyers we spoke to thought pro bono work is conducted to the same standard as fee-paying work.
- Some pro bono schemes are too 'safe' and do not allow for a meaningful professional contribution. Layers of pro bono coordination impact on some lawyers' willingness to remain involved, or on their quality of work.
- Lawyers are more concerned about responding to local unmet needs and place greater priority on legal needs in Australia rather than on international pro bono work.
- In this study, discussion about pro bono did not engender sentiments about lawyering for a cause or for social change.
- Frustration with pro bono was directed at the lack of government funding for legal services and the idea that pro bono will fill the gap.
- Difficult clients and law firm positional conflicts were also discussed in a negative light.

ACKNOWLEDGMENTS

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The Centre also acknowledges the Australian Pro Bono Centre (John Corker and Leanne Ho) and the Queensland Pro Bono Lawyers' Network (Robert Reed and Corin Morcom) for comments on the survey instrument and for disseminating the Call for Participants through their networks.

The Queensland Law Society (through Binari de Saram) and the Queensland Public Interest Law Clearing House (through Andrea de Smidt) also promoted and disseminated the Call for Participants.

The Centre acknowledges its ongoing partnership with Caxton Legal Centre which provided the physical space for data collection. The study was run over two semesters as part of the Manning St Project. Thanks also to Caxton for promoting the Call for Participants to its evening volunteers.

Thank you to Dr Francesca Bartlett and Jennifer Gibbons for their invaluable feedback on a final draft. Thanks also to Nadine Davidson-Wall for layout and design.

Most importantly, the Centre extends its sincere thanks to the lawyers who gave up their time to participate in this study.

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INTRODUCTION

Pro bono in Australia and Queensland

Lawyers historically have always done pro bono; scratch the surface of Australia's community legal centres and you will find a rich pro bono history, much of it legal work conducted after hours, with little or no support from employers, private law firms or government. And yet despite this widespread and sustained tradition of professional service, there is little empirical evidence in Australia about the personal values and private motivations of lawyers who provide legal services *pro bono publico*: for the public good.

The lack of research on lawyers' motivations for conducting pro bono legal work in Australia stands in stark contrast to voluminous quantitative reports of pro bono. Our contemporary pro bono landscape is largely defined by quantitative assessments of pro bono hours performed by individual lawyers in large commercial law firms. Since 2008, the Australian Pro Bono Centre has annually surveyed law firms to report on its National Pro Bono Aspirational Target. The Target is a nationally recognised benchmark for the conduct of pro bono legal work across the legal profession in Australia which requires lawyers to commit at least 35 hours of pro bono legal work per lawyer per year.¹ It covers over 11,000 Australian legal professionals including 19 of the 20 largest law firms in the country. As well as the Target, the Australian Pro Bono Centre also produces a biennial national survey of law firms. In 2014, the Fourth National Law Firm Pro Bono Survey (Australian firms with fifty or more lawyers) examined topics such as the amount of pro bono legal work undertaken by firms, the areas of law and sources of pro bono legal work and the ways in which pro bono is organised and coordinated.²

There are also international quantitative surveys to track the amount of pro bono legal work done by law firms across the globe. The TrustLaw Index of Pro Bono is an international survey that seeks to identify global trends in the pro bono marketplace.³ TrustLaw claims that its survey 'illustrates that the culture of pro bono is thriving across the world'.⁴

These quantitative studies may provide a credible tool to identify and drive pro bono performance. They are, however, only one measure of success. Quantitative surveys generally reveal little about lawyers' underlying motivation for doing pro bono work. The Aspirational Target has captured important longitudinal data over an eight year period on total pro bono hours performed by lawyers across the country, but it does not aim to examine in any detail the underlying reasons why legal practitioners decide to perform pro bono work. One lawyer that we spoke to articulated a concern about the focus of a quantitative approach:

"... Between the firms there is a very different view as to what qualifies as pro bono. I think that can lead to a distortion with the reporting of the respective firms' pro bono contributions. There is an emphasis on how many hours per lawyer are being committed which I'm not convinced is ultimately all that helpful for the profession or expanding quality pro bono throughout." (Senior Associate and pro bono coordinator, Large Law Firm - LLF)

¹ Annual surveys are all available online: <<http://probonocentre.org.au/information-on-pro-bono/our-publications/national-pro-bono-aspirational-target/#reports>> Accessed 26 May 2016 <http://www.nationalprobono.org.au/ssl//CMS/files_cms/Eighth_Annual_Performance_Report_on_the_Aspirational_Target_2015.pdf>

² <<http://probonocentre.org.au/information-on-pro-bono/our-publications/survey/>> Accessed 26 May 2016.

³ TrustLaw Index of Pro Bono: <<http://www.trust.org/trustlaw/>> Accessed 26 May 2016

⁴ Ibid.

This study seeks to complement the quantitative ‘bottom line’⁵ measurements of pro bono to provide a more complete picture of current pro bono practice.

Project rationale - why did we embark on this study?

This project aimed to go ‘beyond the numbers’⁶ by having one-on-one conversations with lawyers about their personal motivations for doing pro bono work. In this study we spoke to 55 lawyers across a range of practice areas who were involved in diverse and often complex pro bono legal matters. We interviewed lawyers who had worked on High Court challenges; lawyers who were assisting asylum seekers with multiple proceedings, and cases involving childhood sexual abuse; lawyers doing pro bono legal work in QCAT and other tribunal jurisdictions; lawyers with longstanding connections to the Queensland community legal sector, including some who had been involved in their establishment. Many lawyers we spoke to regularly participated in pro bono work on a rotational or roster basis, most commonly through a periodic volunteer roster at their local community legal centre or an outreach legal clinic coordinated by the Queensland Public Interest Law Clearing House (QPILCH).

The survey was designed as a set of semi-structured interview questions, rather than a set multiple choice format, which allowed survey participants to speak freely about their views on pro bono outside the constraints of pre-formulated answers.

Whilst the primary aim of the project was to ascertain lawyers’ individual motivations for engaging in pro bono legal service, the Centre is mindful that pro bono work occurs in specific organisational contexts and that individual motivations cannot be considered in isolation from broader workplace settings. In addition to asking questions about individual motivation, the survey also invited lawyers to share their views about their workplaces, such as whether their employer supported pro bono and what, if any, barriers they had to doing pro bono work. This report also considers the institutional environments for pro bono legal service so as to present a more balanced view of lawyers’ motivation beyond a mere individualised analysis.⁷

⁵ Lenore Carpenter, ‘We’re not running a charity here: Rethinking Public Interest Lawyers’ Relationships with Bottom-Line-Driven Pro Bono Programs’ (2011) 29 *Buffalo Public Interest Law Journal* 37; Deborah Rhode, ‘Rethinking the Public in Lawyers’ Public Service: Pro Bono, Strategic Philanthropy, and the Bottom Line’ (2009) 77 *Fordham Law Review* 1435.

⁶ Scott L Cummings and Rebecca L Sandefur, ‘Beyond the Numbers: What We Know – and Should Know – About America Pro Bono’ (2013) 7 *Harvard Law and Policy Review* 83.

⁷ Andrew Boon and Avis Whyte ‘Charity and Cheating Begins at Home: The Aetiology of the New Culture of Pro Bono Publico’ (1999) 2 *Legal Ethics* 169; Robert Granfield, ‘The meaning of pro bono: institutional variations in professional obligation among lawyers’ (2007) *Law and Society Review* 113.

PROJECT OUTLINE

Methodology

The *Pro Bono Values Project* commenced in 2014 as a student research activity conducted through the Manning St Project, a pro bono partnership between the UQ Pro Bono Centre and Caxton Legal Centre. It was designed as a two stage project in line with the 2014 academic year. Four law students were involved in Phase One (March to June), and another four students participated in Phase Two (August to November).

Students in Phase One conducted a literature review on relevant national and international scholarship about lawyers' motivations, attitudes and values towards pro bono work. They also researched any previous empirical studies of lawyers' motivations which had been conducted, either in Australia or abroad. On the basis of their findings, the students drafted a questionnaire to administer to lawyers about their values, motives and perceptions of pro bono work. The questionnaire was revised in consultation with lawyers from both the Queensland Pro Bono Lawyers' Network and the Australian Pro Bono Centre. It was granted Institutional Human Research Ethics Approval in June 2014. A copy of the final questionnaire is included at Appendix B.

Phase Two of the study commenced in July 2014. Four new law students were selected and their primary role was to conduct telephone interviews with lawyers who chose to participate. Phase Two was also conducted through the Manning St Project, with students attending Caxton Legal Centre every Tuesday afternoon to conduct the telephone interviews. The students also designed a promotional flyer calling for participants.⁸ Various organisations helped to disseminate the call for participants throughout their networks: QPILCH, the Queensland Law Society (QLS), Community Legal Centres Queensland (CLCs Queensland) and the Australian Pro Bono Centre.

Each lawyer signed a participation consent form prior to the telephone interview. Participants were advised that the interview was likely to take between 15 to 30 minutes and would be audio recorded. They were also told that all interview recordings would be stored confidentially and anonymously and that no names or any identifying information would appear in any subsequent publication or report.

Study Limitations

The survey took the form of semi-structured narrative interviews with lawyers who were previously or currently involved in pro bono work. Our intention was to interview a group of self-selecting lawyers who shared the characteristic of doing pro bono work from a generally available sample set. There was a natural bias in the selected sample as all participants identified as being 'pro' pro bono. Our survey did not capture the views of lawyers who held negative views of pro bono work. That is not to say that the views captured were wholly positive; some survey participants did express negative views and frustration with pro bono schemes and these are addressed at page 30.

⁸ See Appendix A.

This study is also limited by the fact that many of the practitioners we spoke to were young lawyers working in large city firms. There is also a strong representation of pro bono coordinators (16%, n=9) from large law firms. Only a relatively small number of barristers participated (15%, n=8) but we have analysed their views separately in light of the fact that pro bono work done by barristers has different characteristics to law firm pro bono. Despite the dominance of the large law firm (LLF) response – which in itself is rather telling – the overall geographic and age spread of participants was fairly diverse. The views of the lawyers we interviewed are not suggestive of all lawyers’ perceptions of pro bono work and we do not purport to make generalised findings across the entire legal practice community in Queensland. Even so, the conversational interviews provided a rich source of information from the lawyers we interviewed about their perception of pro bono and their personal motivations for doing that work.

One notable difference between our study and international empirical work on pro bono attitudes is the consideration of whether pro bono legal work ought to be mandatory. US scholars have considered this issue at length⁹ however our survey did not seek opinions from lawyers on this point. In Australia, the debate about mandatory versus aspirational pro bono legal service is relatively settled in favour of an aspirational approach. This is in large part due to the leadership of the Australian Pro Bono Centre in formulating clear, aspirational targets and voluntary guidelines for engaging in pro bono legal work. One of the lawyers we spoke to did assert the importance of maintaining a voluntary approach to pro bono:

“I would like to caution your study and anyone involved in pro bono policy to be very cautious with the view that pro bono work should be imposed on the profession because that will cheapen the gratuitous spirit in which it has been done for some time, and will probably bring into the mix people who don't really have the heart to do it.... I think as a profession it is admirable when people do pro bono work, but I think it would be very unfortunate if it was just an expectation and the public weren't seeing it as being done because it is something we should do as an incidence of our own conscience.” (Senior Associate, LLF)

The participants

A total of 55 legal practitioners were interviewed by the student researchers. 33 lawyers were female (60%) and 22 male (40%). The majority of participants were lawyers in commercial practice, although lawyers specialising in criminal and family law were also well represented (16%). Eight barristers (15%) participated in the survey, two in-house counsel, two community legal sector lawyers and one lawyer employed by Legal Aid Queensland.

64% of respondents worked in or close to the Brisbane CBD (n=35) and half of the respondents also identified as working at a large law firm.¹⁰ The other 50% comprised of lawyers working in small and medium firms, in-house, at community legal centres, Legal Aid or at the private bar. The study did not limit participation to Queensland lawyers and two interstate lawyers from Victoria were also interviewed.

⁹ See for example, Reed Elizabeth Loder, ‘Tending the Generous Heart: Mandatory Pro Bono and Moral Development’ (2000-2001) 14 *Georgetown Journal of Legal Ethics* 459; Jonathan Macey, ‘Mandatory Pro Bono: Comfort for the Poor or Welfare for the Rich?’ (1991-1992) 77 *Cornell Law Review* 1115; Roger C Cramton, ‘Mandatory Pro Bono’ (1990-1991) 19 *Hofstra Law Review* 1113.

¹⁰ When categorising law firm size the researchers applied the Queensland Law Society definition of 50 or more lawyers as a large law firm.

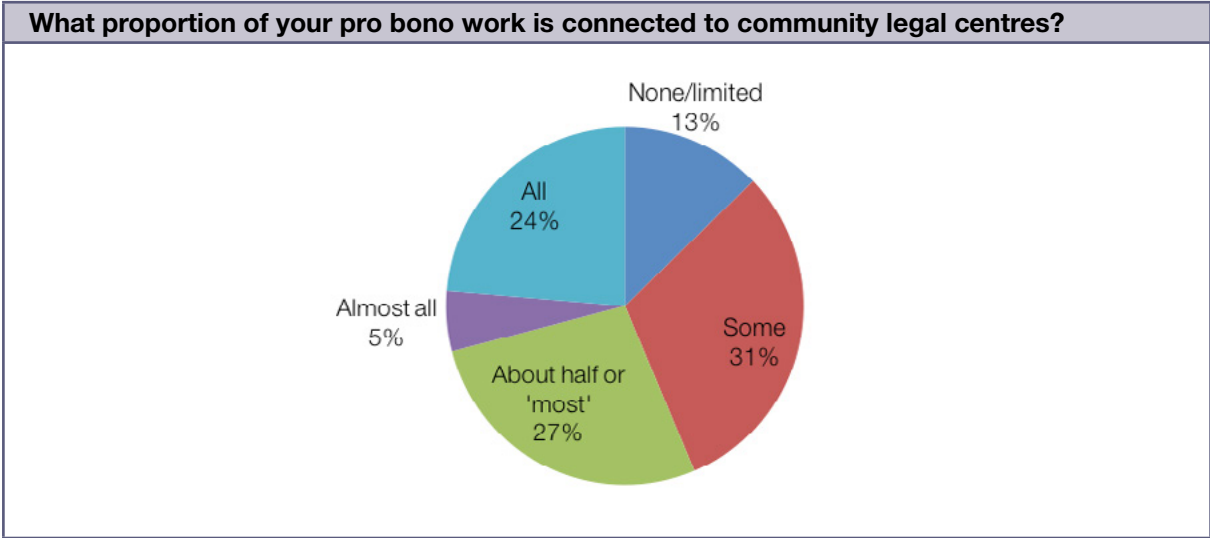
Young lawyers comprised the majority of participants. 42% (n= 23) were between the ages of 20 to 30 years, and 36% (n=20) had practised law for fewer than three years. However we also spoke to senior lawyers, and 16% of respondents (n = 9) were over the age of 50. A solicitor we interviewed had more than 35 years of practice, and one barrister we spoke to had been practising law for 44 years.

Of the 55 lawyers we spoke to, 40% (n=22) had undertaken pro bono activities whilst a law student.

Characteristic	Number	Percent %
<i>Gender</i>		
Female	33	60
Male	22	40
<i>Age</i>		
20 – 30	23	42
30 – 40	13	24
40 – 50	10	18
50 – 60	5	9
Over 60	4	7
<i>Position</i>		
Graduate Solicitor	3	5
Solicitor	20	36
Associate	3	5
Senior Associate	10	18
In-house Counsel	2	4
Special counsel	1	2
Partner (includes sole practitioners)	8	15
Barrister	8	15
<i>Law Firm Size</i>		
Small	8	15
Medium	9	16
Large	28	51
N/A(e.g. Chambers, In-house Counsel)	10	18
<i>Practice location</i>		
Central Business District/Inner city	35	64
Suburban	7	13
Regional	1	2
N/A (mainly barristers)	12	22

The role of Community Legal Centres

We asked lawyers what proportion of their pro bono work is connected to a community legal centre (CLC), and we did so in order to better understand the relative significance of CLCs as conduits for lawyers' pro bono work. Our use of the term CLC included pro bono referral schemes and outreach clinics operated by QPILCH.¹¹ We didn't explore the CLC/individual lawyer relationship in great detail, and yet it was apparent from many of the conversations we had that CLCs are crucial stakeholders in facilitating lawyers' pro bono legal work. Lawyers described the proportion of their pro bono work with CLCs in various ways. A few put it in statistical terms, for example, 'about 30%', 'about 60%' or, 'the majority of my work is with CLCs, about 75%'. In order to categorise their responses we clustered each answer to the question on a spectrum, from 'none' through to 'all'. Of the lawyers we spoke to, 87% (n = 48) engaged in some pro bono work that was connected to CLCs. The pie graph below illustrates this statistic.

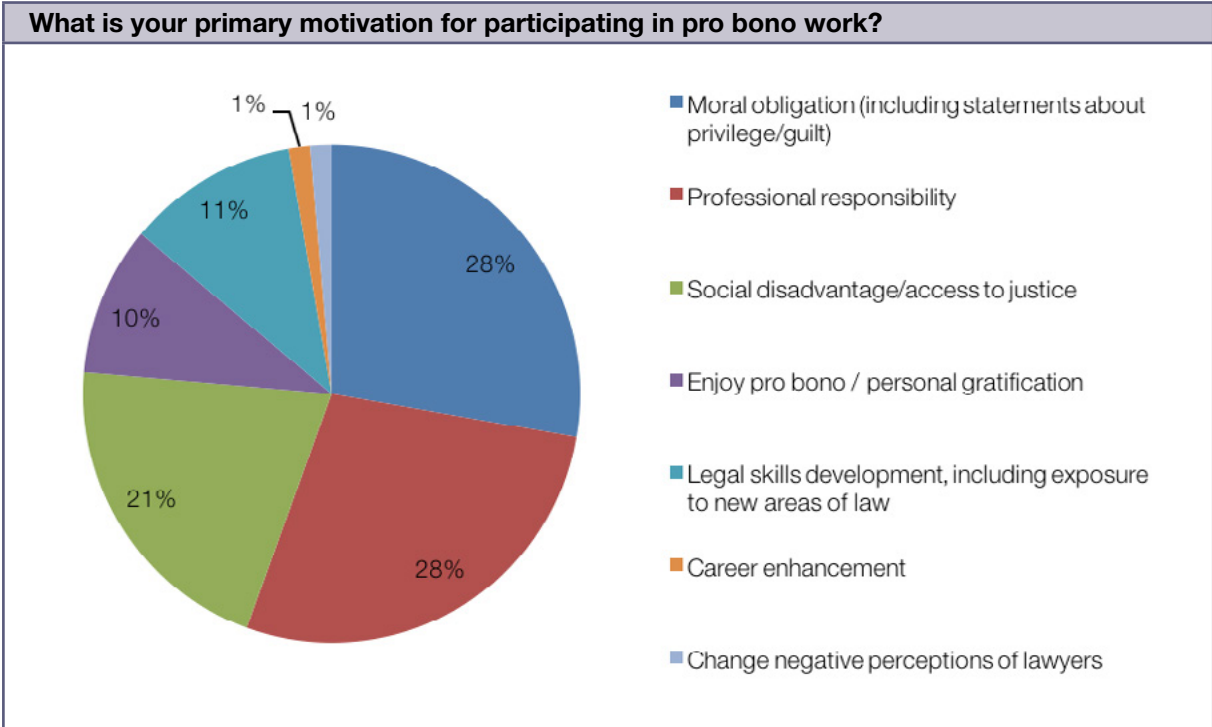


¹¹ We note this is reported differently in the Fourth National Law Firm Survey, Australian Pro Bono Centre: <http://probonocentre.org.au/wp-content/uploads/2015/09/4th_National_Law_Firm_Pro_Bono_Survey_2014_Final_Report.pdf> accessed 26 May 2016.

A CONVERSATION ABOUT PERSONAL MOTIVATIONS

“I think it is the right thing to do. That picks up a few different issues. There is a little bit of altruism, a little bit of guilt, a little bit of a belief that because the public funded most of my education, the right and proper thing to do is not keep all of the benefit to myself. There is no real dominant driver [for me].” (Barrister)

We asked lawyers what their primary motivation was for doing pro bono work. The top three motivating factors were: a sense that pro bono work is a moral obligation; having a professional obligation to do pro bono work; and a motivation to help address social disadvantage and provide access to justice.



Lawyers provided a rich set of insights into the personal values that underpin their decision to do pro bono work. Some reflected on their family circumstances or a particular set of religious values in the context of wanting to make a meaningful contribution to society. Other personal triggers included having had the benefit of a good upbringing, or a free education. These quotes illustrate the wide array of personal values discussed:

“[[It is] part of my belief system that it is the right thing to do. Everyone should have access to justice. A lot of people do not have access to justice because they cannot afford it. It is my spiritual view on humanity and my personal belief.” (Graduate lawyer, Medium Law Firm - MLF)

“I think it is very important to contribute to the community and society that we live in. I have very strong social justice beliefs. For me, studying law was an effort to achieve some of those aspirations.” (Solicitor, MLF)

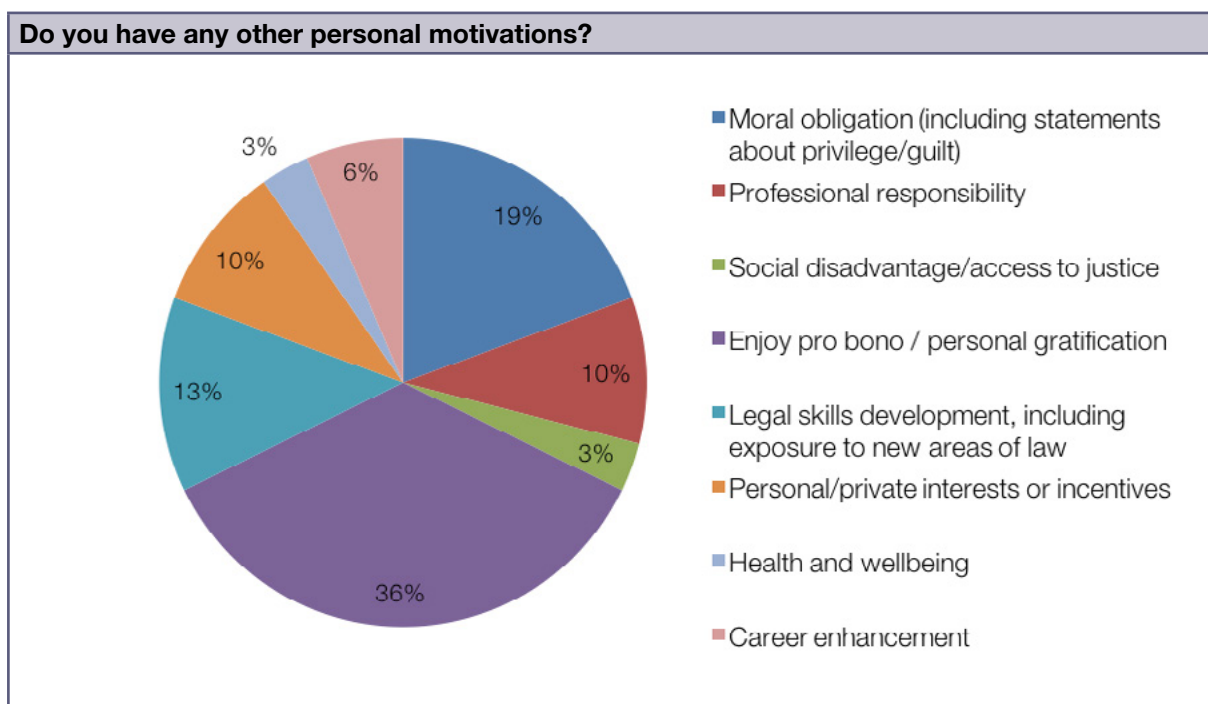
“I know I have been fortunate to have a good life I guess, I certainly haven’t gone hungry. I’ve been able to be educated at university and to work in a profession which I enjoy. I feel it’s important that one does something for those in their community less fortunate and I think that’s the quid-pro-quo. If you have a reasonable life yourself and have the time, energy and resources, then it’s good to help others less fortunate; particularly those who need a bit of assistance to get back in the race and on the track and it makes a big difference if you can do that. That’s always been part of my mantra I suppose: the Christian Ethos. I’m not an overly religious person, but I’m

a reasonably religious person and I think that's all part of being responsible for your neighbour and making sure you assist them where you can.” (Special Counsel, LLF)

“I do not have children and I am not planning to have children so I have got to the stage where I want to feel like I am helping someone rather than just coming to work every day and drawing a wage. It is something important to me, a feeling of altruism you know, contributing and making a difference. That is probably the basis of it and you can talk about it in lots of different ways but I think that is the basis of it: a sense that I am contributing.” (In-house Counsel)

We also enquired whether lawyers had any *other* personal motivations for doing pro bono work, to which half of the participants responded (56%, n= 31). This question was designed to further tease out individual motivations and give lawyers the option to speak in more depth about their personal reasons for doing pro bono work. Lawyers who answered this supplementary question gave diverse responses. Five said that exposure to different areas of law were important to them. Two mentioned career enhancement, and one mentioned health and wellbeing.

20% of lawyers identified personal enjoyment of pro bono work as their primary motivation, and this factor also emerged as a strong supplementary motivation (23%, n=11):



“I enjoy it. I think it is part of how I see myself as a lawyer. I couldn't imagine not doing it. It's a way to give back to the community and use the particular skills that I have. Which is why I prefer doing pro bono work rather than just volunteering my time generally through a charitable organisation or even giving charitable donations. I would prefer to put my time into pro bono work. It also gives you a lot of variety.” (Senior Associate, LLF)

A sense of teamwork and partnership was also mentioned:

“It's very satisfying... and it also builds camaraderie not only within the firm but more generally in the wider community... it's great to see the camaraderie and the esprit de corps that builds around being able to do pro bono work, it seems that it is inherently altruistic.” (Partner, LLF)

A sole practitioner from a regional area noted his personal investment in his local community:

“Sometimes I guess I do it out of a sense of a personal or family obligation to a number of

people. I have worked with Aboriginal groups for many years, and so I have quite a strong sense of obligation to people from particular families that I am close to. But I guess... also, I just hate seeing an individual get run over by a more powerful opponent.” (Sole practitioner)

Changing the negative perception of lawyers was not a motivating driver for the lawyers we spoke to. In fact, only one lawyer raised this point in conversation. The lawyer, a female senior associate practising in criminal and family law, expressed it in these terms:

“For me it’s a ruthless game that we’re in and people associate the profession with people ripping them off which I really hate.... It’s really giving something back to the community and trying to show people that we’re not all bad. We are not all out there to rip people off. I really love my job, I love what I do and I want to use that to help people if I can and just because they don’t have the money to pay me, if I’ve got the time, I will lend them my time.” (Senior associate, Small Law Firm, LSF)

Empathy was both a primary and secondary emotional driver for many of the lawyers responding to our survey:

“Well I grew up basically with an Aboriginal community in Northern New South Wales and I suppose growing up quite closely with that community exposed me to the big difference between the life that I went home to every night with my parents, and the life that my Aboriginal friends went home to. I suppose I have always had a deep social conscience as a result of seeing how different our lives were even though we lived in the same town and shared a lot of the same values.” (Lawyer and pro bono coordinator, LLF)

“I had a brother. He died a number of years ago. He was one of those disenfranchised, disempowered, homeless, fall-between-the-cracks kind of people. I was still a law student when he died but it certainly opened my eyes to the fact that there is a whole world, which us privileged middle class kids do not know exists. When your eyes are opened, you would have to be a cold-hearted person not to recognise a need there.” (Barrister)

“Well I guess a secondary [motivation] is the fact that because I don’t have any kids, I don’t really have anyone to help out. So I feel like when I’m doing the pro bono work I feel like I’m helping people out rather than just operating on a transactional basis like you do at work.... With the pro bono work my motivation is to help out someone less fortunate than myself.”

This lawyer continued:

“I used to go away from the Tuesday session with my faith restored in humanity. It sounds really trite and it’s not meant to, but I used to find it really uplifting. Even though the stories people would come in with would be really depressing, the fact that everyone was there trying to help was really uplifting and it was one of the highlights of my week. It was worth more to me than it was to [the client.]” (In-house Counsel)

Altruism and volunteering

Research into altruistic behaviour and volunteerism exists across multiple disciplines including philosophy, sociology and psychology.¹² Recent developments in neuroscience are now able to explain how the relative influence of our genes and environment might shape our moral selves.¹³ In recent years, US scholars have attempted to apply these new areas of research to the specific activity of lawyers doing pro bono legal work. In a study of lawyers' willingness to take on pro bono cases, Deborah Schmedemann examines lawyers' motivations through the lens of social science research into volunteering, suggesting that 'perhaps many antecedents to volunteering in the form of pro bono are set before someone becomes a lawyer.'¹⁴ Whilst no fixed conclusions can be drawn from this study it is curious to note the strong influence of family life, childhood, parenting, religious or social values on many of the lawyers who we interviewed and who said that those factors influenced why they chose to do pro bono.

Intrinsic motivation is a powerful driver

Very few of the lawyers we spoke to were extrinsically motivated by career enhancement, skills development or any sort of quantitative goal. None of the lawyers we spoke to mentioned the Pro Bono Aspirational Target. Personal rewards such as learning new areas of law and a sense of gratification from helping others only accounted for about 20% lawyers' primary motivation.

We heard far more statements about the importance of doing pro bono work for reasons that relate to lawyers' personal values and attitudes. An overriding concern for access to justice and a desire to alleviate social disadvantage through the provision of legal services permeated the conversations that we had. This finding broadly aligns with the work of US scholars Robert Granfield¹⁵ and Deborah Rhode,¹⁶ whose American studies also found that the most significant motivating factors underpinning pro bono activity were intrinsic (lawyers' personal characteristics, values and attitudes) rather than extrinsic (in the form of social rewards, reinforcement or costs) and were coupled with the profession's normative obligation.¹⁷

Given that the sample of lawyers we spoke to were already 'pro' pro bono, this finding is perhaps unsurprising - but it is nonetheless useful in helping to design effective pro bono schemes. Recognising that many lawyers are intrinsically motivated to do pro bono work suggests that schemes which are driven solely by the need to meet targets, or which are mandatory in nature, are less likely to optimise sustained volunteer involvement or quality of output over time.¹⁸ It also counters the suggestion that it makes no difference why lawyers do pro bono work. Rhode stresses the importance of building a legal culture that regards pro bono as 'integral and inherently satisfying'¹⁹ because this ultimately enhances the quality of individuals' pro bono contributions. She argues that if lawyers just regard pro bono as an academic or workplace requirement then performance will be undermined.²⁰

¹² For a description of three major theoretical perspectives in research on volunteering, see Christopher Einolf and Susan Chambre, 'Who volunteers? Constructing a hybrid theory' (2001) 16 *International Journal of Nonprofit and Voluntary Sector Marketing*, 298. For an economic analysis examining motivations for prosocial behaviour, see Jeffrey Carpenter and Caitlin Knowles Myers, 'Why Volunteer? Evidence on the role of altruism, image and incentives' (2010) 94 *Journal of Public Economics*, 911.

¹³ See for example, Graham Music, *Good Life: Wellbeing and the New Science of Altruism, Selfishness and Immorality* (Routledge, 2014); Daniel Batson *Altruism in Humans* (Oxford University Press, 2011).

¹⁴ Deborah A. Schmedemann 'Pro Bono Publico as a Conscience Good' (2008-2009) 35 *William Mitchell Law Review*, 977 at 981.

¹⁵ Robert Granfield 'Institutionalising Public Service in Law School: Results of the Impact of Mandatory Pro Bono Programs' 2007, *Buffalo Law Review* 1355.

¹⁶ Deborah Rhode, 'Cultures of Commitment: Pro Bono for Lawyers and Law Students' (1999) 67 *Fordham Law Review* 2415.

¹⁷ Granfield, above n 15.

¹⁸ Loder above n 9, 468.

¹⁹ Deborah Rhode, 'Pro Bono in Principle and Practice' (2003) 53 *Journal of Legal Education*, 413, 416.

²⁰ Ibid.

One lawyer we spoke to made exactly this point when discussing whether pro bono ought to be mandatory or not:

"...I think that the good nature which underpins pro bono is removed when it becomes just a part of job, as a necessary part of your job as opposed to something that is an outpouring of your own good will.... [Pro bono work] then becomes cheap in my view. It loses its inward goodness."
(Senior associate, LLF)

Lawyers in this study did make some specific comments about the quality of pro bono work and the various models of service. These observations are examined on page 21.

A CONVERSATION ABOUT PROFESSIONAL IDENTITY

“I think if the broader community had a better understanding of how much pro bono work solicitors and barristers already do, they would have a different perception of lawyers as a profession.” (Barrister)

The traditional and most widely understood reason why lawyers do pro bono work is that they have a professional responsibility to assist. Claims of professionalism underscore the rationale for pro bono and include a commitment to addressing unmet legal need or to furthering access to justice for marginalised people in society.

Scholars have theorised the professional duty of lawyers to engage in pro bono work in various ways. The theories put forward are similar but they often differ as to the source of the duty. For example, David Luban conceptualises lawyers and the legal profession as being in a relationship with society that is akin to a trusteeship: society creates the law and entrusts its benefits to lawyers for distribution.²¹ Therefore, society expects lawyers to dispense legal services in line with their obligations as trustees. Other scholars posit a theory of restitution, such that pro bono services could be understood as a, ‘means of rectifying the consequences for the indigent of an artificially restricted supply of legal services’.²² In this way, only lawyers can carry the weight of the problem as they are uniquely qualified to provide legal services and thus provide restitution. Another similar theory is public assets theory,²³ through which lawyers are said to be granted exclusive access to the ‘commodity’ of legal skills at no fee from the public, and therefore the ‘exaction of a pro bono obligation can be seen as a simple recapture of some of the profit derived from access to this asset’.²⁴ Pro bono is then understood as ‘comparable to an in-kind user fee, severance or commission, returned to the public in exchange for the right to exploit a public resource’.²⁵

The lawyers in our survey spoke candidly about their professional responsibility to do pro bono work. Like moral and personal reasons discussed above, conversations about professionalism transcended the demographic differences of the lawyers we interviewed. We heard statements about professionalism from early career and experienced lawyers, barristers and solicitors, those working in large, medium and small law firms:

“...Being a responsible member of the profession. I don't think it is even a choice anymore. For me, I would pursue [pro bono] even if it were not a choice... we have a privileged position in society because we are affluent and I think it has now become an expectation within the profession that people will help out.” (Solicitor, LLF)

“One of the reasons why I started studying law was to help people in need. In [my] work, I've chosen a field that really isn't representing those sorts of people so it really is to give back. I do view it as nearly an obligation of the profession, given the legal system is so complex to regular people.” (Lawyer, MLF)

A sole practitioner who has practised law for 37 years spoke fondly about the motivating effect of his master back in the days of articled clerkships:

²¹ David Luban, ‘Faculty Pro Bono and the Question of Identity’ (1999) 49:1 *Journal of Legal Education*, 58-75; David Luban, ‘Is there a Human Right to a Lawyer?’ (2014) 17:3 *Legal Ethics*, 371-381.

²² Andrew Marx, ‘A Restitution Theory of Mandatory Pro Bono Services’ (2003) 22 *Business and Professional Ethics Journal* 1.

²³ Steven Lubet and Cathryn Stewart, ‘A Public Assets Theory of Lawyers’ Pro Bono Obligations’ (1997) 145 *University of Pennsylvania Law Review* 1245, 1254.

²⁴ Lubet and Stewart 1246.

²⁵ Ibid.

"My master impressed that upon me when I was training that the community educated me, at least in part and that I owed society something for that and it would be nice to try and give some of it back."

"...I think that the legal profession owes a duty to the public as a whole and it is in the public interest to assist those who have a need which has a benefit to society. I don't necessarily feel an imperative to help every last person who has a problem, but I feel it is consistent with our obligation to the community to help those circumstances where we are able to and when it is in the public interest to do so." (Senior Associate, LLF)

"... I find it embarrassing as a lawyer, that people feel that they have no way of exercising rights that exist and that they know exist, because they are not in a position to enforce them without assistance. I see that as part of my responsibility as a lawyer. As lawyers we are obliged in a way to ensure that people do get an opportunity to assert their rights. It's no good having... quite decent laws on the books if some people just don't have the resources on their own to ensure that that legislation has meaning." (Sole practitioner, regional Queensland)

A partner at a large law firm who has practised for 35 years put it this way:

"I have a very old fashioned view of being a professional. And what that means is that the community provides you with the status of a 'professional' i.e. a solicitor. In my case, it also educated me at the public's expense. And so you have an obligation to put back into the community, and that is what pro bono is all about. I have done it continuously and I have always volunteered at community legal centres or taken on cases in the firm when at the time we did not have a formal pro bono program. I just believe it is something that just is part and parcel of being a solicitor." (Partner, LLF)

Another simply said:

"It is just something that I feel I should do with this career." (Lawyer, LLF)

A CONVERSATION ABOUT PERCEPTIONS OF PRO BONO

“If you give money to someone on the street: that is charity. Or planting trees: that is charity. That is not necessarily a skill you have had to study for years to have, whereas pro bono work is more based on the skills you have acquired.” (Lawyer, LLF)

Our study was also interested in how lawyers who regularly engage in pro bono work perceive that activity in light of recent debates and trends. This part of the report analyses lawyers’ responses to questions about the distinction between pro bono work and charity, and also the relative importance of doing pro bono work in one’s local community compared to overseas through the provision of international pro bono work. This part also considers lawyers’ views about the quality of pro bono.

Charity

In its guidance notes on reporting pro bono legal services, the Australian Pro Bono Centre makes a clear distinction between charitable giving and pro bono legal work.²⁶ The notes state that financial donations and other corporate social responsibility programs (such as literacy and mentoring work) are activities which fall outside the definition of pro bono legal service and should therefore not be reported on for the Aspirational Target. Irrespective of the many years of longitudinal work to monitor pro bono in line with its settled definition, a recent push to expand the definition of pro bono to include cash donations has emerged.²⁷ Australian scholars Rowena Maguire, Gail Shearer and Rachel Field advocate for a reconsideration of pro bono work in Australia. They suggest that the definition should be expanded to include financial contributions:

At present, any sort of financial contribution is viewed as a form of non-legal assistance adjunct to a firm’s pro bono program... if a firm wants to give back to the community through their pro bono program by offering the work of non-legal staff or through the provision of financial or in kind assistance then this should ‘count’ as pro bono just as much as the provision of legal services currently does.²⁸

Our study asked lawyers how they perceive the difference between charity and pro bono. We did not define ‘charity’ when asking the question as we were interested in lawyers’ self-perception of the term. The practitioners we spoke to generally perceived charity as something broader than pro bono, with 36 lawyers (65%) making a clear distinction between the two concepts. Pro bono coordinators especially articulated a clear distinction between the two concepts:

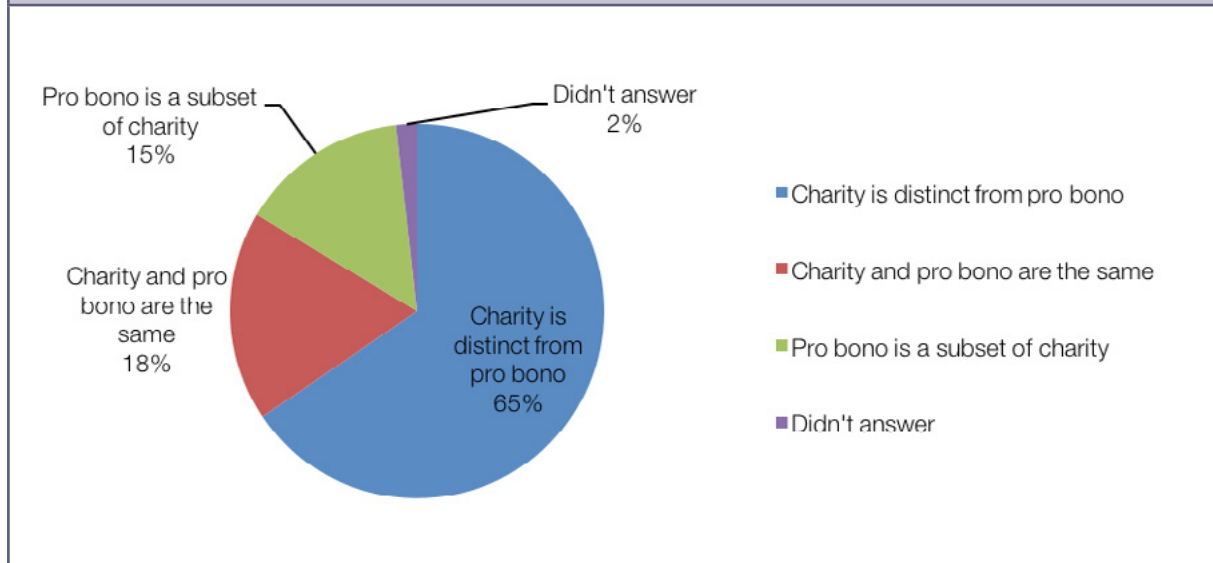
“Charitable acts do not involve the provision of legal advice. It might be volunteering, donating something practical or donating money. But the donation of money is not pro bono even if you are donating it to a CLC or some other legal service.” (Associate and pro bono coordinator, LLF)

²⁶ Eighth Annual Performance Report on the National Pro Bono Aspirational Target, October 2015, available at: <http://www.nationalprobono.org.au/ssl/CMS/files/cms/Eighth_Annual_Performance_Report_on_the_Aspirational_Target_2015.pdf> accessed 11 February 2016.

²⁷ Rowena Maguire, Gail Shearer and Rachael Field ‘Reconsidering pro bono: A comparative analysis of protocols in Australia, the United States, the United Kingdom and Singapore’ (2014) 37(3) *UNSW Law Journal*, 1164.

²⁸ *Ibid* 1189.

How do you perceive the distinction between charity and pro bono?



Many lawyers described the particular skills and service ideals of pro bono:

"Pro bono is having a skill and assisting somebody with your skill and doing work for the greater good of the community I suppose. Charity is, obviously, for the greater good of the community but I would think that charity is more helping somebody out in general, whereas pro bono is specific to having a skill and assisting someone, and being able to use that skill." (Senior Associate, SLF)

"I guess pro bono is perhaps in a legal sense, the donating of actual legal work or legal involved work, whereas charity might just be more generally.... just volunteering time or money without the professional-specific focus." (Solicitor, LLF)

"I would just say that... anyone can really be involved in charity, it doesn't really require a skillset. Whereas pro bono work is certainly delivered for free.... but behind that is a certain skillset that takes a number of years to develop." (Graduate lawyer, LLF)

"I guess it depends what you construe charity to be broadly. I guess pro bono is typically and ideally targeted towards persons or causes with meritorious legal claims, whereas charity might be geared towards purely altruistic purposes." (Solicitor, LLF)

Utilitarian arguments were also mentioned:

"...I prefer to be contributing my legal and professional skills because I think that leverages and makes a bigger difference than, for example, if I were cooking hamburgers down the road at a volunteer stall." (Partner and pro bono coordinator, MLF)

Barristers as a cohort were more likely to perceive pro bono work as a *subset* of charity. Some barristers made the point that their charitable giving aligned with their pro bono work:

"I'm probably driven by the same factors in choosing which charities I give to. So I would much rather give to Amnesty International or one of the overseas charities than I would to cancer research... Amnesty because it is interested in human rights, and the overseas charities because they try to make change for people who are less well-off than us."

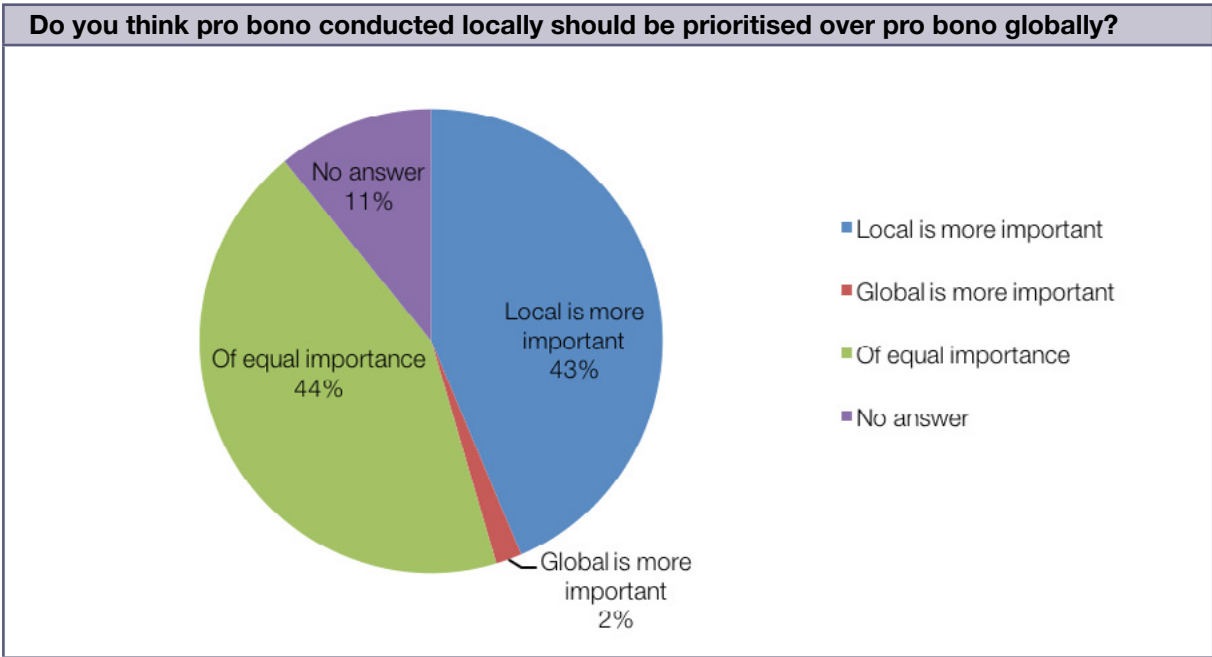
Lawyers overall were very clear that there is a distinction between charity and pro bono as an activity which involves the provision of legal skills, and not a mere cash contribution.

Views about local and international pro bono

In recent years there has been an upwards trend towards the internationalisation of pro bono work. The increasing globalisation of law firms has been a factor,²⁹ with international ‘mega’ law firms undertaking pro bono legal work in overseas countries, or for international bodies such as the United Nations. In Brisbane, mergers of many of the top law firms took place in the late 2000s. The 2014 National Law Firm Survey on Pro Bono found that in a two year period (from 2012 to 2014) 20% of the respondent firms surveyed began to describe their firm as an ‘international law firm’, meaning that they employ more lawyers overseas than in Australia.³⁰

In light of this trend within the legal market, we were interested in gauging local lawyers’ perceptions about the relative importance of doing pro bono work locally as opposed to globally. We asked participants whether they thought pro bono work conducted locally (for example, work that responds to unmet legal need in Australia) should be prioritised over pro bono work conducted globally (such as helping to defend human rights in third world countries).

In response to this question, only one lawyer considered that global work ought to be given a clear priority over local unmet legal needs. The other answers were equally split between prioritising domestic unmet legal need and viewing both local and global work as equally important. Six lawyers chose not to answer this question as they felt they lacked any experience of international pro bono work and therefore did not want to comment on its importance.



²⁹ John Corker, Access to Justice – International Pro Bono Legal Assistance, Meeting of Senior Officials of Commonwealth Law Ministries, Marlborough House, London, 18 – 20 October 2010 at 2.

³⁰ Fourth National Law Firm Pro Bono Survey, above n 11.

Pro bono coordinators as a cohort did not have a uniform view on this point. Despite working for firms most likely to engage in international pro bono work, none of the pro bono coordinators felt that international pro bono work should take precedence over local pro bono efforts. One pro bono coordinator in a large law firm described it in these terms:

"I would say that we are best placed to address legal need on a local basis. I think that it is very difficult for a firm based in Queensland or Australia to assess what the legal need is in another country where there is another cultural regime, where there are different cultural, social, political and legal institutions. Making an assumption that you can really know what things are like on the ground of another country is problematic and I would never do that. [Our law firm] does some things that are internationally based, but this is more when you are feeding into an international project such as the International Centre for Human Rights or a UN project. They are probably the only international programs that I would think are appropriate for us to do." (Associate and pro bono coordinator, LLF)

Another pro bono coordinator made the point that international pro bono can be a 'little overstated' and, 'actually really difficult in practice to provide' in light of the constraints on solicitors' practising certificates which only allow Australian lawyers to practise in the jurisdiction they are registered, and not overseas.

Many lawyers articulated concerns about the need to deal with our own problems first:

"One of the things that really irritates me is that we talk a lot as a society about helping other countries and addressing the issues – particularly, for example – addressing the issues of domestic violence in other countries. What I find quite frustrating is that a lot of people who say those things, have no idea about the extent of domestic violence that is happening in our suburbs around our state right now." (Senior Associate, MLF)

And:

"I know it is a controversial opinion, but I kind of have the airplane mentality: you've got to put your oxygen mask on yourself before you assist someone else. And we have a lot of people in Australia who really need legal assistance, and I think it should be a priority and any resources we have in addition or whatever can be utilised overseas. I'm not saying we shouldn't contribute to pro bono work overseas, but I do think that the bulk of funding for it should be kept in Australia. Because we are a first world country... we can't expect assistance from anyone else, so we have to help ourselves." (Solicitor, LLF).

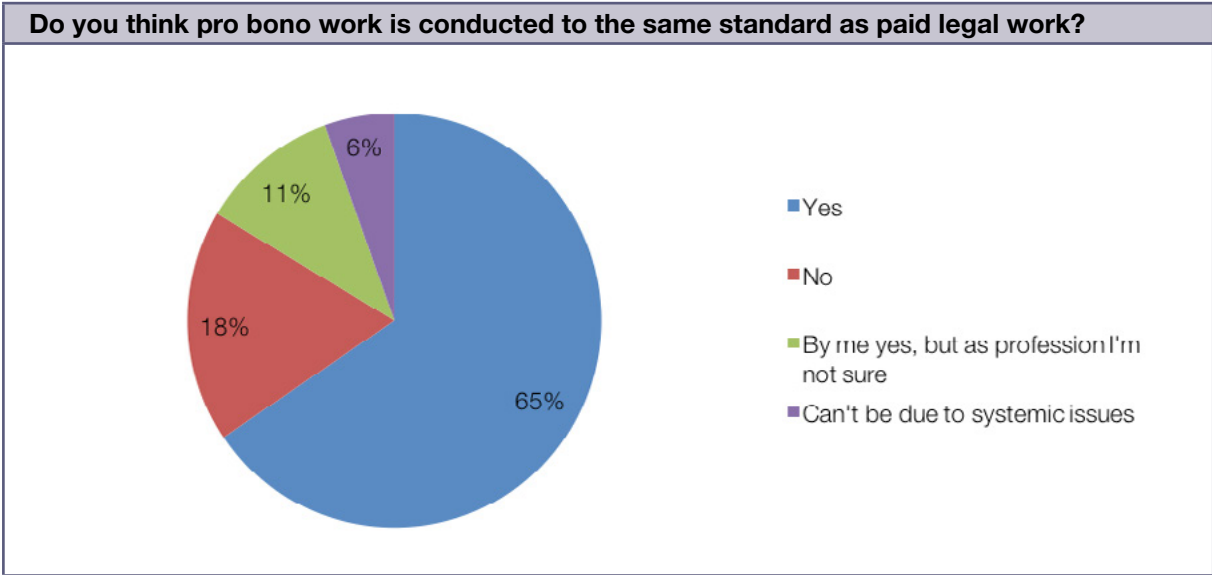
International pro bono work is unlikely to be a feature of small firm pro bono which typically operates with different clients and fewer resources than the large firms. An experienced sole practitioner in a suburban practice simply put it this way:

"That doesn't arise for me because I am a one-man practice and most of my work is local... my pro bono work is generally directed at people in my locale, people or organisations in my locale."

The quality of pro bono work

“Every one of our clients is expected to [receive] the same level of legal service. They are entitled to it. It is my expectation and it is my experience that it is.” (Partner, LLF)

Lawyers were asked whether they thought pro bono work was done to the same standard as paid legal work. We heard statements about professional reputations and practising certificates ‘being on the line’. Participants also described lawyers as ‘perfectionists’ and being reluctant to put their name to anything that isn’t their best work.



65% (n=36) lawyers clearly thought pro bono work was done to the same standard as paid legal work. 18% (n=10) answered in the negative. Many gave nuanced answers, stating that they personally treat it at the same standard but that the profession as a whole doesn’t, or that it is variable depending on the individual lawyer:

“Depends on who is doing it. It depends on the attitudes of the individual lawyer. Some people almost definitely will do the same quality work regardless of who the client is. I think that is the correct approach. I think there are others, though, who possibly do not pay it the same amount of attention.” (Solicitor, CLC)

Many lawyers were taken aback at the suggestion that pro bono legal work would be of a poorer quality than fee-paying work. One barrister put it this way:

“I would be horrified if it wasn’t. I would be absolutely mortified. We have to act without fear or favour. Without favour includes that, “you are paying me therefore I will do a better job”. We have a duty to the court that is not diluted by the fact that they are not paying. For some, if they were being honest, would say that is the case. But for me personally if I take a matter on, regardless of if I have been paid or not, they get the same treatment.”

A pro bono coordinator made the point that sometimes a pro bono file can propel a greater result:

“From my experience it is sometimes done to a higher standard, perhaps because people get so emotionally invested in it in a way that they do not always in other areas, but it does have that human emotional element to it.” (Lawyer and pro bono coordinator, LLF)

Some lawyers thought that it was not possible for pro bono to be done to the same standard because systemic issues like an over-reliance on volunteers and funding shortages preclude it. In relation to the funding limitations on CLCs, one lawyer described it in these terms:

“No, I don’t [think it is done to the same standard as paying work]. That is sort of getting back to my thing about resourcing... It is not done to such a bad standard or low standard that it’s unhelpful or dangerous or recklessly given – not at all. I just don’t think CLCs are adequately equipped to give that same standard.” (In-house Counsel)

A few lawyers commented on the connection between lower quality work and limited retainers or involvement by lawyers in pro bono matters. The comments below were both made by lawyers in large law firms who participate in legal clinics that do not allow ongoing casework assistance:

“Well it should be [done to the same standard] but it probably cannot be because of factors such as limiting the scope of our engagement in terms of only being willing to do a one-off advice, or only willing to give someone one hour of our time at a clinic. I would say the quality is the same for the time we do, but we are not necessarily prepared to put in the same amount of time - therefore the end product may not be as comprehensive. It is not as though there is a deliberate attempt to cut corners.” (Senior Associate, LLF)

“No, not at all. In the position I’m in I get to review most of the lawyer’s work before it actually goes through to [CLC] for them to review it. So I read through what their advice is and sometimes I look at it and think – if this was a non-pro bono client you would not have written this, what you have written is just shocking. But I think to some extent that’s not just because it is a pro bono client... they do it with the mindset that it is going to be reviewed a couple of times and it is potentially going to be changed, so why should they put in top-notch effort?” (Lawyer, LLF)

Individual casework and structural reform

In its 2014 Inquiry into *Access to Justice Arrangements*, the Productivity Commission found that pro bono plays a small but important role in bridging the gap for legal services, but that its role should not be overplayed.³¹ The Inquiry determined that there are limits to the role that pro bono can play in addressing unmet legal need, and the overall contribution of pro bono services throughout the Australian civil justice system is relatively modest.³²

In light of this finding, this study was interested in lawyers’ perception of the role of pro bono in addressing unmet legal need. We asked lawyers whether they regarded pro bono work in the form of law reform or policy initiatives as being more or less beneficial to the public good than individual casework. Lawyers generally felt that systemic work was more important as it can benefit a greater number of people whom they felt were the ultimate beneficiaries of pro bono work. The majority of responses to this question had a strong utilitarian focus on helping the greatest number of people. Most lawyers made the point that there is a need for both individual casework and law reform and that they should co-exist:

“...if you are doing systemic work for a not-for-profit, e.g. assisting a CLC with a law reform or policy project, or community legal education, or assisting a not-for-profit with community legal education material, [I think] that is more beneficial than acting for an individual on a discrete matter that may not have the systemic effect. I think the guiding principle should be the “systemic-ness” of the impact that you are going to have. Sometimes you can have this by acting for an individual through a test case, but that is not very often.” (Associate and pro bono coordinator, LLF)

³¹ Productivity Commission Inquiry Report, *Access to Justice Arrangements*, No. 72, 5 September 2014, overview, 32. See also Chapter 23 ‘Pro bono services’, 810.

³² The Australian Pro Bono Centre and others in the legal assistance sector generally agreed this finding.

"I think law reform initiatives are really important, and I think there's a connection between the two. I think it is really important that CLCs, for example, which are involved in a lot of individual casework, are also able to take on the law reform role, because in a sense they are experts, they see how the law is impacting on individuals, society and different groups within it. It is really important that they can articulate that, because if they don't, no-one will." (Barrister)

This lawyer had a different view:

"I guess I am a practical person so I just like to get in and do the work. I do not perceive law reform initiatives as pro bono work. I don't think people really engage in law reform for the purpose of benefiting the public good - it is more that people are lobbying for change because it will result in benefits to their clients or their profile as being an agitator of law reform, or benefits to people in a commercial manner. It is not as important as helping people with their specific problems." (Senior Associate, LLF)

Interestingly, the younger lawyers in this study were more positive and hopeful than their senior colleagues about the potential of law reform to actually bring about changes to the law. A higher number of young lawyers in the 20 – 30 year age bracket viewed law reform as more beneficial to the public interest than individual casework. Lawyers in the 30 – 40 year bracket either viewed both as equally important or had a preference for individual casework.

There are many reasons why this skew could exist including idealism, increasing family obligations and/or work demands on older lawyers. Boon and Whyte suggest that young people between the ages of 18 – 24, and those over the age of 55 are the two age groups most likely to consistently agree with the proposition that, 'everyone has a duty to do voluntary work some time in their lives.'³³ They suggest that the relative lack of family commitments exerts less pressure on these age groups.

The limits of pro bono

Although many lawyers said they valued law reform over individual casework, their comments about systemic change were generally limited to working within the legal system to protect individual rights. The phrase 'access to justice' was mainly used to describe procedural access, such as access to legal advice or to a lawyer in court, rather than broader notions of substantive access to justice.³⁴ For example, some lawyers described their motivation for doing pro bono work as being to, "assist the court system... in that we can sometimes provide assistance that makes it a bit easier once it gets to court." Another lawyer stated, "I simply want people to be able to exercise the rights that they do have and to get the best outcome that they can through the legal system."

A partner in a small law firm described it like this:

"I believe in access to justice for everyone so that's my motivation essentially. I don't think that people should be prohibited from you know access to justice because they can't afford commercial rates that we lawyers charge." (Partner, SLF)

The lawyers in our study did not necessarily champion a social change agenda when describing their motivations for doing pro bono work. No-one described pro bono as synonymous with lawyering for social change or lawyering for a particular cause.

³³ Boon and Whyte, above n 7, 172.

³⁴ Ronald Sackville notes that the concept of 'access to justice' is a popular catchphrase: '...part of the attraction of 'access to justice' is that it is capable of bearing different meanings, depending on the perspectives or values of the commentator.' Ronald Sackville, 'Some thoughts on access to justice' (2004) 2 *New Zealand Journal of Public and International Law* 85 at 86.

Some legal scholars like Martha Davis speak of the ‘transformative potential’ of pro bono work,³⁵ suggesting that lawyers who participate in pro bono legal services should see their role as supportive of a broader struggle for substantive justice. The American literature on cause lawyering describes this phenomenon, portraying cause lawyers as professionals who embrace the connections between their personal politics and their clients’ goals.³⁶ Recently in Australia there has been some interesting work conducted by CLC lawyers examining the nexus between community lawyering, client empowerment³⁷ and social change.³⁸ However, at least in the Australian context, the role of pro bono work in being able to systemically challenge injustice has not been examined in detail. The Productivity Commission read down the potential of pro bono work:

Addressing the complex legal needs of disadvantaged clients can be challenging and not all private lawyers are equipped with the expertise to provide such services... many lawyers would have little exposure to ‘poverty law’ in their day to day work.³⁹

Paradoxically, the limited potential of pro bono work may also be a reflection of the in-built constraints within many of the pro bono schemes operating in Queensland. Many of the lawyers we spoke to participate in pro bono schemes such as outreach legal clinics that mainly provide discrete task assistance or one-off advice as opposed to ongoing casework with its associated risks. This is partly because the law firms participating in pro bono clinics will not take on casework due to time and resourcing factors, or, risk either direct or positional conflicts. Making pro bono ‘safe’ by limiting the exposure of lawyers can make lawyers feel that they are only assisting on the margins; they do not have carriage of the matter in a way that allows them to exercise their full professional judgment and autonomy. The more ‘hidden’ one’s individual engagement in a pro bono matter, the less exposure a lawyer has and the less connected and engaged they may feel. This can compromise the standard or quality of pro bono work produced, mentioned above on page 21.

³⁵ Martha Davis, ‘Access and Justice: The Transformative Potential of Pro Bono Work’ (2004-5) *Fordham Law Review* 73.

³⁶ For a discussion of cause lawyering see Austin Sarat & Stuart Scheingold Eds, *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press, 2014).

³⁷ James Farrell ‘How Lawyers Can Support and Empower Communities to Achieve Change’ Final Report, Winston Churchill Memorial Trust of Australia, Final Report, April 2015.

³⁸ Agata Wierzbowski, ‘Lawyering for Change’ CLC Fellowship Report 2015, Victoria Law Foundation. See also Radio National Big Ideas ‘Social Change Lawyers’ panel discussion, 2 March 2015. One question posed in the Big Ideas panel discussion was what role do pro bono lawyers play in public interest law? <<http://www.abc.net.au/radionational/programs/bigideas/social-change-lawyers/6263756>> Accessed 23 February 2016.

³⁹ Productivity Commission Final Report, above n 31, Overview, 32.

INSTITUTIONAL SETTINGS FOR PRO BONO

This report has so far presented the individual personal values framework and professional ideals of the lawyers we spoke to in this study. These factors do not sit in isolation however and are influenced by lawyers' specific workplace settings. Although the primary aim of this study was to better understand the personal motivations propelling lawyers' participation in pro bono work, the discussions we had were fundamentally intertwined with the daily reality of lawyers' workplace settings. This section of the report considers the influence of lawyers' workplace environment on their involvement in pro bono legal service delivery. It examines how different institutional environments may result in pro bono being experienced differently across workplaces depending on firm size, location, leadership and culture. US scholar Robert Granfield has similarly drawn on an institutional framework to examine the impact of the legal workplace environment on participation in pro bono work in the US.⁴⁰

A large law firm perspective

In his major scholarly examination of the causes, features and consequences of institutionalised pro bono in the United States, Scott Cummings writes:

Pro bono's institutionalisation has depended critically on the rise of the large corporate law firm. Although small-scale practitioners have been important actors in the pro bono system, it has been the large firms that have provided the resources and prestige to promote pro bono as a central professional goal... In addition, because large firms are highly leveraged, they can generally absorb the costs associated with pro bono more readily than their smaller counterparts.⁴¹

This description mirrors the contemporary landscape of large Australian law firms where pro bono is also institutionalised. The Australian Pro Bono Centre reports that large firms play a leadership role within the pro bono field, and that successful pro bono schemes depend on an infrastructure and network of organisations to support and facilitate them, as well as intra-firm coordinating systems.⁴² In this way, large law firms can be said to enjoy a 'community of pro bono practice' in which they share ideas, structural approaches and resources for pro bono.⁴³

The lawyers we spoke to from large corporate firms described complex and embedded structural arrangements to facilitate pro bono practice, promotion and recognition. We heard about law firm incentives to do pro bono, including end of year bonuses and recognition through annual performance reviews and promotion cycles. Some lawyers mentioned that their firm had an internal policy on pro bono set by pro bono partners who were the driving force behind a strong pro bono culture. The integration of pro bono into the firm was described by this partner:

"I think there is absolutely no question that where pro bono has thrived, it has always been in an environment where the firm has been encouraging of that work... Firms have different approaches; some may treat it strictly as billable work, and some may treat it in a different way, but it has to count, and it has to be actually seen as being part of someone's day to day practice as opposed to some special added extra that you're meant to do when all the other work is finished."

⁴⁰ Granfield, above n 7.

⁴¹ Scott Cummings, 'The Politics of Pro Bono' (2004) 52 *UCLA Law Review* 1, 33.

⁴² John Corker, above n 29.

⁴³ 'Communities of practice' are examined in the context of US divorce lawyers: Lynn Mather, Craid McEwan and Richard Maiman, *Divorce Lawyers at Work: Varieties of Professionalism in Practice* (Oxford University Press, 2001).

Another partner said:

“... the firm budgets for it, we see it as a firm-wide commitment as well as encouraging individuals to make a personal commitment. So the way we have tried to incentivise people to participate is not to see it differently from another other commercial client work they do. We have sophisticated measures about how it is... accounted for, so hopefully that means that people apply the same degree of skills that they would as if it were any other client work.”

One pro bono coordinator spoke of the ‘top-down push’ from partnership but noted that it was not universal:

“We try and ensure that there are no barriers [to doing pro bono] and that it is treated as commercial work. In saying that... some partners are not as supportive as they could be which is problematic for junior lawyers who want to be involved.” (Associate and pro bono coordinator, LLF)

Junior lawyers working in the large law firms also described the importance of normalising pro bono within the firm by making it just another ‘billable’: “You can’t underestimate how important that is for people in our position.” Some spoke about skills development for involving junior lawyers in pro bono work: “[Pro bono practice is] an important process for junior lawyers to engage in... it helps them develop skills that they would otherwise develop more slowly.”

A different view was expressed by one lawyer who questioned the true motivation of commercial law firms to do pro bono work. He spoke of the ‘lurking secret’ of firms to use pro bono work as a way to manage out under-performing staff: “Pro bono is not a stepping stone to success in a firm, it is the long goodbye.” The lawyer suggested some further research could be done to examine whether high performing lawyers in law firms are given paid work while less talented lawyers are used to fill the pro bono quotas.

Small, suburban and regional firm perspectives

“I think it’s increasingly difficult for practitioners in regional areas to provide pro bono assistance.” (Sole practitioner)

This survey provided a rare insight into the practice and attitudes of lawyers who work in small, suburban and regional firms who engage in pro bono legal work. Most of our understanding about pro bono practice in Australia is informed by the large law firm perspective. There is comparatively little empirical or industry research about the particular features of doing pro bono in smaller workplaces: the prominent pro bono discourse is very much that of large commercial firms.

We observed that lawyers in small firms often did pro bono in their own time and after hours. This was the case not only for lawyers working in small firms without a strong pro bono culture, but also for lawyers employed by self-described ‘social justice’ law firms. A junior solicitor employed at a social justice firm commented:

“I don’t understand how I would go about doing a pro bono case at this firm. I volunteer in my personal capacity at [CLC] so that doesn’t affect my firm in any way - there is no cost involved to the firm.”

A lawyer in a small suburban firm described her employer’s attitude and practice towards pro bono work in these terms: “They don’t care what I do in my own time as long as I don’t interfere with their time.” She also commented on the personal costs of doing pro bono after hours:

"It is a crying shame that we don't get any recognition for it. I drive to [suburb] from my house, a 30 minute drive. That doesn't affect my tax return, I can't claim my 60km to do that travel. I don't get any CPD points for it. I think there are a few little things that could make it a bit more attractive to solicitors..." (Solicitor, SLF)

At least five lawyers we spoke to mentioned the lack of fee credit or budget relief for doing pro bono work at their firm. This is a common feature of small firms which are not highly leveraged and do not have the same resources as large law firms to support internal coordination. The embedded cost of doing pro bono is therefore not absorbed to the same extent:

"... We don't get any fee credit in our firm. All pro bono work is above and beyond my budget, which can make it difficult. We also don't have a formal pro bono program. If you want to do it, you find a partner who you can work under to do it. It is not organised or structured or anything. There is no monitoring of how much free work people are doing." (Solicitor, MLF)

Leslie Levin explores the different mechanisms through which solo and small firm lawyers deliver pro bono services, including 'low bono' (discounted fees for low-income clients) and 'unplanned pro bono' (where a lawyer accepts a client on a fee paying basis but the matter turns into a pro bono arrangement when the client can no longer afford to pay the legal bills).⁴⁴ The informal and ad hoc nature of pro bono work was neatly described by a sole practitioner from a regional area:

"You know when I do pro bono, it doesn't enter my system. I am doing something at the moment that I have been handling since February this year which is a criminal matter, I do some lower court pro bono work, I do a bit of crime and I [also] give matrimonial advice pro bono. I suppose I do pro bono work wherever I feel competent." (Sole practitioner)

Organisational culture was also mentioned in a number of the conversations we had with lawyers in small workplace settings. We heard comments about the importance of lawyers having the right 'organisational fit':

"The principal at my firm wouldn't employ people if they didn't have that kind of attitude [to do pro bono]. She is very into helping people wherever she can... I don't think she would employ anyone in the firm that had the mindset that it's all about the money." (Senior Associate, SLF)

A partner in a social justice firm also referred to the importance of hiring staff who share their firm's values: "The people we employ share a similar view about access to justice that the firm does." In answer to the question about whether that firm provided any incentives for employees to do pro bono work, the partner replied: "We don't really have to [provide incentives] as we prefer that the firm encourages and attracts people with that mindset."

One solicitor commented on the cultural change in relation to pro bono that she would like to see at her workplace:

"I don't like that they [law firm] don't encourage pro bono work and there is no pro bono program. There are so many opportunities... for firms to get involved in providing pro bono legal work... But then, not everyone thinks like that: That's a cultural thing within our firm that I would like to see changed, but it's a bit hard as a junior lawyer to do that, so I just do my bit. I make it known in my reviews that I enjoy doing pro bono work. I also make it known that it's difficult when there are no fee credits for it. I tallied up all of my pro bono work and it was the equivalent of one month's billable work with no fee credits." (Lawyer, MLF)

Another solicitor at a small city firm highlighted the difference between large law firm approaches to pro

⁴⁴ Leslie Levin, 'Pro Bono and Low Bono in the Solo and Small Law Firm Context' 155 – 179 in Robert Granfield and Lynn Mather Eds, *Private Lawyers and the Public Interest* (Oxford University Press, 2009).

bono:

"We do have a roster with [CLC] where we do one appointment per month. Otherwise the policy is, if you want to do it in your own time you can. That's really it. There's no support for pro bono here. I know some of the top tier firms have whole pro bono sections and have dedicated solicitors and things. It's not like that." (Solicitor, SLF)

This lawyer went on to say that there needs to be a push for pro bono to be recognised as more of an obligation and not just something to do if you are a 'bleeding heart'. She conjectured that the change in attitude towards pro bono may likely occur over the next decade with an increase in female practitioners and young people coming through the profession.

Ironically, a senior lawyer from the 'big end of town' painted the most vivid picture of the daily reality of the small country-town lawyer:

"I've often said that in many small country-towns, if it weren't for the local lawyer... when you go to those little country-towns there'll be two lawyers in town and you'll find that they'll be chairing or running about 12 different community organisations. Night after night they'll be looking after a whole variety of community organisations and just giving their skills as chairs, keeping minutes and records of meetings... and it's a massive contribution to those communities. If you didn't have that orderly mind doing all of these things, then these communities wouldn't work as effectively as they do to help those who need assistance."

What barristers thought

In its publication, *A Practical Guide to What Works*, the Australian Pro Bono Centre notes that individual barristers generally make significant contributions to pro bono work.⁴⁵ This reflects the fact that barristers are generally motivated by a deep personal interest and commitment to social justice, and because their self-employed status means that they personally bear the costs of pro bono legal work - unlike law firm lawyers who continue to be paid by their firm.⁴⁶ The Eighth Report on the National Pro Bono Aspirational Target states that the majority of barristers who reported on the Target in 2014/15 performed more than 100 individual hours of pro bono legal work. By any measure this is an astounding amount, and close to three times the Target rate of 35 hours per lawyer per year.⁴⁷

The Guide recommends that one of the best ways to pitch a matter to a barrister is to appeal to their sense of professional interest in a complex, untested area of law. Interestingly, none of the barristers in our study mentioned interest along these lines. The majority of the barristers we interviewed mentioned access to justice as their primary motivation for doing pro bono work. Many of them also spoke positively about workplace autonomy and the degree of control which they exercise in accepting pro bono work:

"Barristers are in the fortunate position because we can dictate our own hours it's really a matter of personal choice how much time you put in. Barristers have more autonomy, so it could theoretically be easier for me than some junior person within a firm."

One barrister countered this point with difficulties he had experienced in taking on direct access briefs:

"I like being briefed by a solicitor – I don't want to deal with the client directly. I think that is a recipe for extraordinary tension and worry, so that is one of the restrictions I put on it."

Other stated disincentives were financial, and the perception that lawyers are rich was also mentioned as

⁴⁵ Australian Pro Bono Centre, *What Works in Pro Bono*, 77-78.

⁴⁶ The Productivity Commission in its report on *Access to Justice Arrangements* also recognised these barriers to doing pro bono by barristers and other sole practitioners, Chapter 23 at 811.

⁴⁷ Australian Pro Bono Centre, Eighth Annual Performance Report on the National Pro Bono Aspirational Target, 18.

a disincentive to doing pro bono work:

“Money. You know - the public perception that all lawyers are earning a million dollars. I feel at times like actually charging a million dollars, I mean... you listen to that shit and think, well, I might as well stop what I am doing and join the pack. ... I might as well play out the public perception of what being a lawyer is. I just get the shits with the way lawyers are portrayed.”

“Apart from the bleedingly obvious – it’s hundreds or hundreds of hours of work for which you do not get a cracker.”

Two barristers also made comments about the preponderance of junior barristers doing pro bono work. In their view, young and junior barristers did the lion’s share of pro bono matters but only a handful of dedicated senior barristers accepted pro bono briefs.

OTHER INFLUENCING FACTORS

In answer to the question about factors that discourage one from doing pro bono work, 40% of respondents mentioned time constraints. This was the most significant reason, followed by billable time pressures (29%), unsupportive law firm environment (18%) and difficult or unappreciative clients (16%).

Throughout our interviews we also heard many opinions about factors that influence the effectiveness of pro bono schemes. Since these views can contribute to the ongoing dialogue about pro bono they have been included in this report. We have clustered the remarks in this section under headings that broadly relate to common discussions about pro bono schemes in Australia.

Unfamiliar areas of law

A common debate within pro bono is whether a lawyer should do pro bono legal work that is unrelated to their ordinary practice. For example, it may be regarded as unrealistic or even unethical for a construction lawyer to advise a client with a problem relating to guardianship and administration. A number of lawyers picked up on this issue:

"I might attend a clinic that's a general advice clinic for a CLC, and it might be in an area of law that I don't do all the time. Do I think that the advice they're getting is the same strict quality that they would get if they were someone who came to me in my commercial area and got advice that had been thought about for two weeks? Probably not. Is it what they need? Is it of the same value to that person? Probably. In fact, it is probably of more value. I know that is something that we all struggle with - that when you sort of go outside the stuff you know quite well it can be difficult, or you feel that it's outside your area of expertise. But over the years I have come to realise that a lot of the assistance required in pro bono matters at least initially is basic legal assistance that most of us with the right training can provide." (Senior Associate and pro bono coordinator, LLF)

Frustration

Lawyers also expressed frustration in their discussions about pro bono. Some frustration was directed towards the clients they seek to assist, while others raised issues with the models of service delivery or the limitations on legal services due to the chronic shortage of government funding.

Clients

Frustration with clients was expressed in these terms:

"I find that pro bono clients don't like to help themselves. So for example, you will spend half your time chasing them, trying to get them to return documents and pick up the phone, and it can be frustrating when you are trying to help them and trying to meet your billables. So that can be pretty frustrating." (Lawyer, LLF)

"I often struggle to be satisfied of the overall benefit of assisting on a pro bono basis in complex pieces of litigation. The amount of time required is simply completely disproportionate to the ultimate result.... [in cases] where you give an individual pro bono assistance for a litigation-type matter, it can be incredibly difficult to settle the matter on terms that a commercial client would accept. Whereas a commercial client would consider the legal costs or resources required to move forward." (Senior Associate and pro bono coordinator, LLF)

“Sometimes people turn very nasty when my secretary tells them I am in court that day and then they threaten you or threaten to do things to your family or children - that does not make you want to act for them pro bono, or at all.” (Barrister)

Some lawyers defended the ‘difficult client’. One practitioner put it in these terms: “...that is all part of the territory. You just can’t expect pro bono clients to be of the same level of sophistication that you deal with in a top tier legal practice.” (Partner, LLF)

Government funding

A number of lawyers singled out chronic funding shortfalls for legal assistance services as a systemic issue connected to pro bono legal work. A lack of funding often leads to an over-reliance on volunteers and can result in poorer quality of work for pro bono matters:

“The more that legal aid is not available for people, particularly in family law and domestic violence where people are falling through that gap, the more important it becomes to do pro bono work... because otherwise we have got people who are quite literally desperately in need of some assistance and who get none.” (Senior Associate, MLF)

One lawyer expressed frustration that pro bono is a convenient way for government to abdicate its responsibility to fund legal services:

“This is probably one of my bugbears....recent cuts to funding, particularly... by state and federal governments and the fact that there is an expectation that [legal services] will be picked up by the pro bono sector. Part of me goes, well if we all just stopped helping, then the government might have to do something. But I also can see the significant downfalls in that.... the government kind of gets away with cutting very required area of legal need.” (Lawyer, MLF)

This point was reinforced by a barrister:

“My great concern is that governments see [pro bono] as an alternative to funding Legal Aid. They think they do not have to... The barristers will come to the party. Unfortunately that is my concern.”

A CLC lawyer articulated the inherent tension of the private sector providing free legal services:

“I think the business aspect of the legal profession does not necessarily cater all that well with pro bono work. So I think the legal profession is very much skewed to a money-making exercise, particularly in private practice. And I don’t think that private practice has yet figured out how to factor pro bono work into that equation. The tension between making money and doing pro bono work is quite real and the tension is felt not only at a high level management position but by those who are actually doing the work.” (CLC Lawyer)

Models of pro bono service delivery

Some lawyers we spoke to expressed frustration about the aspects of pro bono schemes, many of them legal clinics. The frustration stemmed from the layers of coordination often accompanying the provision of pro bono legal assistance:

“In terms of the administrative functions, often working through pro bono organisations can be quite clunky and time consuming, For instance, before a letter goes out on a clinic it will be drafted by a junior lawyer, settled by a more senior lawyer, settled again by the clinic coordinator and settled again by [CLC]. It is quite a long drawn out process.” (Associate, LLF)

A lawyer described the frustration of giving one-off pro bono advice in a piecemeal manner that doesn't allow resolution of the client's issue:

"Sometimes you feel that you are just giving advice but you don't quite know what the outcome will be. So you don't really have a client as such that you see through to conclusion. So that is a little demotivating." (In-house counsel)

In the analysis on the quality of pro bono work (above page 21), this report suggests that there is a connection between 'safe' or layered pro bono and the quality of the work performed. If lawyers are to feel intrinsically connected to the pro bono casework they are assigned, greater professional exposure is arguably necessary - having carriage of a matter usually entails a lawyer exercising their autonomy and professional judgment on how a case is to proceed, and how to best relate to and deliver services to their client. Future reviews and evaluations of pro bono-staffed legal clinics that operate in CLC and outreach locations would likely benefit from reducing the layers of coordination.

Pro bono coordination was however also portrayed in a favourable light. One barrister acknowledged the importance of pro bono referral schemes by describing what can happen when a matter is not vetted for legal merit:

"The worst referrals I have had for pro bono work are the ones that come from outside of the [CLC] filtering mechanism. So, when a punter off the street rings the bar association just looking for a barrister, they have almost always been horrible, horrible experiences because that client is looking for a barrister that way usually because the referral agencies have rejected them or done what they can for them... then it just turns into a huge whizz-bang complaint and they are very high maintenance."

This barrister continued:

"The biggest factor in continuing to take pro bono referrals would be... agencies have the resources to continue doing that vetting process. I know a lot of young barristers who've had a couple of those terrible experiences with badly screened referrals and they now do not do pro bono work because of it. It was too painful."

Conflicts of interest

Another frequent criticism or limitation on the reach of pro bono is the presence of positional or commercial conflicts of interest within large law firms to taking on a pro bono case.⁴⁸ This limits lawyers in those firms to only working on cases that do not compromise the interests of paying clients, and sometimes even potential paying clients. One senior associate that we spoke to described the conflict issue:

"Large firms are not prepared to act against clients even if there is no direct legal conflict... law firms are very sensitive about their client's interests. So what you [learn] at university about what constitutes a legal conflict... you can just chuck out the legal textbook because people in law firms either don't know the law, or don't worry about the law. They are more interested in commercial conflicts rather than legal conflicts. That means we cannot act against the interest of anyone who is our client, or anyone who we wish was our client. And it is the second limb – the people we wish were our client - and that would probably cover most of the ASX 200, 300, 400 and also most government departments. It is a disincentive because the pool of persons and organisation for whom we would do pro bono work is severely limited if any complaint was against any of the big boys in town - and often it is."

⁴⁸ See for example, Esther Lardent, 'Positional Conflicts in the Pro Bono Context: Ethical Considerations and Market Forces', (1998) *Fordham Law Review*, 2279.

Another lawyer spoke of the stalling effect that positional conflicts had on bringing proceedings against private companies and government departments. She said:

“It is often difficult to do the most efficient and effective pro bono work which is strategic litigation if you are conflicted out from doing it by your firm... if governments and companies were more open to law firms acting against them ... then that would be quite useful.” (Lawyer, LLF)

CONCLUSION

“It has been an incredibly rewarding thing to do, I would encourage all lawyers to find a way to engage in pro bono work.” (Senior Associate, LLF)

This study produced a rich and interesting set of discussions about lawyers’ personal motivations to do pro bono legal work. Legal professionalism, access to justice and lawyers’ personal values all formed an intrinsic motivational mosaic of the lawyers we interviewed. Overwhelmingly, pro bono was regarded by the lawyers we spoke to as a professional service ideal, defined by the provision of actual legal skills and not the donation of money or other non-legal forms of charitable giving. The study also illustrated the intertwined nature of workplace settings in shaping individual pro bono activity.

Through this research lawyers voiced some of their frustrations with pro bono work. These included the challenge of working with difficult clients, risk-averse pro bono coordination schemes, a legal assistance sector hampered by lack of government funding and the concern that pro bono will be used as a substitute for services that should rightfully be funded by government.

Our interviews with lawyers also yielded an insight into the particular communities of practice of pro bono. We observed the practice of large law firms with their considerable resources but equally revealing was the work of barristers and small and regional law practices, and the distinct pressures and cultures of pro bono that occur in different settings.

This ultimately was a heartening study that demonstrated the abiding commitment of lawyers in Australia to serve their communities:

“I don’t think we really stop and think how much is being done in comparison to other parts of the industries and professions across the country. In Australia I have absolutely no doubt that we are probably the strongest pro bono country anywhere outside of the US, and we do substantially more pro bono work that happens in a range of other western countries.... I don’t think as Australian lawyers we necessarily recognise that enough.”

“One of the lovely things about how our pro bono culture has developed is... there are lots of examples of collaboration.... I think genuinely, we really do provide an outstanding model in Australia for how it can be done, I think often we don’t recognise that ourselves.” (Partner, LLF)

PARTICIPANTS NEEDED

PRO BONO: PROFESSIONAL VALUES AND ATTITUDES

The UQ Pro Bono Centre is conducting research into the motivations, attitudes and values of legal practitioners who undertake pro bono work.

For this project to be a success we need lawyers to participate in brief interviews to share their views on pro bono work.

An Information Sheet describing the project in more detail is printed on the reverse side of this flyer.

Yes, I would like to volunteer my time. How can I be involved?

Telephone interviews will be conducted with participants from August to November 2014. Telephone interviews will primarily be conducted on Tuesday afternoons, from 1pm to 5pm. A telephone interview will take approximately 15 to 30 minutes. If you would like to participate, please email Monica Taylor: m.taylor@law.uq.edu.au or call 3346 9351. The research team will then contact you to arrange an interview time.



Participant Information Sheet

Title: Pro Bono: Professional Attitudes and Values

Description: An investigation into the motivations, attitudes and values of legal practitioners who undertake pro bono work.

Investigators: Law students participating in the UQ Pro Bono Centre.

Supervisors: Ms Monica Taylor, Director of UQ Pro Bono Centre at the TC Beirne School of Law, The University of Queensland;

Purpose of the study: You are invited to assist in this survey regarding the motivations, attitudes and values of legal practitioners who undertake pro bono work. This study aims to provide a deeper insight into the personal reasons why lawyers engage in pro bono work. The investigators also hope to discover what the legal community perceives 'pro bono' to be: what activities are legitimately included in pro bono work, and what is excluded. The investigators aim to discover this information by conducting telephone interviews with individuals who work in the legal sector.

Location: Telephone and/or face-to-face interviews will take place in Brisbane, Australia.

What would be expected of you: If you decide to take part of in this research you will be asked to answer some questions about your experiences and opinions regarding pro bono. The interview will take approximately 15 to 30 minutes. The interviews will be conducted over the telephone although face-to-face interviews may also be possible, subject to your preference. The investigators interviewing you will explain the purpose of the study to you and seek your agreement to participate before asking you any questions. *You can say NO if you do not wish to participate.* The interviewers will audio record your answers.

Benefits of participation: Although there is no tangible benefit (such as payment for your participation), you will be provided with the results of the study upon its completion. Your participation will benefit the legal profession more broadly as it contributes to a better understanding of this issue.

Ethical clearance: This study adheres to the guidelines of the ethical review process of the University of Queensland and the national statement on ethical conduct in human research. Whilst you are free to discuss your participation in this study with project staff (Monica Taylor email: m.taylor@law.uq.edu.au phone: 07 3346 9351), if you would like to speak to an officer of the university not involved in the study, you may contact the ethics coordinator on 3365 3924.

Confidentiality: The researcher will use the information you provide discreetly. All interview responses will be recorded anonymously so that it will be impossible to identify you or any other person in the research findings. Your name and those of any other people mentioned in the interview will not appear in any publication.

Your participation: We would be grateful if you did join in this study, but you are free to refuse to participate. Even if you decide to participate, you may withdraw from the research at any time without penalty by contacting any of the people listed below. There are no foreseeable risks above those of everyday life.

Results of the study: The results of the study are likely to be published in future.

Persons to contact: If you have any questions about this study please contact Monica Taylor (email: m.taylor@law.uq.edu.au phone: 07 3346 9351).

Introductory Questions

1. Gender (to note, not to ask)

2. Law firm size:

Small	Medium	Large
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3. Law firm location:

Inner city/CBD	Suburban	Regional	Rural/remote
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4. Years of practice

5. Main area of practice

6. Position:

Paralegal	Graduate lawyer	Solicitor
Associate	Senior associate	Partner
In house counsel	Barrister	Special Counsel

7. Age bracket

20 – 30	30 – 40	40 – 50	50 – 60	Over 60
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Your Pro Bono Involvement

1. Please describe the pro bono work that you are, or have been, involved in.

(a) – (e) are supplementary questions, to be asked only if Q1 is insufficiently responded to.

- a) How long have you done pro bono work?
- b) Have you done pro bono work since you commenced practice? Did you do pro bono work as a law student?
- c) How frequently do you engage in pro bono work? Has this amount varied with career progression?
- d) What area of law do you mainly practice in your pro bono work? Is this different to your ordinary area of practice?
- e) What proportion of the pro bono work you do is connected to a community legal centre?

Your Motivations

- 2. What is your primary motivation for participating in pro bono work?
- 3. Do you have any other personal motivations?
- 4. Are there factors that discourage you from doing pro bono work?

Your Perceptions of Pro Bono

5. How do you perceive the distinction between charity and pro bono?
6. Do you regard pro bono work for a not-for-profit organisation as being more or less beneficial to the public good, than individual casework? Why?
7. Do you regard pro bono law reform or policy initiatives as being more or less beneficial to the public good than individual case work? Why?
8. Do you think pro bono work conducted locally (e.g. that responds to unmet legal need in Australia) should be prioritised over pro bono work globally (e.g. helping defend human rights in third world countries)?
9. What is your employer's attitude and practice towards pro bono work?

(a) – (c) are supplementary questions, to be asked only if Q9 is insufficiently responded to.

- a) Do you feel that you are supported by your employer to undertake pro bono work?
- b) Does your employer engage in any incentives to encourage pro bono work?
- c) Do you think pro bono work is done to the same standard as paid legal work?

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