



DOING THE PUBLIC GOOD

AUGUST 2013

**A feasibility study of pro bono models for
Western Australia**

Prepared by Kalico Consulting for the WA PILCH Reference Group Scoping Study Subcommittee

'If justice is not accessible to ordinary Australians, the rule of law becomes mythical.'

The Honourable Wayne Martin AC, Chief Justice of Western Australia
(2012)

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DEFINITIONS AND ABBREVIATIONS

Access to Justice

There is no one consistent definition of ‘access to justice’ it is a term that is utilised in differing context to refer to different things. The term is often used in relation to ‘...opening up the formal systems and structures of the law to disadvantaged groups in society...(such as) removing legal and financial barriers but also social barriers such as language, lack of knowledge of legal rights and intimidation by the law and legal institutions...(it has) two dimensions: procedural access and also substantive justice.’ (Global Alliance Against Traffic in Women, www.gaatw.org/atj accessed 25/8/2013).

Legal Assistance Services

Reference to ‘legal assistance services’ include entities that receive a level of government funding to provide legal assistance services to the public, such as LAWA, ALSWA and CLCs.

Pro Bono

For the purposes of this study the definition of pro bono as provided by the Law Council of Australia has been adopted. That definition provides:

A lawyer, without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where:

- *a client has no other access to the courts and the legal system; and/or*
- *the client’s case raises a wider issue of public interest; or*

The lawyer is involved in free community legal education and/or law reform; or

The lawyer is involved in the giving of free legal advice and/or representation to charitable and community organisations.

Abbreviations

ALSWA	Aboriginal Legal Service WA
AGS	Australian Government Solicitor
CLC	Community Legal Centres
CLCAWA	Community Legal Centres Association (WA) Inc.
LAWA	Legal Aid Western Australia
LSWA	Law Society of Western Australia
NPBRC	National Pro Bono Resource Centre
PILCH	Public Interest Law Clearing House
QPILCH	Queensland Public Interest Law Clearing House
RRR	Rural, Remote and Regional
WABA	Western Australian Bar Association

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- Shayla Strapps, Case for refugees
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* There is a standing invitation to all the Pro Bono Coordinators of private firms to attend reference group meetings and it is noted that representatives from nearly all members of this group attended the stakeholder consultation held on 31 July 2013.

**Representatives from the law schools of Curtin University, Edith Cowan University, University of Notre Dame, and Murdoch University who attended the stakeholder consultation forum will be invited to join the Reference Group on an ongoing basis.

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EXECUTIVE SUMMARY

Western Australia has an active pro bono environment. Research undertaken for the study paints a picture in which we can see the West Australian legal profession engaging in pro bono activities through a diverse range of mechanisms, including but not limited to:

- Direct and/or ad hoc arrangements.
- Accepting referrals from schemes such as Law Access, managed by the Law Society of Western Australia (LSWA), the WA Bar Association (WABA) or courts, such as the Federal Court.
- Pro bono relationships with publically funded legal assistance service provider.
- The provision of interns and secondments to legal assistance services and Law Access.

At the same time, however it was evident from research undertaken for this study that Western Australia has capacity to do more and that current pro bono arrangements could be enhanced through a centralised approach to the coordination and delivery of services. A number of issues have been identified by the study in relation to the current Western Australian model. These include:

- A lack of clear access point(s).
- Referrals from one service to another, resulting in consumer confusion and frustration.
- Limited resources being utilised to re-assess the same application as consumers 'shop' for a scheme who will take on their matter.
- Inconsistent eligibility criteria being applied across different schemes.
- Duplication of service provision.
- An absence of a strategic pro-active approach that is directed at unmet legal needs.

The top three barriers to accessing pro bono assistance identified by legal assistance service providers included:

- Current referral pathways take too long.
- Commercial or actual conflict of interest preventing firms from acting in certain matters.
- Inconsistency in the criteria for pro bono assistance across the schemes.

From the perspective of law firm respondents, the top three barriers were:

- Agencies or organisations approaching firms did not understand the firms' area of expertise and pro bono priorities.
- A lack of tailored referrals, which match the firms' area of pro bono interest and expertise.
- Firm not having the expertise to provide assistance in particular areas of law.

On the whole a snap shot of pro bono activity in this State shows similarities with what is happening in other jurisdictions in terms of the type of pro bono matters being undertaken, areas of unmet legal need and the reasons why practitioners engage in pro bono, namely because it increases access to justice and it is seen as a professional obligation. Consistent with national data, what we know about Western Australian legal needs is that:

- Socioeconomically disadvantaged people are most vulnerable.
- A significant number of people take no action to resolve their legal problems and for those that do, most are not consulting legal advisers.
- Cost is the most significant barrier to obtaining legal advice.
- One in seven people living in remote and regional areas of Western Australia are travelling significant distances to seek advice.

The feasibility study found consistent perceptions from all stakeholders consulted that family law (property), employment law and commercial/contract advice are three key areas of legal need.

These areas in particular correlate with areas in which publically funded legal assistance services are either not providing any assistance, only limited legal assistance, or are beyond the capacity of those services.

In terms of what types of pro bono matters are being taken up, it was found that again consistent with national data (NPBRC *National Law Firm Pro Bono Survey 2012*), Western Australian firms are predominately sourcing their pro bono work from internal contacts and are mainly providing pro bono services to not-for-profit agencies in areas of commercial agreements and governance. Whilst legal assistance service providers reported that the top three matter types that they had been able to place included employment law, assistance with internal governance issues and family law, family law was also identified as one in which they were unsuccessful in placing. This last point was consistent with law firms identifying that the main area in which they would not be prepared to provide pro bono assistance with was family law. Findings in relation to family law matters presented as an anomaly as it was apparent that, unlike some other jurisdictions, the Law Access scheme will accept and has been successful in placing some family law matters and such placements have been mainly on the basis of a CLC or small-medium firm agreeing to act as instructing solicitor to a pro bono barrister.

Consultations identified broad support for a centralised entity to undertake a role in:

- Managing, assessing and placing Law Access, WABA and other public interest pro bono applications.
- Being a central contact point for pro bono inquires and referrals across all schemes.
- Having an advocacy role in the public domain including a role in policy and law reform.
- Having a strategic role in identifying and prioritising unmet legal need suitable for pro bono assistance.
- Coordinating clinics in areas of unmet legal need.

Four model options are presented to the Steering Committee in this report:

- An advisory group, which has oversight of existing schemes.
- A centralised clearinghouse, which brings together existing schemes into a single entity operating as a state based 'stand alone' organisation.
- A centralised clearinghouse, which brings together existing schemes into a single entity operating as part of a multi-state model.
- A partnership model.

The consultant's recommendations are set out in the following section.

This inquiry comes at an interesting point in time. There has been the opportunity to review how pro bono is managed in other Australian jurisdictions where centralised public interest clearinghouses (PILCHs) have been operating for a period of time and at a time when there is movement towards the establishment of a multi-state pro bono clearinghouse model, as evidenced by the formation of Justice Connect (a merger of PILCH Victoria and NSW PILCH). This study also takes place at a time when more than ever the stress upon existing legal service assistance providers has seen increased pressure for the provision of pro bono assistance as individuals who do not qualify for publically funded legal assistance and who cannot afford the services of private practitioners seek alternatives.

Despite the principle that pro bono is not a substitute for properly funded public legal assistance services the reality is that pro bono is increasingly being sought as one strategy to respond to the gap in access to legal services. How Western Australia chooses to respond to this challenge is an important component of the access to justice picture.

RECOMMENDATIONS

1. WA would be best served by introducing formal mechanisms and structures that will allow for the better coordination of existing pro bono services and schemes with the potential to enhance existing services.
2. That any model to enhance pro bono coordination and planning needs to:
 - Include a rural, remote and regional (RRR) representative and incorporate RRR considerations, interests and needs.
 - Ensure that a Western Australian focus to pro bono service delivery remains central.
 - Ensure that existing pro bono relationships with local firms and legal assistance services are maintained and enhanced.
 - Be resourced to take on higher-level pro bono functions including, identifying unmet legal need, policy and law reform.
3. That enhanced pro bono services include partnerships with entities such as university law schools and The College of Law to provide opportunities for student clinics and graduate work experience.
4. That a Western Australian Pro Bono Advisory Committee be established or pro bono be included in existing access to justice committees, such as the WA Jurisdictional Forum.
5. That the establishment of a Western Australian stand alone clearing house, similar to QPILCH, is not a viable short to medium term option in the current funding climate.
6. That the most feasible options for improved pro bono coordination and planning in Western Australia at this stage are either through extension of services done under a partnership model and/or by joining a multi-state model.
7. That the Steering Committee take the option of extending pro bono coordination and planning services through a partnership model to the next stage of feasibility and investigation.
8. That the Steering Committee take the option of joining a multi-state clearinghouse model to the next stage of feasibility and investigation.

1 INTRODUCTION

1.1 Background

Pro bono services in Western Australia are currently provided through a range of diverse mechanisms. Absent from the jurisdiction has been a single entity or entry point that brings together the various schemes and pro bono services so as to provide a coordinated and strategic approach to the promotion and delivery of pro bono services in Western Australia.

In identifying the need for this feasibility study, a number of perceived problems had been identified in relation to the current Western Australian model. These included:

- A lack of clear access point(s).
- Referrals from one service to another resulting in consumer confusion and frustration.
- Limited resources being utilised to re-assess the same application as consumers 'shop' for a scheme who will take on their matter.
- Inconsistent eligibility criteria being applied across different schemes.
- Duplication of service provision.
- An absence of a strategic pro-active approach that is directed at unmet legal needs.

In February 2013, with funding assistance from Lotterywest, the Community Legal Centres Association WA (CLCAWA) and the Law Society of Western Australia (LSWA) partnered to undertake a feasibility study on the establishment of a Public Law Interest Clearing House (PILCH) or some other similar pro bono scheme or entity in Western Australia. Kalico Consulting was engaged to conduct the study.

LSWA and CLCAWA jointly formed a reference group (WA PILCH Reference Group), drawing upon a cross section of individual and organisational stakeholders from the community, government, private and not-for-profit sectors. The WA PILCH Reference Group in turn appointed a Steering Group to have oversight of the project and report back with recommendations. The terms of reference for both these groups are provided in Appendix 1.

The objectives of the feasibility study were to:

- Map and describe current pro bono service in Western Australia.
- Identify and discuss issues arising from existing pro bono service provision arrangements for Western Australia. This discussion will include (but not be limited to) issues pertaining to efficiencies and duplication of existing services.
- Identify unmet need for pro bono services in Western Australia.
- Review existing pro bono delivery service arrangements in other national and international jurisdictions and discuss their appropriateness and applicability to the Western Australian context.
- Identify models suitable to the Western Australian context, which bring together a range of providers.
- Recommend models, associated general costs for delivering pro-bono services in WA, identify any possible funding sources and identify any key changes that would be required to the existing arrangement.

It is important to note that the purpose of this project was not to undertake an evaluation of existing pro bono schemes.

1.2 Methodology

The methodology designed for the study sought to consult widely with a range of stakeholders including:

- Legal firms providing pro bono services.
- Legal assistance agencies such as Legal Aid WA, community legal centres and Aboriginal legal services.
- Representatives from key government agencies, courts and tribunals.
- Relevant Law Society committees.
- Pro bono coordinating and resourcing agencies in other states and territories.
- The Western Australian Bar Association.
- Universities delivering legal studies.

These consultations were held through a series of interviews and meetings (see Appendix 2 for a list of consultations).

Two on-line surveys were undertaken - one targeting legal firms and the other legal assistance agencies. The purpose of the surveys was to gain data on the current use of pro bono services, barriers to the utilisation of pro bono services, perceptions of unmet legal need and key functions that should be considered in the development of new models of coordination. The study was also informed by a literature review of best practice, innovation, legal need and benchmarking in pro bono services and schemes from national and international jurisdictions.

Updates about the project were provided through the LSWA and CLC WA and by way of an article published in the July 2013 edition of Brief (Appendix 3).

It was originally intended to gain input from consumers of pro bono services through a LSWA survey of people and agencies who have used the Law Access Scheme. However this survey was unable to be undertaken within the timeframe of the study due to logistical issues for Law Access.

A discussion paper was produced which provided preliminary findings from the study and identified four potential model options. The paper was distributed by the LSWA and CLCAWA to a range of stakeholders who were also invited to attend a forum to discuss and workshop the options.

Feedback from the forum and the Steering Committee has been incorporated into the final report.

2 PRO BONO IN AUSTRALIA

2.1 A brief history

2.1.1 Early days

Pro Bono has a long-standing association with the legal profession. It has been ‘...traced back to practices in early Roman Tribunals, mediaeval ecclesiastical courts and thirteen to fifteenth century Scottish and English legal proceedings’ (Rhode 2005:3). Whilst there may be some debate and uncertainty regarding the full extent of its practice (Western, Makkai & Natalier 2001) it is nevertheless a tradition that has been inherited by the Australian legal profession from early days.

Up until the establishment of large scale state funded legal aid services in the 1970’s, the provision of legal assistance to persons unable to afford legal counsel was through *ad hoc* arrangements undertaken by members of the private legal profession and a patchwork of various government statutory schemes such as crown assignments, Poor Prisoners Defence Acts and the establishment of Public Solicitors Offices in certain jurisdictions, namely South Australia in 1925, Victoria in 1928 and New South Wales in 1943 (Lynch 2001).

Some law societies also developed in-house assistance schemes. South Australia was the first Australian jurisdiction to implement a formal ‘legal assistance’ scheme through an undertaking provided by the South Australian Law Society that its members would provide assistance in deserving circumstances (Sackville 1975). In Western Australia, the Law Society established a legal assistance scheme in 1960, which became known as the Shopfront Legal Advice Service. This was some time before the establishment of the first Legal Aid Commission in Western Australia in 1977 (which was the first Legal Aid Commission to be established nationally):

Until 1971 the scheme (the WA Law Society Scheme) received little financial backing from the State Government and practitioners received no payment of fees unless costs were recovered from the other side. In 1971 the Law Society Scheme received additional funding by virtue of the Legal Contribution Trust Act of 1967 and the Legal Assistance Rules of 1971. Ongoing responsibility for providing legal assistance was vested with a sub committee of the Law Society, which continued to rely on private practitioners to conduct the cases (Coates n.d).

2.1.2 Establishment of publically funded legal assistance

Significant change in the delivery of legal assistance came about in the 1960’s and 1970’s, not just in Australia but also in international jurisdictions, where the notion of access to justice as a right gained precedence (Noone 2001).

The early 1970’s saw the establishment of a new type of legal service in Australia. In 1970, the first Aboriginal Legal Service was established in Redfern and in 1972 the first community legal centre, Fitzroy Legal Service, was established in Melbourne. Similar services were very quickly established throughout Australian jurisdictions including Western Australia, with the Aboriginal Legal Service Western Australia in 1973 and community legal centres in the early 1970s (Robertson 2001).

Whilst these new legal centres employed in-house lawyers, they also relied upon lawyers employed in private practice who volunteered their time to sit on management committees, staff after hours client advice clinics or take referrals. Noone (2001:134) states that in her view, ‘...the volunteers at the newly established community legal centres would not have said that they were doing pro bono work. Their involvement was motivated by a desire to change the impact of law on the poor.’

The predecessor to the current day Legal Aid Commissions began in 1973 with the Whitlam Government’s announcement of the establishment of the Australia Legal Aid Office. For historical reasons associated with the dismissal of the Whitlam Government, a review of the system was

undertaken, resulting in the eventual replacement of the original entity with independent statutory Legal Aid Commissions in each State and Territory (Coates n.d).

2.1.3 Cuts to legal assistance and the growth of pro bono referral schemes

Significant cuts to legal aid funding by the Howard Government in the mid-1990s is often cited as a catalyst for the transition of pro bono from a practice undertaken by lawyers on an *ad hoc* and unstructured basis towards one which saw the establishment of specialist formal schemes directed at the delivery and referral of pro bono services (Regan 2000). This development has taken place within the clear principle that the provision of pro bono services by the private legal profession should never be taken as a substitute for properly funded public legal assistance agencies. The impact of historical funding cuts in the legal assistance sector continues to have currency (Catanzariti 2013) and it is in this context that the current discussion of the provision and coordination of pro bono services takes place.

The 1990's saw the establishment of a range of formal pro bono referral schemes by various law societies and bar associations, as well as the establishment of structured law firm pro bono schemes and court and tribunal pro bono schemes (Western, Makkai & Natalier 2001). Throughout this period pro bono was also being strongly encouraged and supported by the Law Council of Australia, as evidenced by the publication of its first pro bono definition in 1992 and its submissions to the Senate Inquiry into the Australian Legal Aid System in 1997 (Regan 2000).

In August 2000, the first national Pro Bono Conference, *For the Public Good*, was held in Canberra as an initiative of the then Australian Attorney General, Darryl Williams. This conference and the attendant dialogue contributed to the development of a national pro bono focus. In October 2000, Attorney General Williams announced the establishment of a National Pro Bono Task Force, whose task was to develop an action plan to encourage pro bono initiatives.

The subsequent report of the Task Force released in June 2000, articulated the following underlying principles in the provision of pro bono services:

1. Pro bono practice is not a substitute for legal aid.
2. Pro bono schemes offer benefits not always possible via legal aid schemes
3. The design and provision of pro bono services should be driven by client needs.
4. Pro bono clients should expect and receive the same high quality of service as all other clients.
5. Pro bono is a voluntary activity deriving from the legal profession's service ideal and is a shared responsibility involving individual practitioners, law firms, peak professional bodies, courts, law foundations and others.
6. There is an important role for government in encouraging, supporting but not controlling pro bono initiatives.

The Task Force identified five key actions, namely:

- i. The establishment of an Australian pro bono resource centre.
- ii. Producing a best practice handbook for managing pro bono law.
- iii. Supporting client-focused research.
- iv. Developing national professional practice standards for pro bono legal services.
- v. Fostering a strong pro bono culture in Australia.

The first action was implemented in August 2002, with the launch of the National Pro Bono Resource Centre (NPBRC) in Sydney. The NPBRC is funded by the Commonwealth Attorney General's Department and each state and territories equivalent Attorney General Departments. It operates as a not-for-profit company limited by guarantee with the objectives of promoting and supporting pro bono through its role as a broker, researcher, advocate and provider of resources (NPBRC 2013). Some of the major initiatives of the NPBRC include:

- Development of a pro bono manual.

- The promotion of a National Pro Bono Aspiration Target of 35 hours per lawyer per year.
- A biennial pro bono survey of national law firms.
- Introduction of a National Pro Bono PI Insurance Scheme.
- Development of a range of reports, publications and resources.

Appendix 4 to this report contains a table compiled by the National Pro Bono Resource Centre, which provides a useful summary of key dates in the development of structured pro bono programs in Australia. It shows that the first pro bono clinic to be established was in 1989 by Freehills in Perth and that the Law Society of Western Australia (LSWA) was one of the earliest Law Societies to establish a dedicated pro bono referral program with the establishment of Law Access in 1992.

2.1.4 Establishment of Pro Bono Clearing Houses

The first Public Interest Law Clearing House (PILCH) was established in 1992 in New South Wales. It was auspiced by the NSW Public Interest Advocacy Centre (PIAC) and arose from a joint task force, which included the NSW Law Society, PIAC and members of the private legal profession. The model was based upon a New York pro bono organisation, New York Lawyers for the Public Interest, which addressed unmet legal need through partnerships with the private legal profession (NPBRC 2006).

The establishment of a PILCH in Victoria followed on in 1994 as an initiative of the Consumer Law Centre of Victoria and with support of Fitzroy Legal Service, the Victorian Bar Council and a number of private law firms. The model for this clearinghouse was based upon the NSW PILCH.

QPILCH, the public pro bono clearinghouse in Queensland, was launched in 2002, again based upon the NSW model and was a joint initiative of private law firms, the Bar Association, Legal Aid and Griffith University.

South Australia established SA Justice Net in 2009, utilising the models of the earlier established clearinghouses.

Some of the distinguishing features of the early PILCH entities include:

- The requirement that the matter concern a legal matter of public interest.
- In addition to the assessment of matters, clearinghouses also coordinated various projects and or clinics with the aim of promoting the public interest and access to justice.
- The model involved a membership base that contributes to the financial resources of the clearinghouse by way of payment of a membership fee.
- PILCHs were 'stand alone' entities whose primary purpose was concerned with the assessment, referral and promotion of pro bono matters. By comparison schemes operated by Law Societies or Bar Associations were programs usually managed as part of those entities' community service departments.

2.2 The current Australian landscape

2.2.1 Policy context

The Commonwealth Government has acknowledged that it has a role in supporting and encouraging pro bono work. The policy context for this support is found within the Access to Justice Strategic Framework of the Australian Government (Access to Justice Taskforce 2009), with particular reference to the framework's principles of equity, efficiency and effectiveness, which provide that:

- Access to the justice system should not be dependent upon the capacity of an individual to afford private legal representation.
- Greater efficiencies can be achieved through prevention of disputes and early intervention.
- Judicial initiatives need to be considered systemically.

The report of the Access to Justice Taskforce recognised the contribution made by lawyers and law firms through their participation in pro bono schemes (Access to Justice Taskforce, 2009:151). There was only one specific pro bono recommendation of the 2009 Taskforce, namely R12.2 – that undergraduate law degrees include opportunities to undertake pro bono work.

One of the other recommendations of the Taskforce was the establishment of National Partnership Agreements (NPA) on Legal Assistance Services, which provide Commonwealth funding to legal assistance services in the program areas of legal aid, community legal services, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services for Aboriginal Australians. The NPA negotiated between the Commonwealth and respective states and territories does not make any specific reference to the funding of pro bono schemes or programs. A review of the NPA announced by Government in 2011 did not include pro bono services within its terms of reference.

There have however been a number of Australian Government sponsored pro bono specific approaches including:

- Funding the NPBRC.
- Sponsoring events such as the Access to Justice and Pro Bono Conference.
- The Commonwealth Government's commitment to consider the amount of pro bono hours when assessing tenders for legal services.
- Requiring that service providers who are part of its Legal Services Multi-Use List (and as such pre-qualified to provide legal services to federal agencies and government departments) meet a commitment to pro bono legal work either through by being a signatory to the NPBRC aspirational target or to some other target (Legal Services Expenditure Report 2011-2012:10).
- Introduction of a new Commonwealth legal financial assistance scheme – for disbursement support to expand the category of eligibility for funding in Commonwealth matters.
- Establishment of the International Pro Bono Advisory Group.

In terms of future pro bono priorities, an integrated approach involving multi-disciplinary pro bono collaboration has been identified by the Australian Attorney General Mark Dreyfus QC in an address to the Victorian Bar (Third Annual CPD Conference 2013) as one model that would be explored further by an Australian Labor Government. The Australian Attorney General also identified his Department's interest in exploring the following initiatives that to a large degree pick up on the recommendations of the 2009 Access to Justice Taskforce:

- Colocation or integration of legal services with other services (such as health and welfare).
- The establishment of cross-subsidised practices (for example Salvo's Legal in Sydney).
- Encouraging university law schools to establish legal clinics and increase access to clinical legal education programs for law students.
- Including pro bono as both as a prerequisite for law graduates as part of their practical training as well as to being admitted to practice.
- Developing strategies to engage small and mid-tier firms and young lawyers in pro bono work.
- Enabling pro bono work in rural, regional and remote areas.

There is currently no policy indication that the Commonwealth has an intention to provide core funding for pro bono organisations at levels similar to the funding of community legal centres. Consultations with some national law firms undertaken for this study have suggested that if any Commonwealth specific funding were to be provided, it would most likely be directed at a multi-state model rather than directed to state or territory based entities. Having noted such comments, it is also the case that some existing PILCHs do receive some funds from the Commonwealth Community Legal Services Program (Attorney Generals Department 2012).

2.2.2 Recent developments

On 20 June 2012, the Australian Attorney General and Assistant Treasurer announced that the Productivity Commission would undertake an examination of how to improve access to justice in Australia. The terms of reference cover a range of issues including an assessment into the real costs of

legal representation and an assessment of the level of demand for legal services, including an analysis of the number of people who cannot afford legal services but who do not qualify for legal assistance services (Bradbury 2013). The inquiry will also look at current structures and alternative mechanisms to improve equity and access to justice. The public inquiry process may present an opportunity for issues pertaining to unmet legal need and the role of pro bono in this State to be presented.

In July 2013, the Australian Attorney General also announced funding of \$4 million over four years to establish national self-representation schemes in the Federal Court and Federal Circuit Court. This scheme is based upon a pilot operated by QPILCH.

2.2.3 Schemes currently in operation

In terms of the current Australian pro bono landscape, there is a diverse range of schemes and organisations directed at the assessment, referral, coordination and promotion of pro bono legal services. Mapping these current arrangements is limited to formal schemes and does not capture the full spectrum, which includes informal and/or less publicised pro bono arrangements. Table 1 provides an overview of the range of 'formal' pro bono specific schemes /organisations currently in operation in Australia. The table assumes that national law firms with a pro bono program have a presence (or potential presence) in each jurisdiction. A more detailed discussion comparing the various schemes is provided in section 5 of this report.

TABLE 1: SUMMARY OF CURRENT SCHEMES

	Law Society	Bar Assoc.	Clearing House	Law Firm	Court/Tribunal	Other
National					Federal Court	NPBRC
WA	✓	✓		✓	SAT	Case For Refugees Street Law ECU Criminal Justice Review Project
SA	✓		✓	✓		Adelaide Legal Outreach Service (Adelaide Uni. Law School)
NT	✓			✓		
QLD	✓^		✓^	✓		
NSW	✓	✓	✓*	✓	Duty Solicitor/Barrister Scheme: CBD Local & District Courts	Homeless Persons Legal Service Cancer Council NSW Legal Referral Service
ACT	✓			✓		
VIC	✓^	✓^	✓*^	✓	Duty Barrister Scheme: Melbourne Magistrates Court, Supreme Court, Court of Appeal and County Court	
TAS	✓					

^The Clearinghouse operates the scheme

*As of 1 July 2013, the Victorian and NSW PILCHs merged to form a single entity.

2.2.4 Law firm pro bono programs

Capturing data about the extent of current pro bono practices undertaken by law firms is difficult. This is due to a combination of factors, such as the nature of work undertaken by some firms who do not have a 'formal' pro bono practice. In cases where firms do operate a formal scheme, the

absence of a consistent format or approach in how firms record their pro bono practice complicates and limits the analysis of data.

Apart from surveys undertaken from time to time by individual law societies, such as NSW in 1991 (Law and Justice Foundation 2002), the biennial National Law Firm Pro Bono Survey undertaken by the NPBRC provides the most comprehensive snapshot of pro bono practice taking place amongst *national* Australian law firms. The most recent survey, reported in 2013, received responses from 36 of 51 Australian firms that have 50 or more full time equivalent lawyers. The main findings of the latest survey found that (NPBRC 2013:3-5):

- Over 60 percent of pro bono work is being undertaken for organisations as opposed to individual clients.
- More than half of the pro bono work being undertaken is sourced outside of pro bono referral schemes, clearinghouses and the community legal centre sector.
- In 2012, 32 firms provided 343,058 hours of pro bono work.
- Main areas of pro bono practice were governance, DGR applications, employment law, commercial agreements and incorporations.
- Main areas of rejected requests for pro bono assistance were family law, wills/probate/estates, criminal law and immigration law.
- Over half of the pro bono referrals came from outside pro bono referral schemes, the top sources of referral being from in-house sources such as employees, internal pro bono programs and clients.

For the purposes of this study it was not possible to obtain a jurisdictional breakdown of the NPBRC survey results, however it is possible to draw some comparisons between these national results and data collected from Western Australian firms and this is discussed in Section 3.

2.2.5 Variety of schemes equals fragmentation?

Writing in 2000, Regan (p.395) noted, ‘...the variety of schemes raises some concerns regarding the fragmentation and lack of coordination of the system.’ Arguably, this observation is still relevant in today’s pro bono environment (Noone 2011). For example, data collected in Western Australia for this study identified the lack of consistency amongst the various Western Australia pro bono schemes as one significant barrier impeding access and engagement with pro bono services in this state. In a broader context, the fragmentation of existing legal services across Australia was also highlighted in the recent Legal Australia-Wide Survey undertaken by the Law and Justice Foundation of NSW:

... there is considerable fragmentation in legal service delivery, with different types of legal issues tending to be dealt with separately by different legal service providers who function fairly autonomously (Coumarelos et al. 2006; Forell et al. 2005; Scott & Sage 2001). In each Australian jurisdiction, a diverse range of private and public agencies provide a variety of legal services. Private lawyers often specialise in specific areas of law, and some, but not others, provide pro bono services. (Coumarelos et al. 2012:213).

The authors argue that their findings support the need for an integrated and holistic legal service model, which goes beyond relatively small-scale initiatives such as pro bono partnerships between private and public legal services (Coumarelos et al. 2012). Even a moderate approach to integration that results in ‘...harmonising various activities to minimise duplication between agencies’ has benefits (Coumarelos et al. 2012: 215).

There are two aspects to the observation about fragmentation. The first relates to how individual jurisdictions manage the range of pro bono schemes operating within their borders. Some have attempted an informal approach, such as the formation of the Western Australian Pro Bono Network. This is a loose network of pro bono stakeholders who convene two to three times a year to discuss common issues. At times it has included representatives from private law firm pro bono programs, community legal centres, Legal Aid WA, LSWA Law Access, ALSWA and the University of Western Australia Law School. It operates as an informal, information sharing network, without terms of reference.

Other jurisdictions have responded by putting in place formal mechanisms to consolidate and create a single intake, assessment and referral point. For example, in Victoria and Queensland the approach has been to incorporate the Law Society and Bar schemes within the operations of the PILCH. Twelve years ago PILCH Victoria came to an agreement to manage the respective schemes of the Victorian Law Institute (LIV) and Bar Association in return for a management fee. This has resulted in a streamlining of the administration of what were three separate schemes. It has also meant that PILCH Victoria no longer had a focus on only assessing matters that were of 'public interest', as they incorporated the broader criteria of the LIV and Bar Association schemes (Consultations 18 March 2013).

In NSW, the establishment of three institutional pro bono schemes in the period 1992-1998, combined with the growth of interest in pro bono, led to the commissioning of a review of existing pro bono services with a particular emphasis upon ways in which pro bono in that state could be better coordinated. The review undertaken by the Law and Justice Foundation of NSW was completed in 1998 (reprinted in 2002). It identified four possible models for the improved structure, organisation and delivery of pro bono services with a recommendation for a 'central contact model' (Law and Justice Foundation 2002:75).

The second aspect to the fragmentation observation specifically deals with the potential of a multi-state pro bono clearinghouse model that would consolidate the operations of individual state based clearinghouses and potentially avoid replication of some of the functions currently taking place within separate jurisdictions. The decision taken by PILCH Victoria and PILCH NSW to merge into a single entity (Justice Connect) as from 1 July 2013 has served to highlight this as a possible future direction in the delivery of pro bono services. It was apparent from the consultations undertaken with PILCHs and with some national law firms that there is a spectrum of views regarding the feasibility and/or inevitability of a national model.

2.2.6 Emerging trends

The move towards a multi-state clearinghouse mode as an emerging trend has been discussed above.

Another potential emerging theme in the future coordination and delivery of pro bono services is identified in the Legal Australia-Wide Survey that promotes the integration of legal and non legal responses, in particular:

...using non-legal professionals as more direct gateways to legal referral is one method for coordinating legal and non-legal services...The broad adverse impacts of legal problems add further weight to the proposal that a coordinated response to legal and non-legal needs, through joined-up legal and non-legal human services, is likely to be beneficial. (Coumarelos et al. 2012:214-215)

The theme of an integrated legal system, incorporating both legal and non-legal services, also emerges in the recommendations of the 2009 Access to Justice Taskforce and has more recently been highlighted by the Australian Attorney General (Third Annual CPD Conference 2013, Melbourne).

The private legal sector in Australia has in recent years seen significant changes brought on by mergers and acquisitions by global law firms and the rapid expansion of opportunities in the Asia-Pacific region (NPBRC 2013 and ALMJ March 2013). The extent to which these changes will impact upon pro bono programs remains to be seen. In a recent article, John Corker, Director of the NPBRC, noted that the internationalisation of Australian firms potentially could have both a positive and negative impact dependent upon the culture of the acquiring firms. The article also went on to note that the 'tightening' of the legal market had the potential to affect the ability of lawyers to contribute to pro bono work (O'Gorman 2013).

2.3 The international context

There are clear comparisons between the Australian pro bono experience and those of other jurisdictions. The tensions arising from the absence of universal legal services, cuts to government funding of legal assistance services and an increase in legal need and complexity, is a theme repeated in the international literature (Canadian Bar Association, 2012 and Buckley, 2010).

The development of schemes and entities directed at the coordination and referral of pro bono services is evident in comparative international jurisdictions such as Canada, the United States and the United Kingdom. As noted in the previous discussion, the establishment of PILCHs in Australia was modeled upon similar entities operating in the United States and this model has since been taken up and replicated across various Australian jurisdictions.

United Kingdom

In 2010, the National Pro Bono Centre was established in the United Kingdom to operate as a national clearinghouse. The Centre brings together and houses in one location the three arms of the legal profession's pro bono clearinghouses and other related pro bono charities as a means of enhancing the coordination of pro bono resources and services. The vision of the centre is to provide a '...central resource for people seeking pro bono legal advice and representation, making it easier for people in need to seek and receive help' (www.nationalprobonocentre.org.uk, accessed 19/8/2013).

The entities who are co-located include the Bar Pro Bono Unit, Law Works (the solicitors pro bono group), CILEX Pro Bono Trust, the Access to Justice Foundation (a fund raising and distribution entity), the London Legal Support Trust (which raises funds to provide free legal advice services) and iProBono (a web based service connecting pro bono legal services to organisations seeking legal advice and assistance).

Law Works acts as a clearinghouse, brokering pro bono services between individuals, community groups, solicitors, in-house counsel, mediators and law students. Law Works is supported by the Law Society and receive funding through a combination of grants, memberships, donations and fundraising. In 2010 they had a staff of 14 FTE. Their services include:

- Network of national clinics providing free legal advice sessions
- Mediation services
- Casework (pro bono referral service)
- Self-help resources
- Individual projects

The Bar Pro Bono Unit operates a clearinghouse that matches barristers with individuals requiring pro bono assistance. Applications are received via agencies and organisations and are assessed by the unit to determine merit and suitability. As of 2011, it was employing six full time staff and had 2,700 members. The majority of funding for the service is received through the Bar, with other funding received through fund raising events and donations.

In 2001, the UK Attorney General established a pro bono committee comprised of the various pro bono stakeholders across the legal profession and not for profit sectors. The current Attorney General chairs the committee and its aim is to coordinate the delivery of pro bono legal services at a national level. To compliment the work of the Committee, a website provides generic information to both members of the public and the legal profession on how to access pro bono services or get involved in the provision of those services.

United States

Some commentators note the comparatively longer history of formalised pro bono structures in the United States compared to other jurisdictions, such as Canada and Australia (Canadian Bar Association, 2012:11). The American Bar Association (ABA) has a Standing Committee on Pro Bono and Public Service, which has established the ABA Centre for Pro Bono. The Centre provides a range of resources for legal practitioners as well as undertaking a role in the development of pro bono model rules and policies. It has an extensive website which provides links to a range of resources such as listings of national and state pro bono programs.

There are a significant number of state based pro bono programs and clearinghouses, such as the New York Lawyers for the Public Interest (NYLPI), which influenced the establishment of PILCHs in Australia. This service operates a pro bono clearinghouse as well as specific clinics in the areas of disability rights, health justice and environment justice. The NYLPI employs over 30 staff and operates with a board of directors but has also established an advisory council tasked to promote the work of the centre as well as to sponsor a range of events in support of the work that is undertaken.

Probono.net is a national web based initiative that has developed an online presence providing a range of resources for lawyers, students and educators to assist in connecting them to pro bono programs and services. It also manages other online services including:

- LawHelp, for consumers seeking assistance by directing them to legal services and online self help resources,
- LawHelp Interactive, to assist self-representing litigants and
- Pro Bono Manager to assist law firms wanting to establish and expand their pro bono programs.

Canada

The Canadian experience of pro bono reads very closely to the Australian experience. In particular the impact of federal cuts to legal aid funding in the 1990's (similar to the Australian experience) has exacerbated the *'...significant issue of disparity in coverage across Canada'* and seen a corresponding expansion of formal pro bono schemes (Canadian Bar Association, 2012:5-6).

Issues created by unmet legal need in Canada and the response to this by the legal profession in that jurisdiction is the subject of current discussion and debate:

Because public legal services are not constitutionally required of governments (except in certain limited types of cases), and the public has not generally demanded that access to justice be an integral part of Canada's social safety net, governments have been able to cut legal aid funding without significant political risk. The question as to how and who will fill the gap left by those cuts could be called the "elephant in the room", and something that governments and justice system participants are struggling to figure out. (Canadian Bar Association, 2012:17).

A number of Canadian provinces have established clearinghouses to facilitate and coordinate pro bono services between members of the community and the legal profession. The amalgamation of two separate pro bono services in British Columbia into a single entity Access Pro Bono is detailed in Section 5.

3 PRO BONO IN WESTERN AUSTRALIA

3.1 Policy context

The Department of Attorney General is responsible for providing legal, justice, registry, guardianship and trustee services to the Western Australian community and to the State Government. It also has role in leading and influencing justice reform and strategic development for the state (Strategic Framework 2012 -2015). The Department provides funding to Legal Aid WA and also administers a grants program from funds collected pursuant to the *Criminal Property Confiscation Act 2000*.

The Western Australian Government provides recurrent funding to community legal centres through a program managed by Legal Aid WA. The establishment of a state CLC funding program was one of the key recommendations of the Joint Review of Community Legal Centres (2003:1). This recommendation was implemented in 2004/2005. The Attorney General also sponsors an annual Community Service Law Award, which recognises the pro bono work of a legal practitioner. Consultations undertaken with the Policy and Aboriginal Services unit of the Department (Interview 10 May 2013) did not identify any detailed government policies directed at the development of pro bono in Western Australia.

There is scope to open a dialogue with the Department on how the provision of coordinated and well supported pro bono services provided by members of the Western Australian legal profession can enhance Department objectives in the delivery of its services and more generally contribute to access to justice.

3.2 Mapping current Western Australian pro bono services

3.2.1 Overview

The history of pro bono services in Western Australia has tended to be overshadowed by interstate developments, leaving an anecdotal view that the pro bono culture in this state is not as 'developed' as its counterparts on the eastern coast (Interview: 20 March 2013). However as noted, Western Australia has a not insignificant role in the story of the development of pro bono legal services in Australia.

Western Australia has a number of different schemes directed at assessing and coordinating pro bono requests from community members and not-for-profit organisations. These schemes are in addition to various individual pro bono arrangements that happen on an *ad hoc* basis, involving private practitioners/firms, legal assistance services, as well as other not-for-profit organisations.

Some of the main themes to emerge from the investigation into the current pro bono environment in Western Australia include:

- Law Access is operating at capacity on the basis of its current levels of resourcing.
- Law Access is successfully engaging with small to medium sized law firms.
- With the exception of family law matters, there are a number of similarities between the survey findings for WA and those reported in the NPBRC National Law Firm Pro Bono 2012 Survey, namely, WA firms are predominately sourcing their pro bono work from internal contacts and are mainly providing pro bono services to not-for-profit clients in areas of commercial agreements and governance.
- The absence of an instructing solicitor is the main reason why barristers participating in the WABA scheme decline to take on a pro bono matter.

The main barriers to pro bono provision in the current Western Australian environment have been identified as:

- Current intake pathways take too long.
- Confusion around the different criteria and requirements of existing pro bono schemes.
- The lack of tailored referrals that match firms' pro bono expertise and interest.
- Conflict of interest (actual or commercial) prevents firms from acting.

The following discussion provides an overview of pro bono schemes currently operating in Western Australia. The discussion does not involve an evaluation of those schemes.

3.2.2 Law Access

In November 1991, the then President of the Law Society of Western Australia, (now) Justice John Chaney, announced a new pro bono initiative to be launched in early 1992. The Law Access Pro Bono Clearing House was the culmination of a year's work by the Law Society's Pro Bono Committee. At the time the initiative was seen as a means to 'rationalise the provision of pro bono services within the community by the legal profession' (Brief 1991:6), as well as an opportunity to raise public awareness of the pro bono services provided by the legal profession in Western Australia.

Until 2008, Law Access was managed as part of the Law Society's Shopfront lawyer service. In 2008, the Law Society decided to cease operation of the Shopfront service and focus upon the pro bono referral scheme. Law Access receives triennial funding from the Public Purpose Trust (PPT), currently funded to 2016), as well as in-kind support from the Law Society.

Law Access describes its function as the coordination of pro bono services provided by members of the Western Australian legal profession for those in the community who cannot afford the services of a private lawyer and who are unable to obtain assistance from legal aid or a community legal centre. The scheme also provides a service for not-for-profit organisations seeking legal assistance.

The Executive Manager for Community Services is employed for 3.5 days a week and manages and operates the scheme as one of a range of community programs offered by the Law Society, this allows for about 16.8 hours per week on Law Access. A part time worker is employed for 7.5 hours per week who also supervises a law student from Edith Cowan University; this is an intern arrangement with the University with a new student inducted every three months. The Australian Government Solicitor (AGS) currently provides a lawyer one day a week on a rotational basis. This arrangement has been extended until October 2013.

The eligibility requirements for the Law Access scheme requires that the matter is:

- A 'considered matter type'.
- The applicant has exhausted all other avenues of legal assistance.
- The matter is beyond the capacity of a community legal centre.
- The applicant cannot afford the services of a private solicitor.
- The matter has legal merit.
- The applicant meets a means test.

Table 2 shows what matter types are excluded or considered under the Law Access scheme.

TABLE 2: LAW ACCESS MATTER TYPES

Excluded Matters	Considered Matters
<ul style="list-style-type: none"> • Disputes going through internal complaints mechanisms • Dividing fences disputes • Intractable disputes between neighbours • Matters which are customarily or can adequately be dealt with by the applicant without legal representation or assistance • Matters which are not/cannot be brought in a Western Australian court • Matters which have been refused by Legal Aid WA on the basis of merit • Minor criminal offences • Personal injury and negligence • Protection and care matters • Restraining orders • Native title • Tenancy • Uncontested deceased estates • Worker's compensation • Welfare rights and social security (except if at Administrative Appeals Tribunal level) • Any other matter as deemed appropriate by the Access to Justice Committee, at any time 	<ul style="list-style-type: none"> • Administrative appeals and tribunals • Animal welfare • Banking and finance • Bankruptcy and insolvency • Breach of contract • Commercial law • Contested deceased estates • Coronial matters • Corporate law • Criminal injuries compensation • Employment law • Environmental law • Family law – dissolution of marriage, children and property maintenance • Human rights and equal opportunity • Immigration law • Indictable criminal offences • Indigenous corporations • Intellectual property • Loans, mortgage agreements • Not-for-profit associations and clubs • Property and conveyancing • Trade practices • Any other matter as deemed appropriate by the Access to Justice Committee, at any time.

Written applications for pro bono assistance are received by Law Access and assessed by a member of the Law Society's Access to Justice Committee. Committee members provide their assessment based upon the merits of the matter.

Applicants are advised of the outcome of the assessment but reasons for decision are not provided. Matters that are assessed as suitable are referred back to the Executive Manager who then attempts to place the matter with a legal practitioner/firm. This is done through requests posted to members of the Law Society via *Friday Facts*, by direct contact with law firm pro bono coordinators and direct approaches to individual solicitors and barristers.

Management of Law Access on a day-to-day basis involves:

- Receiving calls from members of the public and not-for-profit organisations.
- Identifying whether the matter is suitable for referral to the scheme or whether the matter is to be referred to another agency.
- Providing applicants with information about the process and assistance in completion of the application forms.
- Collating relevant support documents and preparing a brief to a member of the Access to Justice Committee.
- Liaison with the assessing committee member.
- Advising applicants of the outcome of their applications.
- Where successful, seeking to place the matter with a member of the Law Society.

Table 3 provides a breakdown of matters dealt with by Law Access since the 2008-2009 financial year.

TABLE 3: LAW ACCESS STATISTICS

	2008-09	2009-10	2010-11	2011-12	2012-13
Law Access contacts/referrals	N/A	620	844	676	426
Law Access pro bono applications received	51	50	34	74	145
Pro bono matters placed/resolved	19	25	20	27	61
Matters assessed as no merit	8	13	7	12	50
Meritorious matters not able to be placed/no interest	24	12	6	6	12
Matters awaiting final assessment by the Committee	-	-	1	19	6
Meritorious matters awaiting placement	-	-	-	7	4
Matters awaiting more information from client prior to progressing				3	14

Consultations with members of the Access to Justice Committee (17 June 2013) identified that the significant increase in matters being placed over the last two years is related to a range of factors, including the engagement of an experienced part time pro bono officer, utilisation of the AGS secondees and the ECU internship program. This has resulted in a greater ability to undertake one to one contact with practitioners in requesting assistance with matters which in turn has resulted in a greater take up rate as compared to when the scheme predominately relied upon Law Society members responding to requests placed in *Friday Facts*.

Challenges arising from the existing structure of Law Access were identified as including the lack of resourcing and funding and the impact this has on the long-term sustainability of the scheme if it were to continue at current or increased levels. In separate consultations, some members of the Access to Justice Committee identified that they were probably now at full capacity in terms of the numbers of matters being referred to them for assessment. In discussions with one member (18 June 2013) it was noted that the focus upon the Law Access scheme meant it was difficult for the Committee to find time to engage in pro active strategic planning and developing policy positions on broader access to justice issues, as opposed to being mainly occupied with responding to what 'comes through the door' for pro bono assessments. The time taken for individual members to review files was also identified by some members as a concern (Discussion 18 & 19 June 2013), as sometimes the work and hours involved in undertaking assessment is significant given the complexity and history of certain matters.

One distinct feature of the Law Access scheme has been its willingness to take on pro bono applications pertaining to family law matters and its ability to successfully place some of those matters, particularly with small to medium size firms or on the basis of a CLC instructing a barrister. Law Access data shows that, of the 61 matters placed in the period 1 July 2012 to 30 June 2013:

- 22 (36.1 percent) were placed with either a sole practitioner or small local firm.
- 10 (16.4 percent) of matters were placed with a national law firm.
- 6 (9.9 percent) were placed with a local mid size firm.
- 5 (8.2 percent) were placed with a member of the Bar, with a CLC acting as instructing solicitor.
- 3 (4.9 percent) matters were taken on by a member of the Bar.

- 2 were placed with a member of the Bar with a private law firm acting as instructing solicitor, whilst 2 were placed with a large local firm.

Of the remaining 11 matters, five were placed for 'minor assistance'. Three matters initially placed during the financial year had to be placed again with another solicitor for various reasons. Three matters not specified in terms of placement. As noted, this information suggests that Law Access is successfully engaging with a diverse range of firms and some community legal centres. Many of the family law and debt issues were placed either with sole practitioners or small to mid size firms, whereas the larger national and local firms were taking on matters such as employment law, commercial and consumer disputes – this distinction seems logical in terms of the differentiation in areas of expertise.

3.2.3 Western Australian Bar Association

The Western Australian Bar Association (WABA) was established in 1963 and whilst uncertain of the commencement date (Interview 24 April 2013) it has established a pro bono mechanism managed by members of the WABA on a voluntary basis. This process was established as a means to streamline pro bono requests that were being made to individual members of the bar.

Members of the public are able to contact WABA by email or in writing with details of their request. This information is collated and then provided to one of two members of WABA (who take it in turns to review and assess requests). If the view of the assessor is that the matter has merit, then it is circulated amongst members of WABA. If the matter is taken up, the applicant deals directly with the barrister.

According to statistics provided by WABA for this study, in the calendar year of 2012, it provided assistance in a total of 30 matters, three of which were not-for-profits. These are only matters that came through the WABA scheme and this figure does not include matters taken up by barristers outside of that mechanism. Of the matters where assistance was provided, 53 percent were referred through the Federal Court pro bono scheme or Supreme Court, 20 percent were referred by Law Access, 17 percent were referred by community legal centres or Aboriginal legal services and 10 percent came from direct contact by member of the public.

Matter types assisted as recorded by the WABA scheme include 40 percent immigration, 13 percent administrative law, 10 percent criminal law, 10 percent employment law, 7 percent coronial inquests, 7 percent commercial matters and the remaining 13 percent classified as 'other'.

In those matters where pro bono assistance could not be provided, WABA identified that the main reason for this (67 percent) was that the nature of the instructions would require work by a solicitor (i.e. absence of an instructor).

3.2.4 Law firms

All the national law firms interviewed for this study have established pro bono programs. Whilst the structure and focus of these programs vary, they generally involve either a national pro bono partner or coordinator, with some firms having pro bono coordinators located in each of their local offices. Decision making in determining what pro bono matters are taken varies from firm to firm, with some describing a process whereby decisions are made at a 'local office' level whilst other firms' matters are referred back up to the national pro bono partner or coordinator.

National law firms consulted for this study confirmed that each have different priority areas in relation to their pro bono practices. For example, some firms identified that their main area of interest and expertise are in systemic projects in which they provide secondees to specific clinics (e.g. homelessness), whilst others prioritise pro bono work with Aboriginal communities and others focus upon providing governance related advice to not-for-profits. Understanding the pro bono priorities and areas of interest is an important element in ensuring that tailored referrals can be made to firms on specific matters.

One of the themes to emerge from discussions with national law firms was the observation that there can be a variation in the pro bono culture *within* a firm, with some local offices having a ‘stronger’ culture than others. Some national firms noted that their Perth office either had greater or lesser levels of pro bono engagement than other offices (Interviews 20 & 28 March 2013). This observation was also identified in consultations undertaken by the NPBRC in the research for their guide on pro bono partnerships and models (2013:41).

Data request-formal pro bono schemes

As noted, the National Law Firm Pro Bono Survey that is conducted by the NPBRC does not provide a breakdown of its findings so as to give an indication of what is happening at a state level. For the purposes of this study, a request was made to firms with formal pro bono programs to provide data in relation to their Western Australian practice. Only six responses were received so as to render the data of limited statistical value.

What was of value in the exercise however, was that it highlighted the difficulty in collating pro bono statistics due to the absence of a single or consistent data set - as each firm classifies and records its pro bono work differently. Some reported against a calendar year and others against a financial year, whilst all used differing categories of matter, client type and nature of assistance provided. A key consideration for any future Western Australian (or multi-state) model is the inclusion of mechanisms that will allow a consistent approach in capturing pro bono data. Despite the limited data provided, the results appeared consistent with national level data.

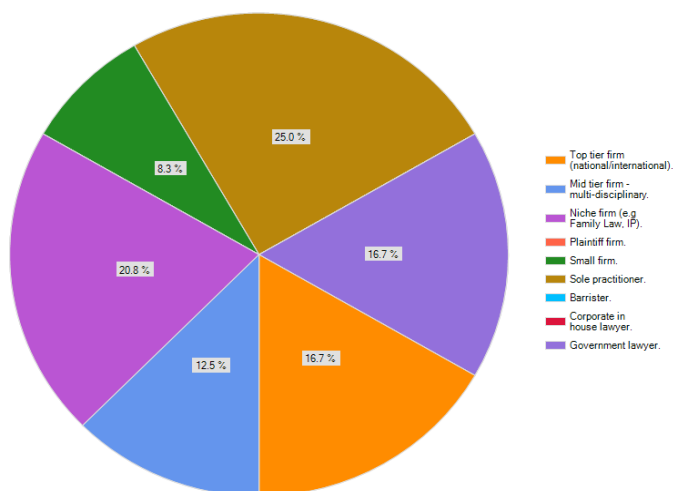
Law firm WA pro bono survey

A broader request for pro bono data was made to Western Australian law firms, practitioners and barristers (regardless of whether or not they had formal pro bono programs) by way of an online survey. The survey was distributed by the Law Society to members via *Friday Facts* and emailed directly to firms and practitioners who had provided pro bono assistance via the Law Access scheme. Of interest in the results of this survey was that many of the responses in Western Australia were consistent with responses found in the NPBRC National Law Firm Pro Bono Survey.

Practice description of respondents

A total of 25 responses were received from practices/firms located in the CBD, outer metro, Great Southern, Peel, Mid West and Kimberley. As seen in Figure 1, the main category of respondents to the survey was sole practitioners and niche firms (total of nearly 46 percent).

FIGURE 1: DESCRIPTION OF LAW PRACTICE



Half of the respondents provide pro bono services on an informal and ad hoc basis.

29 percent have a formal pro bono program.

16 percent do not have any type of pro bono practice.

Identified benefits and reasons for pro bono

As shown in Table 4, the most commonly perceived benefit of pro bono work was its role in increasing access to justice, identified by 83 percent of respondents, followed by professional obligation.

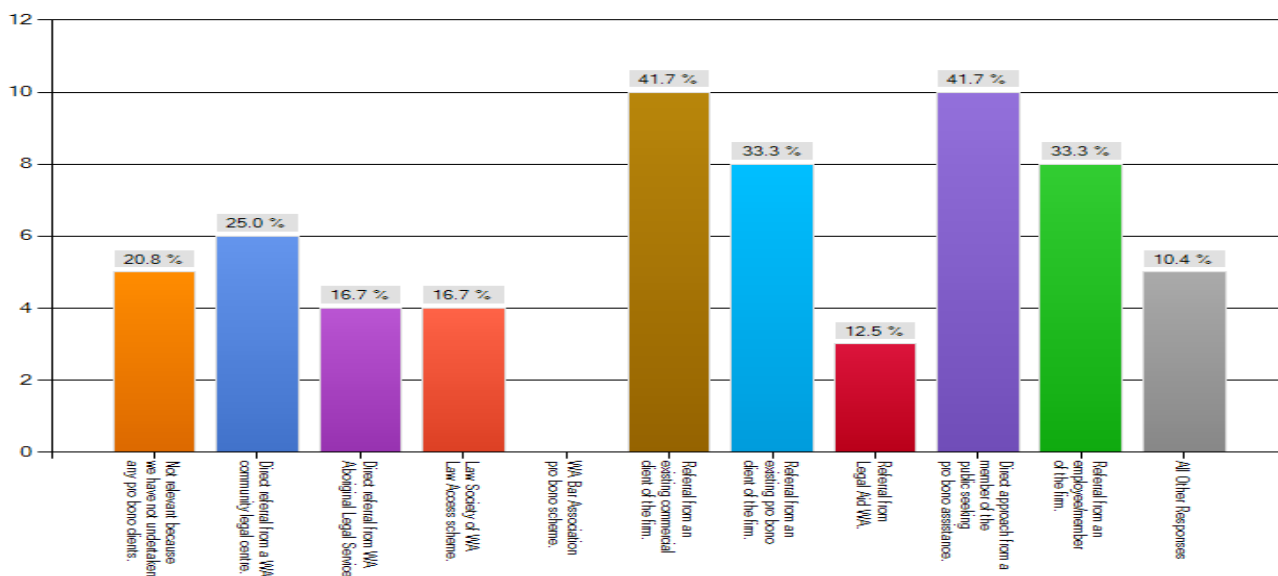
TABLE 4: BENEFITS OF PRO BONO

Benefit of pro bono	%	Other comments
Increases access to justice	83.3%	<ul style="list-style-type: none"> Builds the legal capacity of community legal centres Allows not-for-profits to focus on service delivery and organisational objectives It benefits us as individuals Increases the reputation of the profession Provides opportunities for international pro bono work
Professional obligation	62.5%	
Contributes to a volunteering culture in our practice/firm	45.8%	
Provides learning and training opportunities for staff	41.7%	
Attracts staff to our firm	20.8%	
Allows our firm to contribute to public discourse on public interest issues	20.8%	
No benefit	4.2%	

Sources of pro bono referrals

Consistent with the findings of the NPBR National Law Firms Pro Bono Survey, Figure 2 shows that the majority of respondents identified that their Western Australian pro bono work was mainly referred from sources within their practice or firm (i.e. through a direct approach, from an existing client or via an employee), as opposed from an external pro bono scheme (such as Law Access). Having noted that response, data provide by Law Access shows that that scheme is successfully engaging with sole practitioners and smaller firms.

FIGURE 2: SOURCES OF PRO BONO



Areas of pro bono practice

Nearly 44 percent of respondents identified commercial agreements (e.g. leases) as their main area of pro bono practice. By comparison, the area of practice most identified as one in which a firm/practice would not be prepared to provide pro bono assistance was family law (nearly 79 percent). The main reasons for not undertaking pro bono in the areas nominated were the lack of expertise in that area of law and an actual or potential conflict of interest.

Table 5 provides a comparative ranking of responses to survey questions around what pro bono matter firms will and will not assist with. Interestingly, whilst family law is identified as the area that firms or practices most likely would not provide pro bono assistance, it also appears as the second most common area of pro bono practice amongst survey respondents (total of 6/20 or 26.1 percent). This may be attributable to the work that has been undertaken by Law Access in the last 18 months to particularly focus upon family law matters. What the Law Access statistics show is that family law matters have been successfully placed with medium/small sized local firms or sole practitioners or on the basis of a local community legal centre acting as the instructing solicitor for pro bono services provided by counsel from the bar.

Again, apart from the appearance of family law, these results are consistent with the National Law Firms Pro Bono Survey, which found that the main areas of pro bono practice were governance, DGR, employment law, commercial agreements and incorporations work for not-for-profits. Similarly, the national survey respondents also identified family law, criminal law and immigration law as the main areas of rejected requests for pro bono assistance.

TABLE 5: AREAS OF PRO BONO PRACTICE

Area of pro bono law practiced (actual)	Ranking	Area of law would not provide pro bono
Commercial Agreements (e.g. leases)	1 (most)	Family Law (other than Domestic Violence)
Discrimination Employment Law Family Law (other than Domestic Violence) Governance/Incorporation	2	Criminal Law Immigration/Refugee/Asylum Seeker Domestic Violence
Banking/Finance/Debt Criminal Law Housing/Tenancy Victims Compensation	3	Environment Tax/DGR Town Planning/Local Government Coronial Personal Injury Victims Compensation
Administrative Law Consumer Law Domestic Violence Wills/Probate/Estate	4	Administrative Law Animal Law Discrimination Insurance Housing/Tenancy
Immigration/Refugee/Asylum Seeker Personal Injury Power of Attorney/Guardianship Tax/DGR	5	Banking/Finance/Debt Bankruptcy Employment Law
Animal Law Insurance Town Planning/Local Government	6	Consumer Law Construction Law Governance/Incorporation Power of Attorney/Guardianship Wills/Probate/Estate
Bankruptcy Construction Law Environment Law	7 (least)	Commercial agreements (e.g. leases)

3.2.5 Aboriginal legal service providers

In Western Australia, Aboriginal legal service providers (apart from Land Councils) include Aboriginal Legal Service WA (ALSWA), Family Violence Prevention Legal Services (FVPLS) and the metropolitan based Aboriginal Family Law Service (AFLS).

The FVPLS is a federally funded program that provides free legal and counseling services for victims of family violence and sexual assault who are Aboriginal or Torres Strait Islander or whose partner or children are ATSI. In Western Australia, the program operates from regional centres of Albany, Broome, Carnarvon, Fitzroy Crossing, Geraldton, Kalgoorlie, Kununurra and South Hedland.

In January 2013, the State Government announced funding for the establishment of a metropolitan based family violence legal and counseling service for Aboriginal victims of family violence and sexual abuse. This service, AFLS has been established in Victoria Park.

For the purpose of this study, the ALSWA was identified by the steering committee as one of the stakeholders to be interviewed regarding their experience of pro bono service delivery. ALSWA is a community based organisation that operates offices in the Perth metropolitan area as well as in the regional centres of Albany, Broome, Bunbury, Carnarvon, Fitzroy Crossing, Geraldton, Halls Creek, Kalgoorlie, Kununurra, Meekatharra, Newman, Northam and South Hedland. It provides legal advice and representation in areas of criminal, family law, civil and human rights, prisoner services and community legal education and law reform work.

The ALSWA (Interview 10 April 2013) identified that it did not have any formal ongoing pro bono arrangements in place - rather it had *ad hoc* pro bono relationships with law firms which was very much dependent upon individual relationships and connections. For example, the Stolen Wages case was one in which Clayton Utz provided pro bono assistance.

ALSWA noted that areas of pro bono need included:

- Greater access to pro bono barristers who were prepared to act on matters where the ALSWA was able to go on the record and act as instructor in both civil and criminal matters.
- Assistance in criminal matters in which there was a conflict of interest in the ALSWA acting.
- A range of civil matters, including criminal injuries compensation, tenancy, guardianship, complex family matters, social security and welfare rights and child protection.
- Governance issues and land trusts.
- Public interest and test case matters.
- Assistance in matters beyond the ALSWA in-house expertise.

The ALSWA identified that some of the barriers to their ability to access pro bono services included:

- The time it took to develop and maintain up to date pro bono relationships.
- Knowing whom to contact in certain matters (i.e. who has the particular expertise that they are seeking).
- The differing criteria and contact points for pro bono is confusing and time consuming.
- Access issues for clients in remote communities, where costs associated with accessing legal services were much higher.

3.2.6 Community legal centres

There are 28 community legal centres (CLCs) throughout Western Australia. These are predominately community controlled incorporated associations managed by voluntary management committees. Staffing profiles generally include lawyers, paralegals, tenancy advocates, financial counsellors and administration and management workers. In broad terms, CLC's tend to operate either as 'generalist' or 'specialist' services. Generalist services offer legal

services across a range of matter types within a specified geographical location. Specialist services offer legal services directed to a particular client group (e.g. women) or matter type (e.g. employment law).

CLCs predominately receive funding from Commonwealth and State Government sources, which are managed through Legal Aid WA.

In placing the work of CLCs within the pro bono context, Noone (2001:128) writes that ‘...community legal centres did not come out of the pro bono legacy but instead an activist agenda which sought to utilise the legal system to bring about social change.’ However, as the National Association of Community Legal Centres (NACLC 2012:1) noted, CLCs also have ‘...a long tradition of working collaboratively with lawyers from the private profession to offer free legal services to the disadvantaged.’ What is apparent today is that many CLCs are engaged in very active pro bono partnerships with private law firms and pro bono schemes. According to a NACLC survey (NACLC 2012:1) looking at pro bono partnerships between law firms and CLCs, of 106 CLC respondents to the survey:

- 82.6 percent benefitted from lawyers providing direct services to clients.
- 69.8 percent had experience of lawyers providing advice to the centre.
- 54.7 percent had specialist lawyers advising CLC lawyers on matters.
- 26.7 percent received pro bono assistance from firms in producing publications including design and printing.
- 18.6 percent received assistance in venue and catering for CLC events.
- 16.3 percent received pro bono assistance for CLC administration support.
- 12.8 percent received pro bono assistance in fundraising.

Consultations with law firms and community legal centres for this study also highlighted the importance of these partnerships. Some firms noted that it is the relationship with community legal centres that enables them to understand and connect with legal need (Interview 22 March 2013). Some community legal centres in Western Australia have particular pro bono partnerships in place. For example Clayton Utz has developed specific pro bono relationships providing secondments with the Kimberley Community Legal Service and Geraldton Community Resource Centre (Interview 20 March 2013). Allens Linklaters has a long association with Passages Resource Centre and from this has come their involvement with Street Law, a Western Australian community legal centre for the homeless (Interview 22 March 2013). Secondees from King Wood and Mallesons, Allens and Corrs Chambers Wessgath attend outreach clinics and provide assistance to Street Law solicitors.

Some community legal centres have very specific pro bono programs. Case for Refugees is a community legal centre that provides legal services to refugees, humanitarian visa holders and people from culturally and linguistically diverse backgrounds living in Western Australia. Following the High Court decision in *M13*, there was a significant spike in demand for legal assistance seeking judicial review of MRT administrative decisions. Case for Refugees decided to act as a clearinghouse to assess the merits of applications for pro bono assistance. Their experience identified a range of challenges that had a significant impact on the organisation's ability to galvanize a pro bono strategy that integrated the resources of law firms to act as instructing solicitors for barristers who were willing and able to take on matters. These challenges included the amount of time and resources that it took to develop and maintain pro bono relationships and the bureaucratic processes of some law firms meant that it took a long time for decisions to be made (Interview 16 April 2013).

3.2.7 Legal Aid Western Australia

As noted, Legal Aid Western Australia (LAWA) was the first legal aid commission to be established nationally. It receives both Commonwealth and State Government grants and is also responsible for managing both Commonwealth and State funding programs for Western Australian community legal centers. It provides legal services throughout Western Australia, with offices located in the

metropolitan areas of Perth, Fremantle and Midland, as well as servicing the regional centres of the West and East Kimberley, Southwest, Goldfields, Great Southern, Midwest and Gascoyne, Pilbara and Christmas/Cocos Islands.

According to its 2011- 2012 Annual Report, the main client group of LAWA are men (predominately in relation to criminal law matters), whilst women received 70 percent of the grants in family law proceedings. LAWA provides legal advice, representation, telephone information, minor assistance and duty lawyer programs across areas of criminal, family and civil law. It operates specialist units in the areas of ADR, child protection and domestic violence, criminal appeals and youth law.

Consultations with LAWA for this study (24 April 2013) identified that it has had positive experiences of placing urgent matters through the Law Access scheme where matters have been expedited on the basis that LAWA have already undertaken an assessment of merits. Likewise, LAWA have had good experiences of barristers who will sometimes act on a reduced or delayed fee basis for matters, which are outside the scope of LAWA. The experience of coordinating pro bono assistance in response to the Western Australian bushfires in 2010 was also a positive one.

LAWA identified that there were still significant gaps from its perspective in areas of unmet legal need, which included:

- Provision of assistance for self represented (unrepresented) litigants.
- Mortgage repossessions.
- Prisoners.
- Family law property disputes.
- Small business.
- Workers compensation.
- Employment.
- Consumer law issues, especially in relation to contractual disputes with TELCOs, personal loans, insurance and utilities.

LAWA noted that attempts to refer clients in relation to family law matters were not often successful, with the client returning to LAWA advising that they had been asked to pay an upfront fee, disbursements or sign a costs agreement.

Some of the challenges identified by LAWA with respect to the current pro bono arrangements:

- The system is still too ad hoc.
- Conflict of interest either actual or commercial, significantly impacts upon the ability of LAWA to successfully refer matters on a pro bono basis.

Legal assistance services pro bono survey

This study undertook an online survey of legal assistance service agencies operating within Western Australia. There were 17 responses, 15 from community legal centres, and one from the ALSWA and LAWA respectively.

Pro bono relationships

The survey results indicated that the most common type of pro bono relationship was one in which a law firm provided pro bono assistance directly to the organisation itself, either by providing legal advice on internal governance or other organisational issues such as DGR etc. or through provision of assistance with back of office activities such as printing of annual reports.

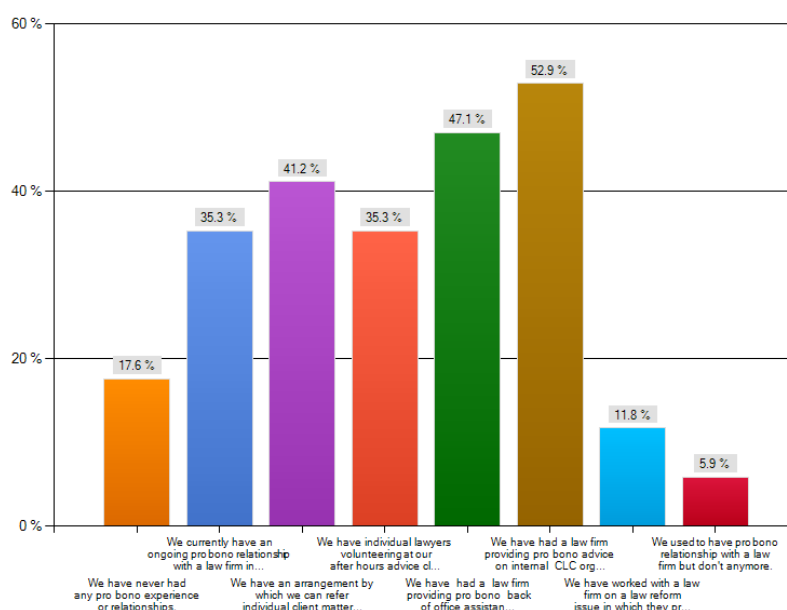
The next most common type of pro bono arrangement reported was one where the organisation and a law firm have an arrangement in which individual matters can be directly referred for legal assistance. This is followed by arrangements in which firms provide secondments for clinic advice services operated by the legal assistance service and arrangements by which individual lawyers

volunteer their time for an after hours advice clinic. The least reported pro bono arrangement related to assistance with law reform and submission writing.

These results appear consistent with this study's survey of law firms and the NPBRC National Law Firm Pro Bono Survey, both which identified that most respondents were directing their pro bono assistance to not-for-profit organisations as opposed to individuals.

As seen in Figure 3, just over 17 percent of responses stated that they have never had a pro bono relationship with a law firm and nearly 6 percent reported having had a previous arrangement, which had since lapsed (this accounted for 3 of the 17 respondents).

FIGURE 3: PRO BONO RELATIONSHIPS



Accessing schemes

The survey asked respondents how often their agency had used a range of pro bono referral schemes in the past twelve months. Table 6 shows that one third of respondents had never used Law Access, WABA or an individual firm's pro bono scheme. Approximately one third had used these services on an infrequent basis (40 percent in the case of individual law firm's pro bono schemes) and an approximate further third were accessing these services relatively frequently.

TABLE 6: FREQUENCY OF USING PRO BONO SCHEMES

	Weekly	Monthly	Every 3-6 months	Twice a year	Once a year	Never
Law Society of WA Law Access	8.3%	25.0%	16.7%	16.7%	0	33.3%
WA Bar Association	6.7%	20.0%	6.7%	6.7%	26.7%	33.3%
Individual law firm's pro bono scheme	6.7%	20.0%	20.0%	20.0%	0	33.3%
Interstate pro bono clearing house or PILCH	0	9.1%	0	0	9.1%	81.8%
Individual Barrister	7.1%	7.1%	14.3%	14.3%	28.6%	28.6%

Matter types

Legal assistance services reported that in the last 12 months, the top three matters for which they were able to secure pro bono assistance were employment law, assistance with a governance (not-for-profit) matter and family law. The areas in which they most unsuccessfully sought pro bono assistance were identified as personal injury and family law. In response to the question 'what type of matters did your organisation not attempt to place', the most common response was family law, in particular matters involving property issues or family domestic violence. The main reason being that the organisation believed that firms would not take on family law matters.

3.2.8 Law schools

As part of the feasibility study, all law schools were invited to be consulted. Responses were received from Murdoch University, Edith Cowan University and Curtin University. The incorporation of practical experiences for law students is a common feature of many law school curriculums, the purpose of which is to provide law students with '...understandings of the relationship between the theory and practice of law...the development of technical skills...the development of professional ethics and a student-centered approach to learning.' (Styles and Zariski 2001:65).

Murdoch University Law School established a clinical legal education unit in 1996 in collaboration with a local community legal centre (Southern Communities Advocacy, Legal and Education Service-SCALES). This model provides students with the opportunity to undertake a placement where they experience direct client contact and interaction under the supervision of legal staff based at the community legal centre. The extent to which these types of clinics expand the capacity of pro bono services is one that is continually debated. As noted in discussions with Murdoch University Law School (Interview 16 April 2013), one needs to be careful in the approach of student clinics in not losing the primary purpose of such clinics, namely:

- It is not about increasing the capacity of the 'host organisation'.
- Supervision of students takes resources.
- Need to understand what is meant by real clinical experience of legal work - it is about inspiring future legal professionals.
- Need for clinics to be underpinned by academia.

Edith Cowan University (ECU) expressed that it is keen to extend opportunities for its students to be involved in clinics and placements (Interview 22 April 2013). ECU established its Criminal Justice Review Project in 2009, which took on the caseload of the Innocence Project WA. This project is facilitated through student participation under the supervision and direction of pro bono legal assistance provided by members of the Western Australian legal profession. As described by Associate Professor Henry, the work involved in this project includes the following elements:

- Individual claiming factual innocence applies to the Innocence Project.
- Application is screened to determine if it falls within the ambit of the Project.
- If yes – full materials are requested from the applicant.
- A documentary analysis is conducted.
- A full investigation occurs.
- If new/fresh evidence identified, a brief is prepared for submission to the Attorney General.
- If the Attorney General approves, pro-bono assistance is sought.

ECU also has an internship arrangement with Law Access as well as legal clinic opportunities for students through the Northern Suburbs Community Legal Centre. ECU identified the potential for pro bono partnerships to be further developed in the public interest work that it undertakes through its Sellenger Centre for Research in Law, Justice and Social Change.

Curtin Law School has identified the establishment of a student clinic as a key priority of its student clinical education program and is looking into the possibility of establishing a clinic at its Murray

Street campus, which would have a particular focus on providing legal advice to small business (Interview 3 April 2013).

In discussions, the universities identified a strong interest in the development of a pro bono clearinghouse or other type of entity that has the capacity to work collaboratively with their respective clinical education programs. As noted, from a Commonwealth policy perspective one area of future development of pro bono is the inclusion of pro bono opportunities within undergraduate law degrees (Access to Justice Taskforce, 2009:151).

It is of interest to note the different approaches taken by established PILCHs in other jurisdictions and the extent to which law students are engaged, either through specific clinics or through the in-house functions of the clearinghouse. PILCH Victoria identified that it used to utilise student secondees, however they no longer operate on this basis due to the resources required in the supervision of students. It does however offer Practical Legal Training (PLT) placements. As an alternative approach, QPILCH has significantly integrated volunteer law students and university clinics into its model, offering PLT placements, a student volunteer program and an internship program (Interview 21 March 2013). It also hosts a range of university clinics in partnership with Bond and Griffith Universities and also Queensland University of Technology and the University of Queensland. These clinics include:

- University of Queensland Homeless Persons' Legal Clinic and Mental Health Law Clinic
- Bond University Administrative Law Clinic
- Griffith University Social Justice Lawyering Clinic
- University of Queensland Public Interest Research Clinic

The clinics operate either on the basis of the student working under the supervision of volunteer lawyers from firms who are providing pro bono advice and assistance or under the supervision of QPILCH lawyers. Students participate in a range of activities including research, casework, drafting and advocacy.

3.3 Issues arising from current arrangements

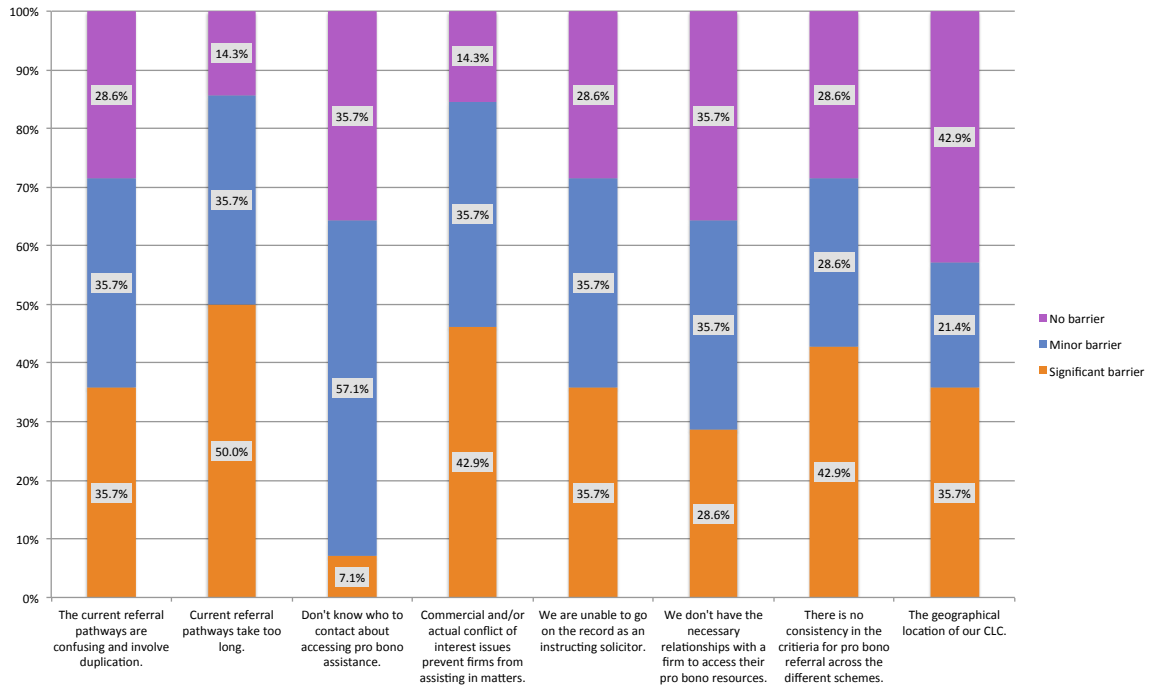
Information about the barriers to pro bono and issues arising under the current arrangements in Western Australia was obtained through face to face interviews and consultations, and through data collected in the WA surveys.

3.3.1 Survey data

Law firms and legal assistance service providers were asked to identify factors that impeded their engagement with pro bono services in Western Australia. The top three barriers identified by legal assistance service providers, as seen in Figure 4, were:

- Current referral pathways take too long.
- Commercial or actual conflict of interest prevented firms from acting.
- Inconsistency in the criteria for pro bono assistance across the schemes.

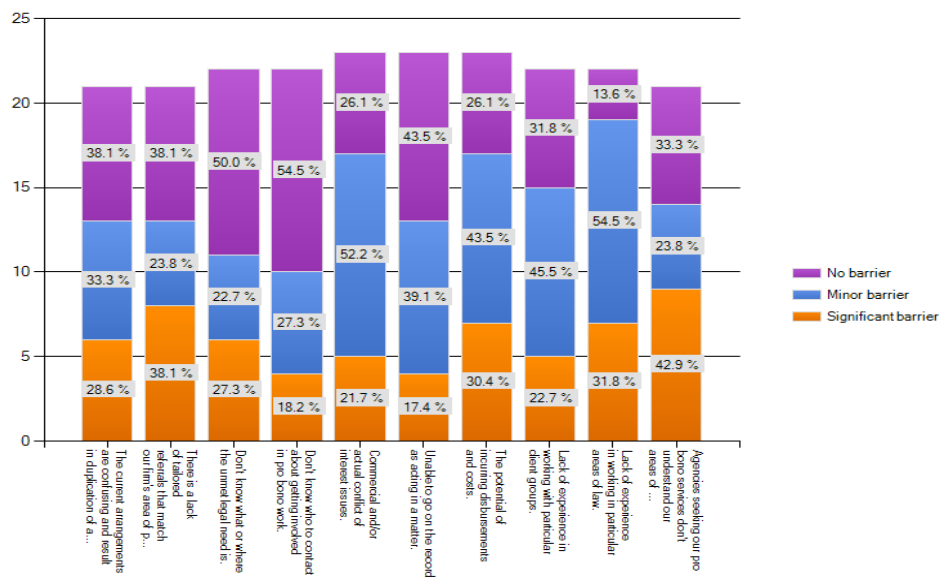
FIGURE 4: BARRIERS TO PRO BONO FOR LEGAL ASSISTANCE SERVICES



From the perspective of law firm respondents, the top three barriers (Figure 5) were:

- Agencies or organisations approaching firms did not understand the firm’s area of expertise and pro bono priorities.
- There is a lack of tailored referrals, which match the firm’s area of pro bono interest and expertise.
- The firm does not have the expertise to provide pro bono assistance in particular areas of law.

FIGURE 5: BARRIERS TO ASSISTANCE FOR LAW FIRMS



3.3.2 Stakeholder interviews

Part of the methodology for this study was to undertake a number of face-to-face interviews with a range of stakeholders identified by the Steering Group. In discussing the current pro bono arrangements in Western Australia, and in particular in identifying what were some of the issues with current operations the following themes emerged:

Diverse criteria and processes across schemes

One of the issues for us are the different criteria in place for different schemes and programs anything that can streamline this would be good (ALSWA).

One of the big issues... in accessing current schemes is the overlap and differing criteria required to assist an applicant wanting to access pro bono services it takes a lot of time understanding what different schemes and firms will and wont do and then if you manage to establish some relationship maintaining that relationship takes a lot of time which is difficult if you are also running direct services etc. (LSWA Country Lawyers Committee member).

We would see great benefit in having a single entry point with one set of criteria at the moment it is a bit hit and miss (Legal assistance service provider).

The time it takes for matters to be assessed and placed

(It is) important to reduce waiting time on assessments – currently people can be waiting up to 6-8 weeks for an answer the current system takes too long (Law firm pro bono coordinator).

The current arrangements can take too long for the process especially urgent matters. Application requirements can seem excessive with the amount of information that has to be provided it is not very easy for some clients and not user friendly (Legal assistance service provider).

It is also difficult for clients because it can take a long time to find out if they qualify and then if they do actually waiting to see if a firm will take on their matter (LSWA Country Lawyers Committee member).

Commercial or actual conflict of interest

(The) issue civil has is around conflict of interest actual or commercial firms not acting in matters involving banks or insurance companies really limits ability to access pro bono assistance (LAWA).

(The) other area of unmet need is where banks are involved as most firms (top tier) are conflicted out either due to actual or commercial conflict (Law firm pro bono coordinator).

Developing and maintaining pro bono contacts is resource intensive

(It is) important to have a tailored relationships manager who can foster and maintain pro bono connections and relationships this is very time consuming when also engaged in direct service provision (ALSWA).

If I had the ability to focus on fostering these relationships on a full time basis I am confident that I would have got there but just did not have the time and resources to devote to that aspect given the direct service (CLC Principal Solicitor).

Pro bono assistance is very much driven by individual relationships and building and maintaining those relationships are time consuming which takes away from direct service provision makes it difficult to do all things within a service (CLC Principal Solicitor).

The number one issue ... was the administration of coordinating those matters that we do not have the capacity to take on ourselves. Trying to find suitable places to refer matters to

having a single service who knows the areas of expertise of law firms would be very helpful (CLC solicitor).

Knowing what the legal need is and understanding what firms are willing to take on

From our perspective getting quality referrals that match our interest and capacity is important (National law firm national pro bono coordinator).

As a firm we are unable to identify unmet legal need this is where direct relationships become important (National law firm national pro bono coordinator).

...pro bono coordination and identifying what is the unmet legal need and why... we as firms want to be able to understand this better (National law firm national pro bono coordinator).

Cultural differences

One issue is that some law firms don't really understand how the not-for-profit and community legal centre sectors are structured and operate (Law firm pro bono coordinator).

I found dealing with law firms very bureaucratic process took a long time for decisions to be made (CLC Principal Solicitor).

The role of an instructing solicitor

(There are) some limitations with law firms who are reluctant to come on the record for matters due to difficulties in them being allowed to come off the record (Law firm pro bono coordinator).

(The) absence of instructing solicitor can be a resource issue for a barrister when considering whether to take on a matter pro bono (WABA).

I had to hit the pavements and knock on doors and meet with firms to seek their assistance one of the issues we had was reluctance of firms to go on the record for matters. Our issue is that very quickly we became overwhelmed – we went on the record for matters and this became very resource intensive it was just one lawyer and a law graduate (CLC Principal Solicitor).

One of the barriers is the ability of CLC's to go on record as instructors due to lack of resources of confidence/expertise (CLC manager).

Geographical and location issues

There are significant logistic issues in terms of distance, often we have to just set up under a tree with no admin support no photo copying...with pro bono lawyers working in remote areas practical issues arise like insurance cover issues for law firm solicitors (this nearly undid a pro bono project) (CLC solicitor).

For ALS clients there can be specific geographical issues - costs are often higher and there is sometimes a higher merit threshold – knowing who to refer to in RRR areas is a problem (ALSWA).

Location of clinics can be an issue for some firms in terms of staff time away from work (Law firm pro bono coordinator).

Resourcing of existing schemes

We are probably now at full capacity in terms of the number of matters that are coming to us for assessment (Access to Justice committee member).

4 UNDERSTANDING LEGAL NEED

A central component of this feasibility study was the brief to explore the level and nature of unmet need for pro bono services in Western Australia. This inquiry is relevant because it taps into a fundamental question, namely, how are pro bono resources best utilised? This in turn frames the context for the subsequent discussion on pro bono model options.

The WA survey undertaken for this study identified that the majority of law firm respondents (83 percent) considered that the main benefit of their firm undertaking pro bono work was that it increases access to justice. The question then, is *access to justice for what and for whom?*

4.1 Defining legal need

Within the literature, legal need is often discussed in terms of 'expressed legal need' and 'unmet legal need' or 'unexpressed need' (Coumarelos et al. 2012, Judith Stubbs and Associates 2012).

On the whole, legal services, including pro bono schemes, largely respond to self-identified legal needs, or expressed legal needs. Expressed legal need refers to the 'demand' side of legal services - that is when someone actively seeks assistance with a legal problem. Expressed legal need can be estimated through service data coming from the private legal sector, publically funded legal assistance programs and court and tribunal figures. Expressed legal need provides an indication of what legal problems people seek assistance with but not the legal problems that people do not approach legal services about.

Unmet legal need can be understood as the gap between experiencing a legal problem and satisfactorily solving that problem (Dignan 2004 as cited in Coumarelos et al. 2012:4). Unmet legal need does not appear easily in service data because often these matters are not brought to the attention of legal services. This can be because:

- some people may not recognise a problem they are experiencing as legal in nature
- some people may recognise their problem as legal in nature but do not seek assistance from legal services due to a range of socioeconomic barriers
- some legal problems are ignored.

Unmet legal need can also include those legal problems that remain unresolved even after access to legal services or the justice system. The New South Wales Law and Justice Foundation suggests a broad approach to understanding unmet legal need as 'legal problems that remain unresolved or are resolved unsatisfactorily, regardless of whether any action is taken and regardless of whether there is any involvement of lawyers or the justice system' (Coumarelos et al. 2012:5). Unmet legal need is best estimated by looking outside legal service data, using methods such as surveys or qualitative studies.

In terms of the legal need for pro bono services, expressed need can be thought of as the types of matters and individuals that come to the attention of pro bono schemes. Expressed need may also be thought of in terms of the types of matters and individuals that are approaching publically funded legal assistance agencies, but whose needs cannot be met by these agencies.

Determining the level and nature of unmet legal need in relation to pro bono services is complex because firstly it requires an assessment of unmet legal need in general and then it requires an analysis of what elements of unmet legal need would best be served by pro bono schemes.

In trying to understand the level and nature of unmet need for pro bono services in Western Australia, this study has drawn upon evidence of expressed need, research evidence of legal need in Western Australia and Australia as a whole and the results from the surveys undertaken as part of this study, which captured the views of law firms and legal assistance agencies. Evidence of legal need in general is presented before moving on to a discussion on what this means about unmet legal need for pro bono in particular.

4.2 Expressed legal need

4.2.1 Pro bono schemes

Data for current Western Australia pro bono schemes is detailed in Section 3. In terms of expressed legal need, historical data kept by Law Access of general referrals recorded in 2009¹ showed that the top six matter types in which individuals sought assistance included:

- Employment law
- Contractual/commercial disputes (e.g. small business, franchise issues etc.)
- Family law (predominately property issues)
- Consumer law
- Personal injuries/criminal injuries
- Deceased estates/wills

In terms of WABA data for 2012-2013, of pro bono applications received and either placed or not placed, the top six matter types were:

- Refugee/Immigration matters
- Contractual/commercial disputes
- Family law
- Debt/Insolvency and mortgage repossessions
- Deceased estates
- Administrative law (including SAT)

As noted in the discussion of the Western Australian survey in Section 3, the main areas of pro bono assistance provided by law firms included:

- Commercial agreements
- Discrimination
- Employment law
- Family law
- Governance (NFP)

4.2.2 CLC data

Additional data on expressed legal needs can be derived from community legal centre service statistics. This data shows the main areas of legal assistance provided by CLCs and is a useful part of building the picture of legal need. What CLC service data does not show are situations where someone has approached a CLC with a problem but the CLC has not been able to assist in any capacity (information, advice or case opened).

Table 7 provides a summary of Western Australian CLC service data for the period 2011- 2012, provided for the feasibility study by the State CLC Program Manager. The data is based on main areas of law across level of assistance provided. The main areas were in Civil Law (tenancy, credit and debt) and Family Law (contact and residency).

¹ This is data collected by Law Access recording information about contacts made with its service regardless of whether the matter was referred to another service or whether it proceeded to an application for pro bono.

TABLE 7: CLC SERVICE DATA 2011-2012 ALL FUNDING SOURCES

Area of law	Information %	Advice %	Case opened %
Family Law	36.9	30.4	26.8
Child support	2.4	1.0	2.0
Child/Spousal maintenance	0.6	0.1	0.1
Contact and residency	10.2	14.7	13.1
Divorce and separation	6.6	2.8	1.5
Family/Domestic Violence	5.4	4.5	4.2
Property	8.5	5.6	4.2
Child protection	1.3	0.5	1.0
Other Family Law	1.9	1.1	0.7
Civil Law	60.2	63.0	63.8
Tenancy	15.1	29.2	19.4
Credit and debt	14.4	12.9	15.6
Immigration law	2.1	0.3	1.2
Govt/Administrative law	1.8	3.4	4.0
Govt pensions/benefits allowances	2.5	2.4	3.2
Consumer and complaints	2.5	1.5	1.0
Motor vehicle	1.1	1.2	1.2
Wills/probate	6.3	2.9	7.0
Environment	0.2	0.2	0.6
Injuries	2.8	1.7	2.9
Discrimination	1.6	1.1	0.5
Employment	3.2	0.4	0.3
Neighbourhood disputes	2.2	0.7	0.6
Other Civil Law	4.6	5.2	6.5
Criminal Law	2.9	6.6	9.4
Offences against persons	1.0	1.5	2.3
Offences against property and other offences	1.8	5.1	7.1

CLCs are often limited in relation to the level of assistance that can be provided. Using the difference between the frequency in information provided on a particular area of law compared to the level of cases opened as an indicator of restricted assistance (and therefore one way of thinking about gaps in legal need), the three areas of law where CLCs have been least likely to provide ongoing assistance were in divorce and separation, family law property matters and employment law. Divorce and separation is an area where the provision of information is often enough to meet a legal need; the areas of employment law and family law property is more likely to indicate restrictions in what level of service a CLC can provide.

4.2.3 Legal Aid WA

According to its 2011-2012 Annual Report, in that reporting year, LAWA received 13,904 applications for legal representation for State and Commonwealth matters. Of these 71 percent of applications in relation to State matters were approved and 67 percent approved for Commonwealth matters.

The annual report confirms that the main area of assistance provided is in the area of criminal law. In relation to family law matters, the main area of assistance is provided for parenting issues. Legal Aid WA only provides legal assistance in matters of family law property settlement in very limited circumstances (Interview 24 April 2013). In the civil division, the main grants of aid are provided in relation to abuse in care, criminal injuries compensation and administrative law. No grants of aid are provided in relation to contractual disputes and minimal grants provided in relation to matters follow death and property (civil law) (2012:24).

The above data and information appears to confirm that expressed legal need directed at pro bono schemes, such as Law Access and WABA, are matter types that CLCs and Legal Aid WA are unable to assist, such as commercial/contract disputes, family law property matters and employment law.

4.3 Research evidence

4.3.1 Unmet need linked with limitations on legal assistance

Unlike education and health, Australia does not have a universal system guaranteeing access to legal assistance and a citizen's right to legal assistance is highly limited. As suggested by the recent terms of reference announced for the Productivity Commission's upcoming inquiry into Access to Justice, there is a growing gap between those who qualify for publically funded legal assistance and those who can afford to purchase private legal services.

At a policy level, there is not an agreed standard of what constitutes an aspirational level of publically funded legal assistance. Whilst in the area of education there is a social contract that every child will have access to 12 years of publically funded education, there is not a similar benchmark in the provision of legal assistance. In the absence of such a benchmark, for which groups and which matters can it be expected that legal assistance will be provided and what happens to those who miss out?

In a climate of increasing demand and decreased funding, it could be argued that some of the gap between what is publically funded and the actual level of community legal need may constitute, in part, an indicator of unmet pro bono need.

The current system of publically funded legal assistance is highly targeted and increasingly restricted due to funding pressures. For example, whilst there have been some increase in the proportion of state levels of funding for legal aid, there has been a marked decrease in Commonwealth funding. In 2009, PricewaterhouseCoopers analysed legal aid funding in Australia, based on budgeted 2010 figures. The analysis found that Australian Government legal aid funding per capita in real terms had fallen 22 percent since 1997 (2009: 27).

Legal aid commissions are the major providers of publically funded legal services in Australia. However funding changes over the past decade or so have led to significant restrictions in the people that can be assisted and the matters that will receive a grant of aid. In National Legal Aid's submission to the Inquiry into Access to Justice it stated that the legal aid means test is set 'at a level that allows only the most poor to be eligible' (National Legal Aid 2009: 15). The Australian Government Attorney-General's Department noted, that in 2008:

98 percent of legal aid recipients were receiving an income that could be considered below the poverty line. This leaves much of Australia unable to afford legal representation but nevertheless ineligible for legal aid (Access to Justice Taskforce 2009: 52).

In many ways, the changes experienced in legal assistance programs are similar to changes in public housing. Where as public housing was once housing for the working poor, increased demand and decreased funding in real terms means that public housing is now highly residual - providing services to the most poor and most marginalised. The same could be said for publically funded legal assistance.

As noted earlier, the 2011-2012 Annual Report for Legal Aid Western Australia shows that most grants of aid are for criminal matters, followed by family law. In 2011-2012, 66 percent of legal aid applications were granted, down by five percent from 2010-2011 due to the higher demand for funding both indictable criminal matters in the superior courts and more complex family law matters.

Sitting alongside legal aid commissions is a network of publically funded community legal centres and Indigenous legal services. Community legal centres were historically established to provide services to people who do not qualify for legal aid but who could not afford a private lawyer. However, due to funding pressures, CLCs have increasingly needed to restrict their service delivery. These restrictions can take the form of narrower eligibility criteria, more focused areas of legal matters that can be dealt with, and reduced levels of assistance with eligible matters. CLCs are now really only able to help people on very low incomes - over 80 percent of the people helped by community legal centres receive under \$26,000 a year in income (Community Law Australia 2012: 6). Often people receive limited assistance, less than the level of help required.

In the 2012 ACOSS Australian Community Sector Survey, 73 percent of community legal services reported an inability to meet demand, 82 percent said that in order to meet demand, services were more tightly restricted and 69 percent said that wait times had increased. The turn-away rate nationally for legal services in 2010-2011 was 14 percent, the highest of the five service groups profiled in the survey (ACOSS 2012). Across all community sector services surveyed, 36 percent of agencies named legal services as a current priority unmet need for clients, the second highest area of unmet need after housing.

Similar results to the ACOSS survey were found by Pricewaterhouse Cooper-CSI Community Index survey results (PricewaterhouseCoopers and the Centre for Social Impact, 2013). Of the 10 not-for-profit industry groups surveyed, Law and Advocacy had the second lowest confidence score after Development and Housing. The confidence index is derived from perception indicators around funding, demand, relationships and people. Law and Advocacy had the highest demand score in the industry, with around 64 percent of agencies reporting 'very high' levels of demand, and the second lowest funding score.

It is apparent that one response to this gap is being expressed in the demand directed upon pro bono legal services. This in turn exposes the tension as noted earlier in this report between the voluntary nature of pro bono, the articulated principle that pro bono practice is not a substitute for legal aid (National Pro Bono Task Force 2001), the reality of unmet legal need. This aspect was discussed in a recent publication examining pro bono partnerships and models (NPBRC, 2013:32-35):

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

4.3.2 Stakeholder Consultative Committee review

In 2009, the WA Community Legal Centre Stakeholder Consultative Committee (SCC) produced a report updating the findings of the 2003 Joint Review of Community Legal Centres in Western Australia. At the time of the report, the Committee was made up of representatives from CLCs, Legal Aid, Law Access Pro Bono Referral Scheme and the Commonwealth Attorney General's Department. One objective of the 2009 review was to outline new and emerging legal needs since the 2003 Joint Review. To assess unmet legal need, a survey was sent to all CLCs and Legal Aid WA regional offices, plus each CLC was asked to nominate five other community agencies to receive the survey. In total, responses were received by 39 organisations.

The 2009 SCC review identified the following priority areas of unmet legal need:

Locational priority areas

There had been some expansion of CLC services into priority locations identified in the 2003 Joint Review (i.e. Gascoyne, Peel and the outer northern metropolitan corridors), however the West Kimberley remained a high priority area of under servicing and increased demand was also experienced in the East Kimberley.

The northeast and southeast Perth metropolitan corridors were found by the SCC to continue to be particularly underserved. Rapid increases in regional centres linked to mining were found to have placed increased demands on areas such as the Pilbara, Kalgoorlie and Gascoyne.

Client groups

The four client groups identified in the 2003 review remained priority target groups for legal services and continued to experience significant disadvantage in accessing justice. These four groups were:

- Aboriginal Australians and Torres Strait Islanders
- Culturally and Linguistically Diverse People
- Mental Health Consumers
- Young People

Other identified priority groups in the 2009 review included:

- Women, particularly Aboriginal women and women from CaLD communities
- Homeless people
- People with complex problems and/or multiple dimensions of disadvantage
- Older people
- People in regional, rural and remote areas

Services and areas of law

The following areas, identified in the 2003 review, remained a priority in the 2009 review:

- Alternative dispute resolution
- Domestic violence
- Family law
- Representation for people appearing before courts and tribunals
- Welfare rights advocacy

Other identified priority areas in the 2009 review included:

- Care and protection
- Employment law
- Consumer law and debt
- Housing and tenancy

Matter types being reflected in the SCC research identifying unmet legal need are similar to matter types impacting people who are approaching pro bono services in Western Australia. What the SCC 2009 review also showed is that the client groups seeking pro bono assistance are often individuals with high needs and complex issues. For many firms and individual practitioners wishing to provide pro bono assistance this raises issues in terms of their capacity, expertise and resources to provide legal services to individuals who require high levels of support.

4.3.3 National legal needs and strategic planning project

In 2010, the National Association of Community Legal Centres engaged Judith Stubbs and Associates (JSA) to provide an evidence-based understanding of the distribution of legal need across Australia and for each state and territory in the context of disadvantage. The research applied a model first developed in the Legal Needs and Strategic Planning Project, developed for Community Legal Centres NSW by JSA in 2009.

The methodology used by JSA identified key demographic indicators of legal need and disadvantage, drawn from Australian and international research. From the research JSA (2012) found that the key socio-demographic indicators of reporting any legal problem/event were:

- Lone parent (extremely high incidence of single and multiple legal problems).
- Co-habiting with children (extremely high incidence of single and multiple legal problems).
- Disability (more likely than persons without a disability to report a legal event).
- Crime victim (very high incidence of single and multiple legal problems).
- On benefits (very high incidence of single and multiple legal problems).
- Private sector rent, housing type (flat) and public sector rent (very high incidence of single and multiple legal problems).

Other socio-demographic indicators of reporting any legal problem/event were:

- Age (young and middle age persons are far more likely to report a legal event than persons aged 65 years or more).
- Income (high income earners have a high incidence of single problems but not multiple legal problems; people on lower incomes are less likely to report a legal event).

The JSA findings are consistent with those found by the Law and Justice Foundation of New South Wales - namely that indicators of disadvantage correlate to higher levels of legal need.

Using identified socio-demographic indicators, JSA developed a model adapted from Pleasance et al (2006, as cited by JSA 2012) that combines and appropriately weights the indicators of legal need and other indicators to determine a probability and overall number of adults in an area likely to experience a legal problem in a three-year period. Using 2006 Census of Population and Housing and Centrelink data, as well as ABS 2010 geographic apportionment data, JSA applied the model for each LGA in Australia. The model provided for a Probability of Legal Need (proportion of adults in an area likely to experience legal need) and a Calculated Legal Need (numbers of adults in an area likely to experience legal need). Some local government areas (LGAs) will have a high probability (concentration) of legal need but an overall small population, whilst other LGAs will have a high calculated need (actual number of people) but a lower overall concentration in relation to the area's population as a whole. Both indicators are based on the likelihood of experiencing a legal problem of any type in a three-year period. Probability and calculated need was then linked with SEIFA (Index of Relative Socio-Economic Disadvantage) to maintain a focus of overall disadvantage.

JSA applied the model to the 139 LGAs in Western Australia. Areas with the highest numbers of adults likely to experience a legal problem were almost always directly related to population size. As a result, the larger LGAs within the Perth metropolitan area had the highest levels of Calculated Legal Need. Those areas with high Probability of Legal Need were a mixture of city and regional LGAs with large and small populations.

Whilst Probability of Legal Need and Calculated Legal Need provide an indication of the extent of total legal need in a locality, it does not shed light on the extent to which this need is met or unmet. The JSA modeling used a 'need ratio' formula to assess the extent to which calculated legal need related to expressed need by using LGA matters reported by CLCs in 2008-2010. A high

need ratio suggested a relatively higher level of CLC servicing, whilst a lower ratio suggested less CLC activity in relation to the level of calculated legal need.

On its own, however, the need ratio does not necessarily tell us where there are gaps in access to justice. For example, the four LGAs with the highest levels of calculated need and a lower than average need ratio were Melville, Kalamunda, Cambridge and Subiaco. Whilst these LGAs show relatively lower levels of CLC servicing to calculated need, they are also LGAs within the top fifth quintile of SEIFA ratings - that is LGAs that are relatively advantaged and therefore possibly more able to afford private legal services. It would be expected that CLCs servicing disadvantaged areas will generate a higher level of activity to calculated need than would be found in less disadvantaged areas. In order to fully appreciate legal need and unmet legal need, indicators of locational disadvantage, calculated and probable legal need, and measurements of current servicing, must be analysed 'as a package'.

Table 8 (adapted from JSA 2012: 53) takes the most disadvantaged 40 percent of LGAs in WA and shows the top 20 LGAs in this group, sorted by calculated legal need. The National CLC need ratio is also shown to indicate a relative level of service responses to expressed need (the lower the ratio, the lower the level of CLC servicing).

TABLE 8: JSA ESTIMATED LEGAL NEED BY LOW SEIFA LGAS

LGA	SEIFA	SEIFA WA Decile	Calculated Legal Need (# Adults)	Probability of Legal Need	Adult Pop (16+)	CLC Need Ratio	Region
Belmont	964.74	3	10,450	41.8%	24,990	2.4	Perth
Bunbury	981.96	4	9,704	40.8%	23,786	1.3	South West
Kwinana	958.07	3	7,212	41.1%	17,531	1.5	Perth
Broome	927.73	2	4,110	42.1%	9,756	0.6	Kimberley
Murray	984.48	4	3,730	39.4%	9,473	1.5	Peel
Northam	939.35	2	3,020	40.4%	7,470	2.2	Wheatbelt
Manjimup	960.41	3	2,676	38.5%	6,943	1.2	South West
Collie	943.28	2	2,561	39.7%	6,446	1.6	South West
Wyndham-East Kimberley	870.25	1	1,973	41.0%	4,818	4.2	Kimberley
Derby-West Kimberley	721.86	1	1,931	42.4%	4,553	1.6	Kimberley
East Pilbara	935.67	2	1,812	37.1%	4,879	2.7	Pilbara
Carnarvon	918.78	2	1,743	41.2%	4,227	2.4	Gascoyne
Plantagenet	976.97	4	1,334	38.9%	3,428	2.1	Great Southern
Narrogin	955.78	3	1,234	39.0%	3,165	1.2	Wheatbelt
Katanning	916.59	2	1,215	39.1%	3,107	2.3	Great Southern
Coolgardie	967.83	3	1,037	38.5%	2,691	2.1	Goldfields
Waroona	964.34	3	1,007	38.4%	2,621	2.0	Peel
Northampton	962.01	3	957	38.3%	2,501	1.4	Mid West
Merredin	982.68	4	945	38.0%	2,485	0.9	Wheatbelt
Halls Creek	534.45	1	849	40.1%	2,118	2.7	Kimberley

The JSA data is consistent with the CLC Stakeholder Consultative Committee findings that the West Kimberley (Broome LGA) has relatively high disadvantage, high legal needs and few opportunities to access legal assistance beyond Legal Aid.

The JSA calculations have not been updated to include 2011 Census data. The full JSA report on legal need in Western Australia is very comprehensive and the data can be viewed through a

number of filters e.g. by level of calculated legal need, probability, SEIFA disadvantage or need ratio. The above table is but one snapshot that the research can offer in regard to legal need.

4.3.4 Self represented litigants

When people cannot afford a lawyer, one option is to self-represent. Data on self represented litigants (SRLs) therefore is one indicator of unmet access to legal assistance, although within the group of self represented litigants is a smaller group who may be able to afford a lawyer but choose to represent themselves.

Specific data on the level of self represented litigations in the Western Australian court system could not be sourced for this study, but the following data is available from the Australian court system:

- The proportion of High Court applications filed by self-represented litigants increased from 25 percent in 1999-2000, to 67 percent in 2007-08 before returning to 34 percent in 2010-2011 (High Court Annual Report 2010-2011). Immigration matters had the highest number of self-represented litigants.
- The 2011-2012 Annual Report of the Federal Court showed 314 applicants in 273 proceedings. The major areas where self-representation occurred were appeals (60 percent), with 76 percent of these appeals related to migration, and administrative law (11%). The Federal Court's data system does not record self-represented respondents and as the recording of self-representation is not mandatory, the figure for applicants is indicative only. In a literature review by Monash University, evidence was found about 17 percent of all parties appearing before the Federal Court are self represented (Richardson et al. 2009: 23).
- The proportion of self-represented litigants in the Family Court of Australia has remained fairly stable in the past five years. In 2011-2012, 17 percent of finalised cases had one party self represented and in 10 percent both parties were self represented (Family Court of Australia Annual Report 2011-2012). At trial, in 2011-2012, 27 percent of cases had one party represented and five percent had two parties unrepresented.
- The Federal Circuit Court of Australia (formerly the Federal Magistrates Court of Australia) tends to have a higher level of self-represented litigants than the higher courts due to its jurisdiction. The Court's data system captures details of self-represented litigants in respect to finalised applications for final orders in family law only and this data excludes Western Australia. In relation to general federal law matters, specific data on self represented litigants was not reported in the 2010-2011 or 2011-2012 Annual Reports. However, the reports state that a significant proportion of self-representation in general federal law relates to migration, where litigants are often then assisted through the Court's pro bono and other assistance schemes.

The literature review conducted by Monash University (Richardson et al. 2009) on self-represented litigants found:

- There is evidence to support the perception that the numbers of SRLs are increasing.
- Whilst the evidence is unclear on why some people choose to self represent, it would appear that many SRLs are self represented because they cannot afford legal representation, although this is not the only factor for self representation.
- SRL applicants are more likely to be male.
- SRL respondents in family court matters are more likely to be male.
- SRLs are more likely to be young (median age 35 years), unemployed, and to have lower education levels.
- SRLs tend to come from culturally and linguistically diverse backgrounds.
- Family, child support, bankruptcy, migration, unlawful discrimination have higher levels of SRLs.
- Matters involving SRLs are more likely to be withdrawn, settled or abandoned.

- Matters where parties are fully represented may be more likely to be resolved by negotiation and the chances of settlement increased proportionate to the level of representation.
- Family law matter cases involving SRLs do not necessarily take longer than those involving represented parties.
- SRLs may be less likely to obtain successful outcomes, although this is not always the case.

The presence of self represented litigants may impact upon the length of the trial, the practices and procedures of the courts, create costs and delays for opposing parties, and have an impact on the outcomes of cases. However, the Monash research found that this varied between courts, registries and jurisdictions (Richardson et al. 2009: 30).

A 2003 study of 500 self-represented litigants found that a lack of legal aid was a significant driver to self representation – less than half of those that applied for legal aid were successful and more than a third had only limited grant assistance (Hunter et al. 2003, cited in Access to Justice Taskforce 2009: 43).

Whilst Western Australian specific data was not available, information obtained through consultations undertaken for this study confirmed the impact of self represented litigants (Interview LSWA Courts and Tribunal Committee 8 May 2013), such as:

- Blurring the lines of representation as Courts will at times direct counsel appearing for the other party to assist or explain issues to the unrepresented party.
- Drives up costs for parties due to the introduction of irrelevant materials and time taken for proceedings.

There are limited examples of Court or Tribunal based pro bono schemes in Western Australia apart from the Federal Court and the recently introduced State Administrative Tribunal scheme. However, self-represented litigants have been identified in this study's surveys as an area of unmet legal need in this jurisdiction.

QPILCH provides a self-representation service, which is located on site at the Supreme and District Courts and Queensland Civil and Administrative Tribunal, as well as a pilot service in the Brisbane Federal Court and Federal Magistrates Court. Initial service is provided by a QPILCH lawyer on discrete tasks, such as information and advice on court processes, assistance with drafting and trial preparation. Additional work and support is provided by member firms on a pro bono basis. Clients of the service continue to self-represent in proceedings but with support. In some instances clients of this service are referred into QPILCH's pro bono assistance scheme, which may see their matter being taken up on a pro bono basis (Banks 2012 and Interview 22 March 2013). Some funding for these schemes is provided through the State Department of Justice and Attorney General.

As noted earlier in this report, in July 2013 the Commonwealth Attorney General announced four year funding to nationally roll out the QPILCH pilot in the Federal Court.

4.3.5 WA feasibility study surveys

As part of this study, law firms and legal assistance agencies were surveyed on their perceptions of unmet legal need. Respondents were asked to identify their perception of the top three areas of unmet legal need in Western Australia that could potentially be addressed through pro bono services. Responses were received from 14 legal assistance agencies and 13 law firms.

Whilst legal assistance agencies identified family law as the main priority area, law firms identified assistance to not-for-profits, including assistance to community legal centres, as their highest priority area. This difference is not surprising and perhaps reflective of the tension as discussed earlier between what matters and clients are presenting in terms of pro bono legal need and what many firms are wanting and practically able to offer in terms of pro bono services. As noted in the NPBRC recent publication (2013:33):

Some of those consulted expressed the view that given the voluntary nature of pro bono, it is important to take into account the type of pro bono work that lawyers want to do and is easy for them to do, and their existing skills and interests, even if the work is not necessarily about meeting the greatest unmet legal need... One clearinghouse manager expressed concern that clients with the greatest needs may also be the ones who are least likely to obtain legal assistance because there is more work involved in assisting them.

The results to the question (Table 9) show that both groups of respondents identify family law (especially property matters) as a high priority area. This finding is congruent with expressed need findings coming from the Law Access and CLC service data. Other priority areas identified by both survey groups were unrepresented litigants, assistance for seniors, domestic violence related proceedings (e.g. VROs) and employment law.

TABLE 9: UNMET LEGAL NEED THAT COULD BE ADDRESSED BY PRO BONO SERVICES

Legal assistance agencies		Law firms		Combined – top 11 issues	
Area of need	%	Area of need	%	Area of need	%
Family Law	57.1	Not-for-profits	53.8	Family law ²	51.9
Employment Law	21.4	Family law	46.2	Not-for-profits ³	25.9
Administrative Law	14.3	Unrepresented persons – criminal courts	30.8	Unrepresented persons – criminal courts	22.2
Unrepresented persons – criminal courts	14.3	Seniors	23.1	Unrepresented persons – civil courts	18.5
Immigration/Refugees/Asylum Seekers	14.3	Domestic Violence/ VROs	15.4	Seniors	14.8
Manage pro bono referral & assess merits	14.3	Unrepresented persons – civil courts	15.4	Domestic Violence/ VROs	14.8
Domestic Violence/ VROs	14.3	Banking/Finance/Debt	15.4	Employment Law	14.8
Unrepresented persons – civil courts	14.3	Middle income and low income earners	7.7	Immigration/Refugees/Asylum Seekers	11.1
Seniors	7.1	Homeless people	7.7	Homeless people	7.4
Civil Law	7.1	Tenancy and housing	7.7	Administrative Law	7.4
Common law compensation	7.1	Slave labour and sex trafficking	7.7	Manage pro bono referral & assess merits	7.4
Consumer law	7.1	Immigration/Refugees/Asylum Seekers	7.7		
Discrimination	7.1	Wills and estates	7.7		
Freedom of Information	7.1	Employment Law	7.7		
Homelessness	7.1	International Law	7.7		
Mental Health Law	7.1				
Mining law	7.1				
Protection and care proceedings	7.1				
Welfare Rights	7.1				
Workers compensation	7.1				

² In particular family law that does not necessarily involve custodial disputes e.g. relocation, property and financial issues.

³ Includes mentoring of principals in CLCs, lawyers prepared to volunteers in CLCs, new social enterprises and general support for not for profits e.g. constitutions and general legal advice.

4.3.6 Legal needs Australia-wide survey

The Access to Justice and Legal Needs (A2JLN) research program, undertaken by the Law and Justice Foundation of New South Wales, is the most comprehensive suite of studies conducted in Australia to date on legal need and access to justice. Along with collecting data from legal service providers and targeted qualitative studies, the A2JLN program undertook a major Legal Australia-Wide Survey (LAW Survey) that produced reports for Australia as a whole and reports for each state and territory.

The survey assessed the prevalence and nature of legal problems, the vulnerability of particular demographic groups, the way people respond to legal problems and the outcomes achieved. Administered between January and November 2008, the LAW Survey draws upon 20,716 telephone interviews with household residents aged 15 years or over across Australia. The survey provides insight into prevalence of legal need (both expressed and unexpressed), the consequences of legal need, how individuals attempt to deal with their legal needs and subsequent outcomes.

Respondents to the survey were asked whether they had experienced a range of problems, without labeling them as legal problems, including those that:

- are not necessarily recognised as legal problems by the respondent
- potentially have legal resolution that is unknown to the respondent
- are resolved outside the formal justice system or by non-legal means
- are ignored or remain unresolved.

By broadening the approach to assessing legal need, the LAW Survey aimed to provide a more comprehensive study of the prevalence and nature of legal problems, as well as the various legal and non-legal pathways used for resolution.

Legal problems in the LAW Survey were categorised into 12 broad problem groups - accidents, consumer, credit/debt, crime, employment, family, government, health, housing, money, personal injury and rights. One limitation in the LAW Survey is that the broad categories do not provide insight into the breakdown of subcategories. For example, 'housing' problems include tenancy, home purchase and neighbour disputes; 'government' problems include local council disputes, problems with pensions/benefits and government services.

The major findings of the LAW Survey were similar across all jurisdictions, including Western Australia, namely:

- Legal problems are widespread and often have adverse impacts on many life circumstances.
- Some people, most notably disadvantaged people, are particularly vulnerable to legal problems, including substantial and multiple legal problems.
- A sizeable proportion of people take no action to resolve their legal problems and consequently achieve poor outcomes.
- Most people who seek advice do not consult legal advisers and resolve their legal problems outside the formal justice system.

Prevalence

In Australia as a whole, 50 percent of respondents experienced one or more legal problems in the 12 months prior to interview. In Western Australia, the prevalence rate was 52 percent - translating to an estimated 899,000 people.

The most prevalent legal problem groups in Western Australia were:

- 21 percent consumer problems (21 percent nationally)
- 19 percent crime problems (14 percent nationally)

- 12 percent housing problems (12 percent nationally)
- 11 percent government problems (11 percent nationally).

The experience of multiple legal problems was common. In Western Australia, 23 percent of respondents experienced three or more legal problems within the 12 month reference period (22 percent nationally) and nine percent of respondents accounted for 63 percent of the legal problems reported (65 percent nationally).

The LAW Survey found that legal problems tended to be inter-related and co-occur. This can be because one legal problem can lead to another (e.g. divorce can lead to debt issues) or some people are vulnerable to experiencing multiple legal problems (e.g. people on low incomes are more likely to experience housing problems and government benefit disputes). However, the evidence of clustered legal problems does not mean that there is always an inter-relationship - sometimes multiple legal problems co-occur simply by chance.

The three main clusters found in the LAW Survey were a combination:

- comprising consumer, crime, government and housing problem groups
- dominated by 'economic and family' issues, comprising the credit/debt, family and money problem groups
- dominated by 'rights and injury/health' issues, comprising the employment, health, personal injury and rights problem groups.

In Western Australia, the first and second combinations were evident, with some evidence of elements of the third combination. The strongest associations of family problems with credit/debt and/or money problems occurred in Australia as a whole, South Australia, Western Australia and Tasmania.

In keeping with other studies, the LAW Survey found that socially disadvantage groups were more likely to experience legal problems overall, had increased vulnerability to substantial legal problems and were more likely to have multiple legal problems. A person's age had the strongest relationship with prevalence and types of legal problems. People aged 65 years or over had significantly lower prevalence rates. In Western Australia, as in most jurisdictions, accidents, crime, personal injury and rights problems peaked between 15 and 24 years of age, and credit/debt and family problems peaked between 25 and 44 years of age. Across all jurisdictions, people with a disability stood out as the disadvantaged group that had significantly higher prevalence of legal need. In Western Australia, people with a disability were also more likely to have substantial legal problems and problems from most of the 12 problem groups.

Adverse consequences of legal problems

The LAW Survey showed that legal problems often have adverse impacts on a broad range of life circumstances, including health, financial and social circumstances. In Western Australia, just over half of the respondents with legal problems (52 percent) had a 'substantial' legal problem that had a 'severe' or 'moderate' impact on everyday life.

Some types of legal problems were found to have more severe consequences than others. In Western Australia, family problems stood out as having the highest proportion of substantial problems (75 percent) and had the highest mean number of adverse consequences. This finding was similar in other jurisdictions. Legal problems related to health or employment also tended to be substantial, with adverse impacts. Consumer and crime problems tended to be minor problems. However, consumer and crime problems had higher levels of prevalence, which means that substantial problems associated with these problems were experienced relatively frequently.

Response to legal problems

Seeking legal advice or assistance was only one of a broad range of actions taken in response to legal problems. Furthermore, respondents often used multiple actions. In Western Australia, these actions included:

- seeking advice from legal or non-legal professionals (53 percent)
- communicating with the other side (38 percent)
- consulting relatives or friends (24 percent)
- using websites or self-help guides (19 percent)
- court or tribunal proceedings (9 percent)
- formal dispute resolution (7 percent).

The LAW Survey defined three broad strategies in response to legal problems, with Western Australian results provided below:

- 'Seeking advice' involved consulting a legal or non-legal professional, regardless of whether any other type of action was also taken (53 percent).
- 'Handling problems without advice' involved taking at least one action but not consulting a professional (29 percent).
- 'Taking no action' involved using none of the above types of actions (19 percent).

In Western Australia, reasons for inaction included:

- it would take too long to resolve the problem (34 percent)
- the respondent had bigger problems (29 percent)
- it would be too stressful (26 percent)
- it would cost too much (24 percent)
- the respondent did not know what to do (20 percent)
- it would damage the respondent's relationship with the other side (10 percent).

In some cases, inaction may have been a sensible response. In others it appears that inaction resulted in unmet legal need. Responses to legal problems depended on the characteristic (nature and severity) of the problem. Respondents were significantly more likely to take action for substantial legal problems. Consumer problems were the most likely to be handled without advice. Accidents, crime, family and personal injury problems were more likely to result in respondents seeking advice when they took action.

Whilst not as strong a predictor as problem characteristics on the type of strategy used, demographic characteristics were related to strategy. Age had the strongest influence on responses - the younger groups (aged 15–24 years) and the oldest group (aged 65 years or over) tended to have the lowest percentages for taking action, while the middle age groups (aged 25–64 years) tended to have the highest. Age was also found to influence the type of action taken - younger respondents were significantly less likely to seek advice and most likely to handle problems without advice. In Western Australia, the disadvantaged groups with significantly higher levels of inaction were people with low levels of education and people with a non-English main language. People with a disability tended to have higher rather than lower odds of taking action. They also tended to have higher odds of seeking advice when they took action.

Advice for legal problems

People who seek advice for their legal problems do not rely solely on lawyers or traditional legal services. The LAW Survey found that for many people a variety of non-legal workers are often the only point of contact about legal problems.

In Western Australia, legal advisers were consulted for only 23 percent of the legal problems for which respondents sought advice, significantly lower than the national figure of 30 percent. Legal advisers included CLCs, ALSs, Legal Aid, court services and private lawyers. Given that respondents did not seek advice in just under half of all cases, this percentage translates to respondents in Western Australia seeking advice for only 12 percent of all legal problems (16 percent nationally).

Of the 23 percent of respondents who had contacted a legal adviser about a problem, 15.1 percent had used a private lawyer, 4.9 percent had used Legal Aid, 2.4 percent had used a court service, 1.9 percent had used a CLC and 2.6 percent had used an unspecified legal service (totals are higher than 23 percent because some respondents used more than one adviser).

When respondents sought advice on a legal problem, the nature of the problem strongly influenced the type and number of advisers used. For example:

- Legal advisers were consulted in 73.4 percent of family law matters, 55.2 percent of money problems (including wills, estates and owning a business) and 36.3 percent of credit/debt matters (the three highest areas where a legal adviser was used).
- The most frequently used advisers for consumer problems were government advisers (34.7 percent).
- Financial advisers (including insurers) were the most common type of adviser for accidents and credit/debt.
- Police were the most common adviser in relation to crime.

When the main adviser was a legal, dispute/complaint-handling or government adviser, these advisers were most commonly sourced through respondents' own personal resources or networks (74 percent). In Western Australia, the main adviser was sourced via referrals from legal professionals in five percent of cases (e.g. CLC, court service, Legal Aid or legal professional) and via referrals from non-legal professionals in 4.5 percent of cases.

In Western Australia, barriers to obtaining advice from main advisers who were legal, dispute/complaint-handling or government advisers were:

- difficulty getting through on the telephone (19 percent)
- the adviser taking too long to respond (13 percent)
- inconvenient opening hours (11 percent)
- too far away or too hard to get to (9 percent)
- inadequate or poorly explained advice (9 percent).

In all jurisdictions, cost was an important barrier to obtaining help when the main adviser was a legal adviser (20–27 percent) and the most common barrier in Western Australia (21 percent).

Western Australian respondents living in remote or regional areas travelled more than 80 kilometres to consult their main adviser in 14 percent of cases.

Finalisation of legal problems

In all jurisdictions, approximately two-thirds of legal problems were reported to be 'now over' at the time of the interview. In Western Australia, legal problems were finalised through the following means:

- 30 percent by the respondent not pursuing the matter further.
- 27 percent through agreement with the other side.
- 17 percent through the decisions or actions of other agencies, such as government bodies, insurance companies or the police.
- 4 percent through formal legal proceedings in a court or tribunal.
- 3 percent through formal dispute resolution or complaint-handling processes.

The types of legal problems and the strategies used were significantly related to whether these problems had been finalised. Substantial legal problems had significantly lower levels of finalisation. Both seeking advice and handling the problem without advice resulted in significantly lower levels of finalisation than taking no action.

In most jurisdictions, age had a strong relationship to finalisation status, with younger people having significantly higher levels of finalisation. In Australia as a whole, the following disadvantaged groups had significantly lower levels of finalisation: Indigenous people, people with a disability, people with low levels of education, single parents, people living in disadvantaged housing, people whose main source of income was government payments and people with a non-English main language. In Western Australia, unemployed people and people living in disadvantaged housing had significantly lower levels of finalisation.

Outcome of legal problems

In all jurisdictions, respondents reported that approximately two-thirds of finalised legal problems had 'favourable' outcomes to the respondent, with no significant difference in these rates between states/territories. Substantial legal problems were significantly less likely to have favourable outcomes. In Western Australia, the outcomes of accidents and personal injury problems were more likely to be favourable, while the outcomes of crime and government problems were less likely to be favourable.

The strategy used in response to legal problems was also significantly related to outcomes achieved. People who took no action achieved the poorest outcomes across jurisdictions. In Western Australia, 67 percent of legal problems resulted in favourable outcomes when advice was sought, 73 percent when the problem was handled without advice, but 56 percent when no action was taken.

The type of legal problem and the strategy used were the main determinants of whether favourable outcomes were achieved. There were very few significant relationships between demographic characteristics and outcomes across jurisdictions.

4.4 Summary

The above discussion examining data, research and information relating to expressed and unmet legal need for pro bono services in Western Australia presents a multi-faceted picture. In real terms there is a widening gap between those who qualify for legal assistance series and those who can afford to pay for such services. Over 80 percent of CLCs service clients receive less than \$26,000 per year and the 2012 state minimum wage was approximately \$32,700 per annum. This figure supports the findings from the Attorney-General's Department and National Legal Aid that the majority of Australians are unlikely to afford anything more than basic services from a private lawyer but are ineligible for publically funded legal assistance.

The evidence suggests that pro bono schemes might best be directed to low to medium income earners who do not qualify for legal assistance programs or very low income earners whose legal problem does not fall within the range covered by legal assistance programs.

Consistent with national data, Western Australians are experiencing legal issues as clusters:

- Socioeconomically disadvantaged people are most vulnerable.
- A significant number of people take no action to resolve their legal problems and for those that do, most are not consulting legal advisers.
- Cost is an important barrier to obtaining legal advice.
- One in seven people living in remote and regional areas of Western Australia are travelling significant distances to seek advice.

Consistent with national data, the area of legal need that is of highest *prevalence* in Western Australia is consumer law. These problems are often seen to be 'minor' in impact and are most likely to be handled without legal advice. This finding may indicate a potentially unmet legal need in relation to pro bono requiring a different approach to providing assistance, such as legal clinics, with the option of class action or public interest advocacy.

In terms of expressed legal need, the data is consistent in presenting family law (property), employment law and commercial/contract advice as three key areas of potential pro bono need. These areas in particular correlate with areas in which publically funded legal assistance services are either not providing any or only limited legal assistance and representation.

Data from Australian courts and the literature support the perception of survey respondents that unrepresented or self-represented litigants are also a potential priority area. The data from the Federal and High Courts show immigration to be a priority area for self represented litigants and this is supported by data provided by the WABA for this study, which showed immigration to be the most frequent area of assistance provided.

Another way to view unmet legal need is in relation to type of assistance provided. Community legal centres are increasingly restricted in their ability to provide substantive legal assistance, even if the client and legal matter fit within eligibility criteria. This results in higher levels of information and advice only assistance, limited casework and even limited legal representation.

This experience of higher demand and restricted service provision is supported by the ACOSS and PwC-CSI surveys that show not-for-profit legal agencies are experiencing higher demand pressures and overall less confidence than most other community industry groups. This evidence suggests that one priority area for pro bono services could be to partner with CLCs so as to provide extended levels of assistance such as legal representation.

It is against the backdrop of legal need in Western Australia, that the following section examines pro bono model options.

5 MODEL OPTIONS

5.1 Some key questions

Before proceeding to consider model options there are some key questions that are useful to considering in framing that discussion:

- Is there a need to change the current pro bono arrangements in Western Australia?
- What function and role should be undertaken under any new arrangement/model?
- What considerations need to be taken into account regarding demographic and geographic factors specific to Western Australia?
- What unmet legal need should be addressed?

5.1.1 Is there a need to change the current pro bono arrangements in WA?

As part of the consultation undertaken for this study participants were asked whether in their view and experience there was any need to make changes to the current pro bono arrangements operating in Western Australia. With few exceptions (see correspondence Appendix 5) the predominate response was that some change was both desirable and necessary.

Many of the reasons for this view relate back to the barriers that were identified under the current arrangements (as discussed in section 3.3) such as:

- The time it takes for pro bono applications to be processed and placed.
- The diversity of criteria and requirements across the various schemes.
- The absence of a cohesive, strategic and coordinated pro bono strategy.
- The lack of resources limiting the operation and expansion of current schemes such as Law Access and WABA.

From the perspective of legal assistance service providers, the development and maintenance of pro bono relationships and information is a time and resource intensive activity for which legal services are not funded to undertake. As a result, the corporate knowledge of pro bono partnerships can be ad hoc, lost with changes of personnel or developed in a reactive rather than a strategic and proactive way. A centralised pro bono entity resourced to take on this role is viewed as a beneficial outcome (Interview ALSWA 3 April 2013 and Case for Refugees 16 April 2013). Legal service providers also see the benefits in a strategic approach that targets areas of legal need and can provide tailored solutions and responses (LAWA 24 April 2013).

The WABA noted that a centralised pro bono service would reduce the number of people who 'shopped' around, moving from one scheme to the next looking for pro bono advice and assistance (Interview 24 April 2013).

From the perspective of law firms, one significant benefit to introducing a centralised pathway for pro bono is that it would assist them with the time and resources currently involved in responding to individual cold calls and inquiries from members of the public seeking pro bono assistance (Interviews Pro Bono Coordinators 7 March 2013 and 6 May 2013).

PILCHs play important role as they provide a central access and coordination point for pro bono matters. From a firm's point of view being able to refer individuals to the PILCH plays an important function from a resource perspective... Clearinghouses also provide pro bono opportunities for firms that they cannot access on their own and they assist firms also in accessing the bar (Pro bono partner 20 March 2013).

In attempting to gauge what interest there exists amongst Western Australian firms in supporting a clearinghouse or other coordinated pro bono entity, survey respondents were asked to identify in what why they may consider involvement. The areas of involvement in which respondents were either very interested or interested were as follows:

- 68 percent - become a member
- 59 percent- accept suitable referrals
- 50 percent- offer training, research and submission writing on public interest issues
- 48 percent - volunteer or offer secondment to clinics
- 29 percent - provide in kind support for back of house functions
- 24 percent - provide secondments for an unrepresented litigants clinic

5.1.2 What unmet legal need should be addressed?

Strategic public interest, individual need or both?

Section 4 identified a range of key indicators of expressed legal need, unexpressed legal need (matter type), client type and type of assistance required. We know that there are particular areas of law that are presenting on a regular basis i.e. family law (property), employment law, commercial/contract disputes and that there are certain matters that have been identified as of high prevalence but unexpressed, such as consumer law. The question is *what role should pro bono play in addressing unmet legal need?*

In the absence of universal legal assistance and in an environment in which in real terms the amount of financial resources being directed at publically funded legal assistance services has declined, the options for those seeking legal assistance who cannot afford the cost of private legal services are to either ignore the issue, try and deal with the matter themselves, seek non-legal avenues of assistance or to seek pro bono assistance.

As discussed earlier in this report, historically pro bono services provided by the legal profession pre-date state sponsored legal assistance services, they provided albeit a limited safety net for some individuals facing legal problems who could not afford to pay for the service. The introduction of various state funded legal assistance services in the 1970's and their subsequent growth saw a shift in how pro bono services were provided by the private profession. Arguably, this correlated with the growth of PILCHs and the concept of focusing upon 'public interest' pro bono matters rather than upon individual matters.

The revision of funding for state legal assistance services in the 1990s however, has seen a change in emphasis from pro bono addressing matters of 'public interest' to increasingly been asked to also respond to unmet legal need in individual matters. In a sense we are coming full circle – the fact that some clearinghouses are moving away from self-descriptors such as *public interest* clearinghouses to services described as providing *access to justice* is perhaps indicative of this shift. What is different now from the situation pre 1970s is the existence of various schemes and entities directed at coordinating and promoting pro bono services in a much more formal way.

Increasingly, pro bono schemes are being asked to place matters not involving systemic or broad public interest matters, but individual matters that are not being accommodated by legal assistance services or by the private profession. Whilst pro bono will never be a means to fully meet that demand (and nor should it be expected to do so) it raises questions that given the legal profession's continued commitment to provide pro bono, *what and how should this look like?*

The significance of this shift is what we see in the tension between what firms and legal practitioners are able, willing or wanting to do by way of pro bono services and what increasingly is being asked of them. In a sense despite the principle that pro bono is not a substitute for properly funded public legal assistance services the reality is that pro bono is being sought increasingly as one strategy to respond to the gap in services. Again as noted by the NPBR (2013:34-35):

Some of the consulted pro bono coordinators expressed their firms' preference for 'strategic pro bono' and law reform rather than individual case work, which they saw as the responsibility of legal aid. For example, family law is an area of great unmet legal need which is seen by many in

the pro bono community as being ‘the government’s job’ and therefore not appropriate for pro bono legal assistance.

This tension is by no means new. The same issues were being canvassed in research undertaken in 1998 (Law and Justice Foundation of NSW, 1998, 2002: 34), where it was observed:

...pro bono services could distinguish themselves from legal aid by giving priority to providing services in areas not covered by legal aid... However, this solution may not be acceptable to the pro bono schemes, which see themselves as serving the ‘middle ground’ of persons who cannot get legal aid because they do not satisfy the stringent means test but who are still unable to afford legal services. That is, the pro bono schemes generally target a type of litigant rather than an area of law.

5.1.3 What function and role should be undertaken under any new arrangement/model?

As part of the survey undertaken with Western Australian law firms and legal assistance service providers, respondents were asked to identify what functions a pro bono clearinghouse (or other entity) should be involved in. Table 10 outlines and ranks those responses, which are consistent with information obtained through interviews conducted with various stakeholders for this study.

TABLE 10: POTENTIAL FUNCTIONS OF A CLEARINGHOUSE

	Very Essential	Essential	Combined - very essential and essential	Not sure	Not essential	Should not be doing this
Manage and coordinate public interest pro bono applications.	51.3%	43.6%	94.9%	5.1%	0.0%	0.0%
Be a central filtering point to which pro bono requests received by law firms from members of the public can be referred.	48.7%	43.6%	92.3%	5.1%	2.6%	0.0%
Have a role in promoting the culture of pro bono within WA.	43.6%	46.2%	89.7%	10.3%	0.0%	0.0%
Provide a tailored match between areas of unmet legal need with the interest and skill base of law firms.	28.2%	59.0%	87.2%	12.8%	0.0%	0.0%
Manage the pro bono referral schemes of Law Societies and Bar Associations.	53.8%	30.8%	84.6%	12.8%	2.6%	0.0%
Undertake in house assessments of the merits of pro bono applications.	41.0%	41.0%	82.1%	17.9%	0.0%	0.0%
Be the public voice on public interest and pro bono issues in WA	33.3%	48.7%	82.1%	10.3%	7.7%	0.0%
Identify areas of unmet legal need suitable for pro bono legal work.	30.8%	48.7%	79.5%	12.8%	5.1%	2.6%
Coordinate pro bono requests from not for profit organisations.	35.9%	41.0%	76.9%	15.4%	7.7%	0.0%
Undertake a secretariat role that can support and coordinate existing pro bono schemes, providers and stakeholders.	33.3%	41.0%	74.4%	20.5%	5.1%	0.0%
Provide training to lawyers who wish to undertake pro bono work in specific areas of unmet legal need.	33.3%	35.9%	69.2%	15.4%	15.4%	0.0%
Provide a brokerage service between law firms and community legal centres.	17.9%	51.3%	69.2%	25.6%	2.6%	2.6%
A role in coordinating pro bono triage responses to natural disasters (e.g. WA bushfires).	25.6%	43.6%	69.2%	28.2%	0.0%	2.6%
Undertake research and law reform on public interest issues.	30.8%	35.9%	66.7%	15.4%	15.4%	2.6%
Operate and coordinate legal clinics in areas of need (e.g. seniors, homeless persons).	23.1%	38.5%	61.5%	17.9%	15.4%	5.1%
Operate and coordinate unrepresented litigants clinics.	17.9%	25.6%	43.6%	33.3%	17.9%	5.1%
Provide training on topics of relevance for not-profit organisations.	25.6%	15.4%	41.0%	33.3%	23.1%	2.6%

Grouping these functions, we can see support for an entity to undertake a role in:

- a. Managing, assessing and placing Law Access, WABA and public interest pro bono applications.
- b. Being a central contact point for pro bono inquires and referrals across all schemes.
- c. Having an advocacy role in the public domain, including a role in policy and law reform.
- d. Strategically identifying and prioritising unmet legal need suitable for pro bono.
- e. Coordinating clinics in areas of unmet legal need.

Currently, whilst individual schemes such as Law Access and WABA undertake the functions identified at (a) there is no entity in Western Australia, which currently takes on the other functions set out at (b-e). What appears to be missing in Western Australia are the strategic and higher level functions.

In asking the question ‘what functions should a clearinghouse or other entity not be involved in?’, responses from legal assistance services related to concerns about possible competition for funding and resources with a new entity. Both law firms and legal service providers identified that it was important to avoid any potential for a clearinghouse to ‘creep’ into or duplicate areas of service provision currently provided by existing service providers:

...we simply wanted to make the point that it's important to consider carefully which functions a pro bono clearing house will undertake because there is obviously a limited pool of funding available to CLCs, pro bono clearing houses, Legal Aid etc. and there is some potential for duplication between the functions of a pro bono clearing house and CLCs. (Survey response)

5.1.4 What demographic and geographic factors need to be taken into account?

According the Australian Bureau of Statistics (2013):

- The population of Western Australia has nearly reached 2.5 million.
- The growth in population in the 12 months to the end of September 2012 was the states highest annual growth rate since the early 1970s (ABC News 28 March 2013).
- Western Australia represents the largest land area in Australia, with 78 percent of the population residing in the greater Perth area.
- The estimated residential population of regional WA is over 520,000 persons (2011 ABS census).
- Aboriginal and Torres Strait Islanders as a proportion of the regional population is 8.4 percent (compared to an overall WA average of 3.1 percent).

The demographic and geographical profile of Western Australia is a relevant consideration in any model that seeks to service the pro bono needs of all West Australians. A WA Council of Social Services issues paper (2010) identified a range of issues that impact upon the ability to service regional, rural and remote (RRR) communities, including:

- The cost of housing and accommodation, fuel and transport, utilities, insurance, regulatory costs and security on regional service providers.
- Delivering outreach services without adequate additional funding.

The impact that remoteness of location has in an individual's ability to access justice has been discussed in Section 4 of this report. Interestingly, the same issue is identified in international literature (Buckley, 2010:3) where in British Columbia (a significant comparative jurisdiction to Western Australia) the ‘biggest gaps are in rural and remote areas, in delays in accessing services and in the ways services are provided.’

Barriers to pro bono for RRR

In consultations undertaken with respect to this feasibility study, particular issues and barriers relevant to geography and location that were identified included:

There are significant logistic issues in terms of distance, often we have to just set up under a tree with no admin support no photo copying...with pro bono lawyers working in remote areas practical issues arise like insurance cover issues for law firm solicitors (this nearly undid a pro bono project). (CLC solicitor)

For ALS clients there can be specific geographical issues - costs are often higher and there is sometimes a higher merit threshold – knowing who to refer to in RRR areas is a problem. (ALSWA)

Location of clinics can be an issue for some firms in terms of staff time away from work. (Law firm pro bono coordinator)

These were in addition to the barriers generally identified in the study.

RRR and unmet legal need

In terms of unmet legal need, consultations with RRR stakeholders identified the following areas of unmet need:

- Family Court proceedings.
- Aboriginal Corporations and other community organisational governance and related issues.
- Tenancy and public housing issues.
- Criminal injuries and historical compensation claims.

These issues were confirmed in consultations with members of the East Kimberley Legal Service Network (18 July 2013) who identified a range of challenges specific to working with RRR communities.

- There are difficulties for local services and firms acting for Aboriginal organisations due to resources, capacity and issues of conflict (e.g. acting for an entity could then conflict a legal service provider from acting for any individual member).
- There are also cultural and political issues that need to be taken into account where intra-Aboriginal disputes may arise around a particular issue. For some of these matters, it would be useful to have an external firm acting, provided that they have a good understanding of the cultural/political issues that can come into play.
- Limited number of private law firms who practice, particularly in the north of the State, has an impact on the capacity to offer pro bono options.

Examples of how other pro bono entities have addressed RRR needs

QPILCH has been able to obtain funding (not recurrent) from their equivalent of the Public Purpose Trust to run a RRR project. This particular project has focused on developing partnerships between RRR local firms and metropolitan based firms who jointly take on pro bono referrals from RRR applicants via QPILCH.

QPILCH also provides:

- Outreach services for its Unrepresented Litigants Clinics by arranging phone appointments for RRR clients.
- Employs a paralegal hosted in a RRR community legal centre to coordinate pro bono services for the QPILCH Homeless Persons Clinic.

Discussion with QPILCH on their RRR project (Telephone interview 11 July 2013) identified some limitations with the model particularly in relation to maintaining the metro-local law firm relationships over a period of time.

Access Pro Bono is a service that operates in British Columbia and, as noted, this is a jurisdiction that has similar geographical and demographic characteristics to Western Australia. Access Pro

Bono has sought to respond to this through an extensive province network providing legal advice clinics via technology such as Skype. More information about Access Pro Bono is provided in the discussion below looking at specific model options.

Model considerations for RRR service providers

Consultations with the East Kimberley Legal Service Network emphasised the following considerations in developing a pro bono model that is mindful of RRR needs:

- There is a preference for a model that will best accommodate the cross jurisdictional realities of the East Kimberley and its proximity to the Northern Territory and Darwin.
- The model needs to be independent of any existing entity, such as the Law Society of Western Australia, so as to ensure that it has a sole focus on the provision and promotion of pro bono services.
- Critical in any model is that staff are locally situated. A model that just operates out of Perth will not work for RRR communities and service providers. It is important that people are working from the region in order to really appreciate the issues of distance, cost and client base.
- The ideal would be to have a replication of the Perth office co-located with a RRR service i.e. a referral officer, project officer and a relationship manager. These positions could be resourced by a central clearinghouse in Perth but hosted by an agency in the region.
- The buddy system being run by QPILCH in which a local firm form a partnership with a city firm to run pro bono matters could have some benefits for RRR communities but the challenges in the Kimberley are that there are low numbers of private firms providing services in some RRR areas and that some of the pro bono issues would be outside the expertise of large metropolitan based firms.
- Any model needs to reflect and factor in the additional cost and time it takes to delivery services in RRR areas.
- Any governance structure for a pro bono entity must include specific RRR representation.
- RRR interests also need to be represented in any steering/negotiating committee that is set up to progress a particular model arising from this report.

5.2 Model options

The brief for this project required the study to identify models suitable in a Western Australian context, which would bring together a range of pro bono providers. In developing model options, regard was given to examples currently operating in other jurisdictions, both nationally and internationally, as well as reference to similar studies.

5.2.1 Model development and the pro bono forum

The models identified in this report have emerged from consultations, literature review and from feedback received at a stakeholder forum held on 31 July 2013 and subsequent to that forum. The forum was attended by an estimated 40 participants including representatives from membership bodies, universities, law firms, the Western Australian Bar, not for profit organisations, the Federal Court and the State Administrative Tribunal and legal assistance services (Appendix 6 attaches the list of registrations). Also in attendance was John Corker, Director of the National Pro Bono Resource Centre, and Fiona McLeay, Executive Director of Justice Connect (the newly merged Victorian and NSW PILCHs).

The forum was informed by a discussion paper, which was distributed to attendees prior to the forum. This discussion paper identified the following potential models, which were explored by participants at the forum:

- a. An advisory group, which has oversight of existing schemes.
- b. A centralised clearinghouse, which brings together existing schemes into a single entity operating as a state based 'stand alone' organisation.

- c. A centralised clearinghouse, which brings together existing schemes into a single entity operating as part of a multi-state model.
- d. An enhanced Law Access service.

No one model had majority support from those in attendance at the forum. In terms of each of the models the following comments were recorded:

Model A – Advisory Group

- The establishment of an advisory group with oversight of pro bono in Western Australia is a good idea and this could be incorporated as a part of any of the models.

Model B – Stand Alone State Based Clearinghouse

- This approach would best serve Western Australian interests and avoid competition with other jurisdictions for resources.
- Setting up a stand alone Western Australian entity could mean that WA misses out on the wealth of knowledge that has accumulated in other services like Justice Connect.
- National law firms represented at the forum said they would not support this model as their preference is to support a multi-state model.
- The issues of how a standalone entity is resourced and funded is a critical consideration in terms of viability.

Model C – Multi-State Based Clearinghouse

- This model has the support of many national law firms.
- It provides better logistics in terms of national coordination of administration, finance, policy, research and fundraising.
- This model provides an existing infrastructure and a ready-made vehicle.
- This model would need a strong local office and strong stakeholder engagement in each state.
- One advantage of this model is that it could avoid duplication, but it depends on what the model looks like in practice.
- How will this model deal with remoteness of some communities – perhaps linking pro bono services with Queensland and South Australia would make a more natural fit?
- Some believed that this model would not work with national programs – ‘WA always comes last and it makes it difficult to maintain relationships due to practicable issues such as time differences and distance’.
- This model could be effective provided that the interests of local firms and RRR interests can be accommodated.
- Keep the status quo and then transition to a multi-state model over time.

Model D – Enhanced Law Access service

- This model could allow for gradual development and then be expanded into a multi-state or stand alone model later.
- Has the benefit of keeping things at grass roots.
- Infrastructure, goodwill and people are already there - just needs to be better utilised.
- Leaves the door open for university student inclusion.
- Best placed to utilise private practices via the Law Society. Law Access has a strong link with the profession and is well placed to raise the pro bono profile.
- Some felt that the Law Society would not be a good fit for expanded services as its structure and processes are not suitable for the purpose of a pro bono clearinghouse.
- Enhancing Law Access within the Law Society could create a potential conflict of interest between representing pro bono clients and representing the Law Society membership.

Other comments and feedback:

From barristers view, whichever model it needs to be an incorporated entity.

Enhance Law Access for now and then move to a multi-state model once we have the chance to see how it operates. It is still early days and perhaps we need to wait and see.

A multi-state model provides us with a ready made vehicle but the advantage of a state based clearing house is that it is operated from Western Australia and would be more tailored to Western Australian needs.

Our table was very WA focused and wanted something that was State based only 'to have control over the product' something similar to QPILCH...however...when Fiona spoke (Justice Connect) about there being a local presence/all the work generated in WA would be covered and we would not be ignored in favour of Melbourne and Sydney. Our table then reconsidered and thought becoming involved in Justice Connect model might work provided that there was WA representation on the national board and also state based links, Shopfront/presence here. This also appeased the lawyers on our table who worked for national firms who said their firms not likely to support another state based PILCH and unlikely to pay further fees towards creating a state based PILCH. Our table would have liked the opportunity to have heard Justice Connect do a bigger presentation.

Our table was split down the middle, the national firms want a national model others (CLCs and barrister) prefer a state model but with close ties with a national scheme...can't decide between the two.

An alternative model is to house the clearinghouse with Legal Aid.

Fiona McLeay of Justice Connect made the following comments in relation to a multi-state model:

- Justice Connect has strong roots with the law society, the Bar and community legal centres.
- We see ourselves as a specialist CLC with diverse membership.
- We have managed the Law Institute of Victoria and Victorian Bar scheme for the last 12 years.
- Justice Connect provides a centralised point of referral for clients and firms with the ability to address a whole range of issues.
- We offer a range of clinics to address specific needs and to coordinate responses to particular issues.
- Justice Connect also undertakes law reform and policy work to advocate for change.
- Nothing works unless there is local ownership and attachment from the local profession; this is a fundamental starting point in a multi-state model. A meaningful and real relationship on the ground is essential.
- In terms of governance, we have a Board with representatives from NSW and Victoria. We have the ability to appoint up to nine Board members, so there is potential for other state representatives.
- We have established state committees who will report to the Board. These committees allow for a broad range of stakeholders.
- Justice Connect has strong support from the Australian Attorney General.
- If WA got on board people would be employed but based in WA with referrals taking place at a state level. It has to be localised as it would not work to have someone based in Melbourne trying to place matters in Perth.

John Corker of the National Pro Bono Resource Centre made the following comments:

- Noted that the forum represented the largest gathering of people he has seen on this topic in WA.

- This is about culture and setting up something that works for WA.
- It needs to be proactive and driven by need Victoria is probably the best example of this.
- Integrity is the other point, how do we build a model that embraces the entire profession as best it can – universal support will lead to the greatest success.
- I think that you can do a lot more in this State.
- Quality management is important, a multi-state model would give an excellent management model.

Matthew Keogh, Junior Vice President of the Law Society of WA and member of the Steering Committee noted:

- The Law Society does not have a view on what model would be best.
- What Council and the profession want is the model that will best meet the pro bono needs of the state – we don't want to just react to perceptions of what exists in other states.
- Posed two questions: other than the argument about fees, is there a particular view as to why national firms support a multi-state model? What is the potential for conflict of interest between the function of a clearinghouse and the operation of the Law Society?

Responses to these questions were noted as:

- There are benefits in aligning the existing structures of pro bono schemes within firms with a multi-state model. This approach avoids duplication.
- Questions about the agility of the Law Society to take on a truly clearinghouse function. There are differences in priorities of a clearinghouse that is client focused from the Law Society's core function that is to represent the interest of their members.

5.2.2 Suggested models and costings

The following discussion looks at what type of entities are best suited to carry out the functions identified in Section 5.1. As such, the discussion of model options does not examine pro bono schemes but rather examines what structure is best suited to better coordinate existing and future pro bono resources and activities.

The following options also take into account feedback from the forum and subsequent discussions with the steering committee and relevant stakeholders, such as the Law Society. In view of the feedback the following have been identified as models that can bring together existing pro bono service providers and enhance current pro bono service coordination and delivery. These options include the establishment of:

- a. An advisory group, which has oversight of existing schemes.
- b. A centralised clearinghouse, which brings together existing schemes into a single entity operating as a state based 'stand alone' organisation.
- c. A centralised clearinghouse, which brings together existing schemes into a single entity operating as part of a multi-state model.
- d. A partnership model (building on the earlier Enhanced Law Access model.)

The following provides an overview of each of the four models, identifying key features, functions and comparative examples of models currently operating in other jurisdictions. Discussion of relevant features and possible scenarios are also outlined.

Each of the four models are then examined within some comparative tables so as to provide a summary and overview of their relative features, functions and ability to address current barriers to pro bono coordination in Western Australia.

5.2.3 Model A: ADVISORY GROUP

Description	A stakeholder advisory group with terms of reference to provide a forum for the oversight and coordination of existing pro bono services and resources
Examples	<ul style="list-style-type: none"> • The WA Pro Bono Network Group • WA Jurisdictional Forum (WAJF)
Features	<ul style="list-style-type: none"> • Existing pro bono referral schemes e.g. Law Access and WABA would continue to operate as independent programs. • An advisory group composed of 'leadership level' representatives from relevant stakeholders including: <ul style="list-style-type: none"> • Existing Law Society Law Access and WABA pro bono referral services • Law firm pro bono partners/coordinators • Community Legal Centre Association of WA • Legal Aid WA • Aboriginal Legal Service WA • Aboriginal Family Violence Legal Service • University law schools • WA Department of the Attorney General • The advisory group would operate and meet in accordance with agreed terms of reference, undertaking functions such as those identified in the Law and Justice Foundation study (2002:74) including: <ul style="list-style-type: none"> • providing a forum for the discussion of policy issues and the exchange of ideas among pro bono service providers and users, • preparation and dissemination of information about the schemes and their eligibility criteria, • promoting pro bono work to the legal profession, • collection and publication of statistical data on pro bono legal services. • No direct service provision, but would undertake some of the higher strategic functions leaving the direct service delivery involving assessment and referral of pro bono matters to existing services and entities.
Resources	<ul style="list-style-type: none"> • Secretariat support.
Benefits	<ul style="list-style-type: none"> • Provides a low cost model with the least amount of change to current arrangements. • Has the potential to provide a higher-level strategic approach to the coordination of pro bono resources. • A common or shared approach to information and data collection. • Has the potential to provide a 'public' voice on pro bono and access to justice. • Provides an effective forum in which to respond to urgent events (e.g. pro bono responses to natural disasters). • In the event that Western Australia considered joining a multi-state model at some point in the future, an established well functioning advisory forum could provide the mechanism by which to link into a multi-state governance structure (see Model C).
Challenges	<ul style="list-style-type: none"> • Advisory group 'fatigue' – a number of potential stakeholders for a pro bono specific advisory forum are already engaged in other similar entities (e.g. the WAJF). This may result in a lack of motivation in being involved in 'yet another' committee. • Some entity needs to 'hold' and 'drive' the forum – which may be the role of the secretariat, but that requires the entity to be resourced.

Discussion

This option encompasses similar elements to that found in models of collaboration referred to in the literature as 'collective impact' (Kania & Kramer, 2011). These types of models have emerged from the United States and have been successfully utilised in relation to cross-sectorial collaborations. The main elements of this approach have been identified as including:

- Having a common agenda with a shared vision, common understanding and joint approach.
- Shared measurement systems in the way that data and information is collected.

- Mutually reinforcing activities so that activities of each of the partners are coordinated and fit into an overarching plan.
- Continuous communication, which is essential to developing trust and a common language.
- A backbone support organisation that is a separate organisation to the collective, which manages and co-ordinates the process.

Examples

The WA Pro Bono Network Group is an informal attempt to bring together the various pro bono service providers and stakeholders on a regular basis. The group operates without terms of reference and brings together representatives from existing pro bono schemes, pro bono coordinators, university law schools and legal assistance service providers. Whilst the network group currently meets only sporadically, it provides an example of this type of approach.

Another example can be seen in the establishment of Legal Assistance Forums arising out of the National Partnership Agreement on Legal Assistance Services. These forums are an example of attempts to develop a level of service integration. In Western Australia, the initial establishment of a legal assistance forum (WALAF) was disbanded in 2010 and replaced with the WA Jurisdictional Forum (WAJF), which is made up of Commonwealth and State Attorney General Departments, LAWA, ALSWA, Aboriginal Family Legal Services and the Community Legal Centre Association of WA. This forum meets twice a year, with secretariat support provided by LAWA. Its terms of reference include:

- a. Identifying and quantifying the scope of existing service delivery within the Western Australian legal assistance sector.
- b. Considering alternative and early intervention approaches or models to improve efficiency and service quality.
- c. Identifying, documenting and quantifying areas of existing and emerging service delivery stress or failure.
- d. Providing advice to the State and Commonwealth Governments.
- e. Other matters as agreed by members of WAJF.

Some possible scenarios

An existing pro bono service provider (such as Law Access) is resourced to take on the 'backbone' or secretariat role to an advisory group. The main proviso here is that whoever takes on that role is adequately resourced to do so and that its role as such is acknowledged and supported. In the absence of this, the risk is that the backbone organisation will not be able to devote the time and resources to ensure that the purpose and function of the advisory forum are properly supported.

Given the similarities between the potential stakeholders of a pro bono advisory forum and existing forums such as the WAJF, one option may be to approach WAJF to consider the possibility that membership of the forum is expanded to take on board pro bono stakeholders and, as such, places pro bono within the current discussions regarding access to justice outcomes.

Resources and estimated costings

Item	Estimated Cost – per annum
Part time project officer and secretariat support. 1 day per week pro rata @ \$70,000 pa.	\$14,000
Salary on-costs @15%	\$2,100
Postage and telephone	\$2,000
Printing and stationary	\$2,000
Catering for meetings	\$2,000
Travel and accommodation for RRR member	\$6,000
Office and equipment administration fee (based on being co-located)	\$10,000
TOTAL	\$38,100

5.2.4 Model B: STATE BASED CENTRALISED CLEARINGHOUSE

Description	A state based centralised clearinghouse
Examples	<ul style="list-style-type: none"> • QPILCH and SA Justice Net • Access Pro Bono (British Columbia)
Features	<ul style="list-style-type: none"> • Existing pro bono schemes are integrated into a state based entity, creating a single pathway for pro bono applications in Western Australia. • Could either incorporate as a company limited by guarantee or operate as an incorporated association under state legislation. • This new entity could undertake the following functions: <ul style="list-style-type: none"> • Manage, assess and place Law Access, WABA and other public interest pro bono applications. • Be a central contact point for pro bono inquiries and referrals across all schemes. • Manage and develop pro bono networks and relationships with key stakeholders. • An advocacy role in the public domain, including a role in policy and law reform. • A strategic role in identifying and prioritising unmet legal need suitable for pro bono. • Coordinate clinics in areas of unmet legal need. • New entity would be managed by board made up of stakeholders/skill based members. • Employ staff to undertake functions. • Establish reference groups who report to the board on specific issues and projects (e.g. RRR, CaLD etc.) • Structure could allow for broad membership, including professional associations, law firms, legal assistance agencies, corporates, individuals, universities and barristers.
Resources	<ul style="list-style-type: none"> • Optimal initial resourcing could include: Manager/Director, Solicitor x 1, Paralegal x 1, Policy/ Project Development officer x 1 and Administration Support. Potential for secondments and internship arrangements to provide additional resourcing. • Would require office space, set up and operational costs.
Benefits	<ul style="list-style-type: none"> • Provides a clear pro bono pathway and entry point for members of the public, not-for-profits and publically funded legal service providers. • Has a state specific independence, governance, brief and focus. • Ensures a consistent approach in the assessment and referral process. • Brings in-house expertise and knowledge devoted to the assessment and placement of matters. • Provides a single focus and a greater public profile, allowing for the promotion of pro bono work and advocacy. • Provides a clear point of contact and reference for parties wishing to engage or negotiate pro bono issues relevant to Western Australia. • Provides a higher-level strategic approach to the coordination of pro bono resources. • Introduces a common or shared approach to information and data collection. • Provides an effective forum in which to respond to urgent events (e.g. pro bono responses to natural disasters).
Challenges	<ul style="list-style-type: none"> • Resourcing the model to an adequate level and securing recurrent core funding. • Avoiding competition for resources from other similar types of entities (e.g. CLCs) for resourcing. • State based model does not have support of many national firms (resource implications here in terms of membership). • Ensuring that, in setting up a separate entity, current networks and relationships established within existing schemes are not lost.

Examples

QPILCH is a state based clearinghouse, which has been coordinating pro bono services since 2002. It provides an example of the scope of work that can be undertaken by a relatively well resourced centralised clearinghouse working with a range of stakeholders, and in this case, particularly with universities.

Features of QPILCH include:

- It operates as a not-for-profit incorporated association pursuant to state legislation.
- It is a membership-based organisation derived of law firms, the Bar, universities, corporates, publically funded legal service providers, professional organisations and individuals.
- According to the 2011-2012 Annual Report, QPILCH has an operating budget of just over \$1.2 million. Of this, 77 percent of funding was from state government sources and a combination of recurrent and one off funding from the Legal Practitioners Interest Trust Account Fund (LPITAF - the equivalent of the WA PPT), seven percent from membership fees, seven percent from universities, six percent from Australian Attorney General and the remainder from donations and small grants.
- It employs five full time senior solicitors (Director and coordinators of key programs), two full time and four part time lawyers, and two paralegals who are involved in the clinics and referral programs, with secondments and internships being utilised to varying degrees.
- Undertakes assessments in-house, manages clinics and provides training.
- It has relationships with university law schools and law students, providing volunteer and internship opportunities for students to work within its referral service and hosting a range of university clinics. The universities determine entry into these clinics. Clinics include:
 - University of Queensland Homeless Persons' Legal Clinic
 - University of Queensland Mental Health Law Clinic
 - University of Queensland Public Interest Research Clinic
 - Bond University Administrative Law Clinic
 - Griffith University Social Justice Lawyering Clinic
- It has engaged in a range of specialist projects including: Land Use Governance; Rural, Regional and Remote Project and Flood and Cyclone Legal Help.
- The RRR project is of particular relevance to Western Australia, given the geographical and demographic similarities between the two states. This project has been funded by the LPITAF to enhance pro bono service delivery to RRR locations. The project employs a RRR coordinator and involves a range of approaches, including developing and supporting specific pro bono relationships between RRR law firms and metropolitan based firms.
- Operates a self-representation service, which offers unlimited appointments to provide advice and assistance (but not representation) on a range of discrete tasks. QPILCH lawyers and member firms staff the service.
- Operates a disbursement fund.

QPILCH provided the following level of assistance in the last financial year (2011-2012):

	Number of applications	Number of referrals	Number clients assisted / Files opened	Number appointments conducted
Referral Services	468	172		
Homeless Persons Clinic			507 clients	
Refugee Civil Law Clinic			34 clients	
Self Representation Services	450			688
Administration Law Clinic			35 files	
Mental Health Law Clinic			41 files	
Open Minds Legal Clinic			35 files	
IP Law Clinic			30 files	

SA Justice Net is an example of a smaller state based centralised clearinghouse, which has been operating since 2009. In many respects its operations are comparable to the work and functions currently undertaken by Law Access.

Features of SA Justice Net include:

- It operates as a not-for-profit incorporated association pursuant to state legislation.
- It is a membership-based organisation derived of law firms, the Bar, universities, corporates, publically funded legal service providers, organisations and individuals.
- It employs an Executive Director (0.9 FTE), Referrals Lawyer (0.6FTE) and an Administration Assistant (0.6 FTE) and utilises volunteers and secondees.
- A panel made up of the Executive Director, a management committee member and a barrister member assesses applications.
- In the last financial year (2011-2012) it had an operating budget of just over \$160,000 derived from a combination of fundraising (19 percent) memberships (22 percent), donations (31 percent), and grants (26 percent).
- In the last reporting period it received 563 inquiries, dealt with 175 applications and referred 65 matters.
- It operates a legal referral service for refugees and asylum seekers.
- No provision is made for disbursements and related costs.

Access Pro Bono, British Columbia (APB) provides a comparative model relevant to Western Australia, given the similarities between the two jurisdictions. APB was the result of a merger in 2010 between two separate British Columbian pro bono services.

Features of APB include:

- It operates as a province wide pro bono incorporated charitable entity and receives funding from the BC Law Foundation as well as income from fundraising, events and donations.
- The BC Law Foundation provides a grant specifically for disbursements.
- The board is made up of directors from a range of backgrounds from across BC.
- Staff profile includes:
 - Executive Director
 - Intake coordinator and project manager
 - Roster coordinator
 - Civil chambers program manager
 - Project and information officer
 - Clinic coordinator
 - Finance administrator
 - Fundraiser and recruiter
 - Operations coordinator

Core programs operated by APB include:

- Summary legal advice program, which operates 105 clinics across the province, including clinics operated by Skype and phone. Staffed by volunteer lawyers.
- Civil chambers program provides pro bono legal advice and representation in Vancouver in Supreme Court and Court of Appeal civil chamber matters.
- Roster program which provide pro bono services across a range of matter types including Court of Appeal, Family Law, Federal Court of Appeal, Judicial Review, Mediation and Wills and Estates (this operates as a referral service to private practitioners).
- Solicitors program –a service specifically for not-for-profit organisations.

- Paralegal program provides support for self-represented litigants in Vancouver.
- Wills Clinic.
- Children's lawyer program operates across different regions in BC through a court referral process.

The main areas of assistance are in general civil and family law matters.

	Number of applications/ contacts	Number of referrals	Number clients assisted / Files opened	Number appointments conducted
Roster program (Referrals)	659	110		
Paralegal program			166 clients	
Civil chambers program			195 clients	
Summary legal advice program	8,817			6,954

Possible scenario

If the establishment of a clearinghouse model is viewed as the best option for enhanced coordinated pro bono services in Western Australia one option is to establish a state based clearinghouse similar to that operating in Queensland (QPILCH), South Australia (Justice Net) or British Columbia (APB).

Consultations undertaken for this project identified that many people generally preferred the concept of a stand-alone clearinghouse model rather than one that remained within an existing entity such as the Law Society. The main reason being that a stand-alone model might ensure greater independence and clarity around role and purpose. As noted there were some exceptions to this view. This study received feedback from a few people who stated that current arrangements were satisfactory and could continue with minimal changes without the need to establish a new entity (Appendix 5).

Under this scenario:

- Law Access could leave the Law Society and incorporate as a new, not-for-profit legal entity with a membership base.
- The WABA scheme could be managed by the new entity.
- Governance could be a board made up of a combination of stakeholder and skill based members.
- A high profile patron could be appointed to promote the work of the clearinghouse.
- The new entity would:
 - Engage staff to undertake in-house assessment of pro bono applications. It could however also utilise the expertise of members or management (such as in South Australia) to assist with that function if so required.
 - Become the central contact point for pro bono inquires.
 - Devote resources to develop and manage pro bono networks and relationships with law firms and other stakeholders.
 - Take on higher-level advocacy and strategic functions.
- A significant issue would be to ensure that the entity has a clear strategic direction and plan to develop and resource the service to a point that it can take on the additional functions of a clearinghouse rather than focus only on referrals. In this regard, QPILCH and APB represent the type of programs that could be undertaken.
- Securing sustainable recurrent funding and resources is a key viability factor in this model.

Resources and estimated costings

(Based upon equivalent positions advertised in the NFP sector)

Item	Estimated Cost- per annum
Director Full Time	\$100,000
Solicitor Full Time	\$87,000
Paralegal Full Time	\$65,000
Policy/Project Officer Full Time	\$60,000
Administration Officer Full Time	\$55,000
Staff on-costs 15%	\$55,050
Insurance, practice certificates, professional development and CPD	\$15,000
Rent and outgoings (estimated \$550 per sqm x100 sqm)	\$55,000
Postage and telephone	\$5,000
Printing and stationary	\$15,000
Subscriptions and library	\$5,000
IT support	\$10,000
Board meetings and support	\$5,000
Travel	\$10,000
Office set up costs	\$50,000
TOTAL	\$592,050

5.2.5 Model C: MULTI-STATE CENTRALISED CLEARINGHOUSE

Description	WA is incorporated into a multi-state clearinghouse
Examples	<p>Justice Connect</p> <p>On 1 July 2013 PILCH Victoria and PILCH NSW integrated into a new entity called Justice Connect. According to PILCH Victoria (2012), Justice Connect aims to bring <i>'better client services, improved efficiency and greater impact</i>. The integration arises from the view, <i>'that a new organisation which is not restricted by state boundaries will be better placed to further develop and strategically deploy pro bono resources to improve access to justice in response to the changed legal and social environment'</i>. These changes include:</p> <ul style="list-style-type: none"> • the increased sophistication and professionalism of pro bono work • the development of a national legal profession and the emergence of international firms in Australia • changes in the nature of disadvantage and unmet legal need in Australia • pressure on funding for legal assistance services. <p>A Western Australian pro bono entity could consider becoming part of Justice Connect. The option for a multi-state model, including Western Australia, is based upon the Justice Connect structure. It is important to note that what is outlined below would require discussion and amendment to take account of specific Western Australia needs.</p> <p>Justice Connect current programs are:</p> <ul style="list-style-type: none"> • Referral: comprising referrals of clients to member lawyers and the management of the pro bono programs of the Victoria Bar and the Law Institute of Victoria. • Legal Services: comprising established clinics – Homeless Persons' Legal Clinic and Seniors' Rights Legal Clinic (both in Victoria)– and a number of projects and pilots including MOSAIC, for newly arrived migrants (in NSW) and work on the Advocacy Health Alliance model of partnership between legal and health service provision. • PilchConnect: a specialist legal service for not-for-profit community organisations, providing information, training, advice and pro bono referrals.
Features	<p><i>Governance</i></p> <ul style="list-style-type: none"> • Justice Connect is incorporated as a company limited by guarantee. • A skills-based Board made up of 7 members (with the ability to appoint up to 9 members) has been established. The Board operates on three-year terms. Directors are currently drawn from Victoria and NSW. • State committees operating as committees to the Board will be established. The composition of these committees is not prescribed but will reflect local interests and needs and ensure local input. It could include representatives of local law societies and Bar associations, community legal centres and state legal aid offices, as well as law firms. • State committees will report and make recommendations directly to the Board. They will provide direction and input on state issues. • State committees will be resourced by Justice Connect (via the Justice Connect Executive Director with the assistance of state based staff). <p><i>Operational</i></p> <ul style="list-style-type: none"> • Justice Connect would employ state based staff who will be integrated into Justice Connect's assessment and relationship support teams. Activities undertaken by staff at a state level would include assessment, WA stakeholder relationship management and administrative support. The team could be complemented with assistance from law firm secondees and PLT students (e.g. College of Law). • Justice Connect currently manages the Law Institute of Victoria's Legal Assistance Service and the Victorian Bar's Pro Bono Service, using funds granted by the LIV and the Victorian Bar for this purpose. In a Western Australian scenario, Justice Connect could take over management of Law Access and the WABA schemes. These local schemes would retain their existing branding. • Initial contact requesting pro bono assistance will take place at a state level. State based staff (assessment solicitor) will deal with the initial inquiry and either refer to a

	<p>third party agency (if the matter is assessed as not suitable) or, if appropriate, progress it to assessment. Assessment will happen in conjunction with the 'national' assessment team.</p> <ul style="list-style-type: none"> • Depending on the outcome of the assessment, if the matter is best placed with a Justice Connect member (for example a national law firm) the matter will be referred at a 'national' level and allocated. This may mean that for some matters, a national firm located in any jurisdiction may do the work. If the matter is best matched with a smaller or mid-tier local firm, then the referral and placement will happen at the state level where those relationships are in already in place. • All back of house activities such as HR, finance, communications, fund-raising and IT would operate from the main office in Melbourne. • Other existing Justice Connect programs, such as the not-for-profit pro bono service (currently known as PilchConnect), could be enabled in other state jurisdictions. PilchConnect is a service provided to community groups providing either free or low cost specialist legal assistance. It offers web based resources, legal advice, information and training. Legal assistance is provided through a combination of in-house staff and pro bono assistance provided by Justice Connect's membership.
<p>Resources</p>	<ul style="list-style-type: none"> • Suggested WA office staffing profile: <ul style="list-style-type: none"> • Assessment solicitor • Stakeholder relationship manager • Administrative support. • Potential for secondments, internships and PLT arrangements to provide additional resourcing. <p><i>Funding</i></p> <ul style="list-style-type: none"> • Justice Connect has received funding from the Commonwealth Attorney General to assist with the roll out of the integrated service in Victoria and NSW over the next 12 months. • Some financial support for the inclusion of a Western Australian component could be derived from existing Justice Connect finances and funding sources, including existing and new memberships and from its ability to leverage off existing financial sources (e.g. Justice Connect has a significant fund raising and philanthropic capacity). Justice Connect is a deductible gift recipient, meaning it is able to apply for funding from philanthropic trusts and foundations provide tax deductions for donations made. It is envisaged that funding could be sought from both WA based charitable trusts, as well as those based in other states who are interested in funding a multi-state service (Justice Connect currently has two such philanthropic supporters in place). • Payment of a fee for Justice Connect to manage existing state based schemes. For example the LIV referral scheme is funded by the equivalent of PPT funds; these monies are directed to Justice Connect who manage the service on behalf of the LIV. • Politically, it is considered by some that an integrated entity is a much more attractive funding proposition to government rather than seeking funding for individual entities with attendant duplication in administration and operational costs.
<p>Benefits</p>	<ul style="list-style-type: none"> • The view of some national law firms is that they support this model as it aligns with their national structures and their pro bono practices. One significant issue from their perspective is that as a proportion of their pro bono budget, the cost of membership of separate state based clearinghouses is becoming prohibitive. <p>Justice Connect argues the following benefits of an integrated model include:</p> <p><i>Improved service delivery for clients:</i></p> <ul style="list-style-type: none"> • Opportunity to present a single entry portal for access to pro bono services in Australia's largest states (including individual clients and not for profit community organisations and key referral sources, including CLCs and welfare agencies). • Facilitation of the development of programs across the jurisdictions, for example PilchConnect. • Easier take up of 'best practice' projects and methods from one state to another. • Better understanding of unmet legal need through the pooling of client and case information. • Increased size and resources, enabling greater ability to respond.

Clearer brand and presence:

- Enhanced ability to present a clear voice to government when advocating for law and policy reform and/or seeking funds.
- Increased size and resources, allowing more effective engagement with professional bodies, both state and national.
- More straightforward and appealing membership proposition for state-based, national or multi-state member firms.
- Meaningful membership proposition for firms with lawyers in more than one state.

Improved effectiveness and efficiency via increased size and resources:

- The opportunity to develop more effective tools to support the work, such as databases, websites and information.
- Reduced duplication of resources e.g. HR, IT and finance functions.
- Greatly improved 'employment proposition', including the creation of career paths, the ability to pool resources for staff development and training, and the opportunity to work in different cities.

Challenges

- Some stakeholders expressed concern that a multi-state model might not best serve specific Western Australian issues and context. In particular, questions were raised on how this model would:
 - Ensure that local relationships and networks (particularly with local mid tier and small firms) were properly resourced and maintained.
 - Ensure that jurisdictional matters particular to Western Australia were appropriately assessed and placed.
 - Ensure that state issues and concerns would be properly considered and resourced.
 - Accommodate particular Western Australian features e.g. RRR interests.
 - Not be dominated and driven by the national law firms' pro bono priorities.
 - Deal with practical issues arising from doing business across different time zones and distance from an interstate head office.

Resources and estimated costings

Attached at Appendix 7 is a paper prepared by Justice Connect outlining how a multi-state model would operate, together with their estimate of costings.

5.2.6 Model D: PARTNERSHIP MODEL

Description	Existing services remain within Law Society and WABA with new partnerships to enhance pro bono service delivery.
Features	<ul style="list-style-type: none"> Existing pro bono schemes continue to operate. Partnerships are formed with other relevant stakeholders (including Justice Connect) to enhance existing services. Working relationships are defined in MOUs. Establishment of a WA Pro Bono Advisory Committee has oversight (invite Justice Connect as participant of the Advisory Group).
Resources	<ul style="list-style-type: none"> Secretariat to support the work of the Advisory Committee. Full time pro bono coordinator.
Benefits	<ul style="list-style-type: none"> Utilises the 'collective impact' approach in responding to pro bono needs in WA. Builds partnerships between relevant stakeholders to build upon existing pro bono services by targeting the areas of expertise of each partner. Allows WA to pilot a working relationship with Justice Connect. Ensures a WA focus to allay concerns of interstate dominance.
Challenges	<ul style="list-style-type: none"> Properly resourced secretariat to support the work of the Committee is essential. Will require high level of communication and commitment to ensure coordination of services.

Discussion and possible scenarios

This model provides a potential 'middle' ground, which allows Western Australia to pilot partnerships with a range of stakeholders, including Justice Connect.

Increasingly within the community sector sphere there is a greater focus upon service providers being able to demonstrate collaborative approaches and partnerships, which to a large extent has been driven by Government policies and approaches to how community services are funded. For example, in Western Australia, the Delivering Community Services in Partnership Policy has introduced a fundamental change in the approach of the State Government in how it negotiates the funding and delivery of community services (Kalico Consulting, 2012). One potential advantage of partnerships is that it utilises an approach that is attractive to Government and is aligned with current tendering procurement approaches.

Apart from this policy context, the literature recognises the innate benefits of partnering as an approach to service delivery (VCOSS 2009:3). Such benefits include:

- It allows diverse thinking and values to lead to better outcomes.
- It provides opportunities to share workloads and resources.
- It develops capacity.
- It creates environments for taking risks in developing new service models.
- It creates the motivation for people to pull together, which in turn drives and sustains partnerships.

This approach recognises and builds upon the particular experience and expertise of each of the relevant stakeholders, so for example:

Law Access and WABA

- Have the relationships and connections with local WA firms and barristers.
- Can draw upon existing networks and areas of influence.
- These schemes could continue to deal with placements at a local level.

Justice Connect

- Has the national relationships with firms and offers programs such as PILCH Connect.
- Also has a national policy and law reform focus.

- Through an MOU arrangement it can take on the assessment of matters and deal with placements that are suitable for national firms.

Legal Assistance Service Providers

- Have the local knowledge of unmet legal need and can identify and direct this information to the WA Pro Bono Advisory Group.

University Law Schools and College of Law

- Have the student and graduate population who could want to be involved either as volunteers or as interns.
- Potential for research and clinics through special projects established by law schools.

The management of these stakeholder relationships could be through the establishment of a WA Pro Bono Advisory Committee. It would operate under terms of reference, be representative of relevant stakeholders and would have an oversight role whilst providing a forum for common issues and coordination. An essential element will be to ensure that this group is properly supported through a resourced secretariat and through the appointment of a full time pro bono coordinator/project officer.

This Advisory Committee has the potential to eventually become the WA state committee if Western Australia should decide at a later stage to join Justice Connect as part of a multi-state model. Alternatively it brings together all the relevant stakeholders and expertise should the funding context change and WA decides at a later stage that it is in a position to resource a stand-alone state based clearinghouse.

Examples of successful partnership arrangements can be identified within sectors such as mental health where a range of partnering models involving consortia and lead agencies have come together to respond to specific community issues in developing a service response. The Family Resource Centre in Geraldton is an example. This partnership involves a consortia of different service providers including Centrecare, Geraldton Resource Centre, Geraldton Community Education Centre, Chrysalis Support Services and Midwest Men's Health, to establish a Family Relationship Centre providing a range of services including family dispute resolution, education and family skills programs, support services and supervised visits and changeover (Kalico Consulting, 2010: 41).

Resources and estimated costings

Item	Estimated Cost
Full time pro bono project officer and secretariat support	\$70,000
Staff on costs @ 15%	\$10,500
Postage and telephone	\$2,000
Printing and stationary	\$2,000
Catering for meetings	\$2,000
Travel and accommodation for RRR member	\$6,000
Office and equipment administration fee (based on being co-located with existing entity)	\$10,000
TOTAL	\$102,500

5.2.7 Comparative table of models

	A. Advisory Group	B. State Clearinghouse	C. Multi-State Clearinghouse	D. Partnership Model
Examples	WAJF	QPILCH SA Justice Net Access Pro Bono (BC)	Justice Connect	Family Relationship Centre Geraldton
Governance	Independent of existing schemes. Voluntary. Terms of Reference. Join an existing forum?	New legal entity Board of Management. High profile patron. Membership organisation.	Join existing entity - Justice Connect. Company limited by guarantee. State committees operate as committees to Justice Connect Board.	Existing schemes continue to operate. Partnership arrangements. MOUs. Establishment of WA Pro Bono Advisory Group with oversight.
Staffing	Secretariat	Manager/Director Solicitor x 1 (referrals) Paralegal x 1 Policy/ Project Development officer x 1 Administration Support Secondments and Interns	Assessment solicitor Stakeholder relationship manager Administrative support Secondments, internships and PLT arrangements	Secretariat Full time pro bono coordinator/project officer
Funding possibilities	PTT Lotterywest Federal and/or State Government grants	PPT Lotterywest Membership fees Donations Federal and/or State Government grants	Existing Justice Connect WA sources e.g. PPT etc. Federal and/or State Government grants	PPT Lotterywest Federal and/or State Government grants Partnership contributions

5.2.8 Comparative table of functions

Functions	A. Advisory Group	B. State Clearinghouse	C. Multi-State Clearinghouse	D. Partnership Model
Least degree of change	✓			
Mid degree of change				✓
Most degree of change		✓	✓	
Existing schemes continue to operate independently	✓			Dependent on partnership arrangements
Has capacity to 'click' into a multi-state model		✓		✓
Guarantees state control of pro bono issues and agenda	✓✓	✓✓	✓*	✓✓
Low additional level of funding and infrastructure	✓			
Mid additional level of funding and infrastructure			✓	✓
High additional level of funding and infrastructure		✓		
Potential to develop university clinics		✓	✓*	✓
Centralised assessments of Law Access, WABA and public interest pro bono applications		✓	✓	Dependent on partnership arrangements
Central contact point for pro bono inquires and referrals across all WA schemes		✓	✓	Dependent on partnership arrangements
Advocacy role in the public domain including a role in WA policy and law reform	✓	✓	✓	✓
Strategic role in identifying and prioritising unmet WA legal need suitable for pro bono.	✓	✓	✓*	✓
Coordinate clinics in areas of unmet legal need		✓	✓*	✓

* Subject to governance and decision making arrangements that are agreed to.

5.2.9 Comparative table of ability to address pro bono barriers

Ability to address current barriers	A. Advisory Group	B. State Clearinghouse	C. Multi-State Clearinghouse	D. Partnership Model
Diverse criteria and processes	✓	✓	✓	✓
The time it takes for matters to be assessed and placed		✓	✓	✓
Lack of tailored referrals, which match the firms' area of pro bono interest and expertise		✓	✓	✓
Commercial or actual conflict of interest prevented firms from acting	Possibly, through awareness and policy development	Possibly, through awareness and policy development	Possibly, through awareness and policy development	Possibly, through awareness and policy development
Role of instructing solicitor	Possibly, through awareness and policy development	Possibly, through awareness and policy development	Possibly, through awareness and policy development	Possibly, through awareness and policy development
Developing and maintaining pro bono contacts is resource intensive	✓	✓	✓	✓
Knowing what the legal need is and understanding what firms are willing to take on	✓	✓	✓	✓
Geographical and location issues		✓	✓*	✓

* Subject to governance and decision making arrangements that are agreed to.

5.3 Funding sources

The main challenge facing the establishment of any new pro bono entity or approach in Western Australian is the ability to secure sustainable funding for such an enterprise.

In reviewing pro bono entities and organisations in other jurisdictions, one of the significant features is that funding is realised from multiple sources. As can be seen in the comparative tables at Appendix 8, interstate clearinghouses are funded from a mix of membership fees, grants, the equivalent of Public Purpose Trust, fee-for-service, fundraising and donations. This model of funding in itself requires significant resources being directed in the ongoing management and administration of such diverse funding sources as well as the potential to develop an expertise in the area of fundraising and attracting philanthropic donations.

From a WA perspective, there are some particular issues that have been identified in the course of this study that will potentially have an influence upon the potential for funding any model. These include:

- The absence of any specific State or Commonwealth program directed at the aims and objectives of a pro bono clearinghouse or similar entity.
- The continued restricted funding environment for legal assistance services. Whilst the State and Commonwealth provide funding to community legal centres through CLSP (and State equivalent) programs, as noted one of the concerns raised by community legal centres was the potential of a pro bono entity such as stand alone clearinghouse competing for limited funds. It is interesting to note that for this reason some of the interstate PILCHs identified that whilst they define themselves as community legal centres, they avoid applying for CLSP funds.
- The position taken by some national law firms that they would not be interested in directing membership fees to a WA standalone clearinghouse entity.

The following discussion identifies potential funding sources.

Delivering Community Services in Partnership Policy and the Social Innovations Grant Program

As noted in the discussion on the Partnership Model (Section 5.2.6) there has been a significant development within the community sector with the introduction of the State Governments new policy approach in relation to the funding and contracting of community services. This policy applies to all public authorities which provide funding or who purchase community services from organisations and to all State funded and Commonwealth and industry funded services to the extent that the requirements of the policy are not inconsistent (Government of Western Australia, 2011 as cited in Kalico Consulting, 2012:18).

This reform has emerged from recommendations made by the Economic Audit Committee in 2008-2009 in its report *Putting the Public First*. Of relevance to the community sector in WA were the recommendations directed at:

- Strengthening the capacity of the public sector to work collaboratively
- Progressively implementing individualized funding approaches
- Negotiating principles to facilitate government-community sector partnerships
- Reducing administrative burden on government agencies and community sector by permitting consortia and sub-contracting arrangements
- Establishing a social innovation grant program for community sector organisations.

Model D in this paper speaks to this type of approach and in that context may be considered suitable for funding through the Social Innovation Grant Program, particularly if any initiative involved partnerships between the not-for-profit and business sector. This program is administered by the Department for Communities and is aimed at:

- Helping establish effective action to better meet the needs of the Western Australian community.
- Helping community sector organisations develop and trial new ways of delivering services to produce better outcomes.
- Applying the most effective ideas to other service delivery areas facing similar challenges.
- Promoting the development of strategic partnerships between community sector organisations.
- Demonstrating collaboration and partnership between the public and community sectors.

Current grant rounds closed on 28 June 2013 with future rounds to be advised pending program review.

Lotterywest

Lotterywest manage a range of grant programs that can be utilised by not-for-profit organisations. Relevant programs include:

- **Big Ideas** – has scope for a broad range of projects, which have the potential to bring about important, change, addresses important community issues and have a major impact. What is especially important in this program is (amongst other things) the ability to demonstrate support from community organisations and government agencies and long-term impact.
- **Furniture and equipment** – to support the purchase of furniture and equipment for an organisation's needs, such as telephones, filing systems, and other office items.
- **Information, technology and web** – to support organisations in the purchase of their IT needs.
- **Organisational development** – to support not-for-profits in a range of projects, such as developing strategic, business and fundraising plans, establishing policies and procedures, travel costs to explore best practice, training and development for volunteers and board members.
- **Research** – studies that help to understand, question, formulate policy, realise opportunities and find solutions to challenges.
- **Workplaces** – grants provided for the construction or purchase of buildings and for fit out of workspaces.

Full details of these programs can be accessed from the Lotterywest website at www.lotterywest.wa.gov.au

Public Purpose Trust

The Trust currently funds the operation of Law Access. Similar funds are also utilised by a number of interstate PILCHs such as QPILCH. The objects of the Trust are aligned to the objects of any enhanced pro bono entity in Western Australia.

Justice Connect

The Justice Connect proposal at Appendix 7 notes the potential for resourcing to include WA in a multi-state model would potentially '...come from Justice Connect's own reserves, as well as through seeking a contribution from WA law firms, either as a membership amount or a donation. Justice Connect has strong expertise in obtaining funding for philanthropic trusts and foundations (it currently raises in excess of \$1 million per year from this source) and it would also seek funds from this source to support the work.'

APPENDIX ONE – TERMS OF REFERENCE

WA PILCH REFERENCE GROUP

The purpose of the Reference Group is:

- a. To assess the existing needs and gaps in the provision of services to allow and enhance access to justice in Western Australia and whether a PILCH or similar type entity is the best way to fill those gaps;
- b. To facilitate strategic planning around the development and establishment of a WA PILCH and provide an opportunity for information exchange, networking, discussion and mutual support;
- c. To provide a mechanism for consultation and conversation between organisations and individuals who have an interest in the development and establishment of a WA PILCH;
- d. To facilitate strategic alliances and joint initiatives in relation to the development and establishment of a WA PILCH.

WA PILCH REFERENCE GROUP Scoping Study Subcommittee (Steering Committee)

The purpose of the Subcommittee is to select, engage and supervise a consultant to undertake a scoping study:

- a. To assess the level and nature of unmet need for pro bono services in Western Australia now and over the next 15 years.
- b. To assess the effectiveness of existing pro bono service provision arrangements, including, but not limited to: ease of public access, time taken to refer matters to pro bono providers, existing arrangements for attraction, training and retention of new pro bono service providers.
- c. To review the effectiveness of existing pro bono service delivery arrangements Australia wide, including analysing the critical factors for success in each model.
- d. To make recommendations to the PILCH Reference Group by December 2012 concerning the priorities for future pro bono service delivery in Western Australia along with recommendations for how to best meet those priorities, in the local context.

APPENDIX TWO - CONSULTATIONS

Aboriginal Legal Service of Western Australia, Sarouche Razi, Senior Solicitor Civil and Human Rights Unit and Marianne De Leo, Senior Policy Advisor

Allens Linklaters, Nikki Friedman

Ashurst Australia, Ann Cregan, Partner, Georgina Perry, Pro Bono Coordinator, Jared Clements, Lawyer and Perth Pro Bono Coordinator

Case for Refugees, Shayla Strapps, Principal Solicitor

Clayton Utz, David Hillard, Pro Bono Partner, Elizabeth Stubbs, National Pro Bono Coordinator, Caitlin Sharp, WA Pro Bono Coordinator

CORRS, Heidi Roberts, National Pro Bono Coordinator

Community Legal Centre Association of WA members meeting:

- Mariette Cowley Aboriginal Family Law Services
- Charmaine Pienaar Albany CLC
- Richard Taggart Bunbury CLS
- Fiona Hobbs Community Legal Centres Association
- John Perrett Community Legal Centres Association
- Stephen Hall Employment Law Centre
- Marion Leach Gosnells CLC
- Liz O'Brien Kimberley CLS
- Ivi Sanchez Mental Health Law Centre
- Julia Birch MIDLAS
- Karen Merrin Northern Suburbs CLC
- Lisa Craig Peel CLS
- Nanette Williams Pilbara CLS
- Jane Timmermanis Sussex Street CLS
- Kate Beaumont Welfare Rights & Advocacy Service
- Carol Hawkins Wheatbelt CLC
- Lesley Kirkwood Women's Law Centre

Curtin University Law School, Prof. Paul Fairall, Dean of Law

Department of the Attorney General, Robert Taddeo, Director Policy and Aboriginal Services, Miriam Groenewold, Senior Policy Officer

DLA Piper, Daniel Creasey, Asia Pacific Pro Bono Manager and Pro Bono Counsel

East Kimberley Legal Service Network

- Shelley Cerqui , Solicitor ALSWA
- Thomas Allen, Principal Legal Officer, Kimberley Community Legal Service
- Liz O'Brien, Manager Kimberley Community Legal Service
- Kylie Kerin, Solicitor LAWA
- Nick Espie, Solicitor LAWA
- Bonnie Clark, paralegal LAWA
- Hamish Patterson, solicitor Aboriginal Family Legal Services

Edith Cowan University, Prof. Anne Wallace, Head School of Law and Justice and Associate Prof. Pamela Henry, Director Sellenger Centre

Federation of Victorian CLCs, Claudia Fatone, Acting Executive Director

Joint meeting of PILCH/Clearing House organisations:

- Katrina Ironside, Principal Solicitor. NSW PILCH
- Andrea De Smidt and Karen Dyhrberg, QPILCH
- Fiona Mcleay, CEO, Victoria PILCH
- Tim Graham, Executive Director, SA Justice Net

Kimberley Community Legal Service, Liz O'Brien, Director

Legal Aid WA meeting:

- Justin Stevenson, Director Civil Law.
- Andrew Robson, Senior Solicitor
- Julie Jackson, Solicitor in Charge Family Court Services and Children's Court Protection Services
- Su Mahalingham, Senior Solicitor
- Lex Payne, Director Regions

Legal Aid WA email contact, Malcolm Bradshaw, Director Business Services

LSWA Courts and Tribunal Sub Committee:

- Katja Levy, Francis Burt Chambers
- David Bruns, Francis Burt Chambers
- Tim Carey, State Administrative Tribunal
- Philip Keays, Moray & Agnew
- Registrar George Kingsley, District Court of WA
- Melvyn Levitan, sole practitioner
- Fiona Vernon, Francis Burt Chambers

LSWA Country Lawyers Committee:

- Mike Hayter (Convenor), Mid West Lawyers
- Julia Barber, Kimberley and Pilbara Lawyers
- Peter Brindal, Peter A Brindal & Co
- Edward Gray, E W Gray Lawyer, Esperance
- Richard Hickson, Family Violence Prevention Legal Service Albany
- Kylie Kerin, Legal Aid WA – Kununurra
- Alison Muller, Geraldton Community Legal Centre
- Carolyn Smiddy-Brown, Latro Lawyers, Albany

The following members of the LSWA Access to Justice Committee:

- Rick Cullen, Cullen Babington MacLeod (Convenor)
- Belinda Lonsdale, in her capacity as a Legal Aid Commissioner, also of Albert Wolff Chambers
- Graeme Slattery, Squire Sanders
- Cathryn Greville
- Matthew Keogh, Herbert Smith Freehills
- Courtney Robertson, Lavan Legal
- Gary Mack, Fremantle CLC
- Nicholas Snare, ALS
- Timothy Mason, Jackson MacDonald
- Maryse Aranda, SWSLC
- Yasmin Salleh, Public Trustee
- Maria Lamattina, Castledine Gregory
- Steven Penglis, Barrister
- Dominique Hansen, LSWA

Murdoch University, Prof. Jurgen Brohmer, Dean School of Law and Anna Copeland, Director of Clinical Legal Programs (SCALES)

National Pro Bono Resource Centre, John Corker, Director

PILCH Victoria, Fiona McLeay, Executive Director

QPILCH, Andrea De Smidt, Senior Solicitor

State Administrative Tribunal, Charlotte Wallace, Member SAT

Street Law, Ann Margaret Walsh, Principal Solicitor

WA Bar Association: Elspeth Hensler, Francis Burt Chambers, Natasha Breach, John Toohey Chambers, Debbie Cole, Executive Officer Western Australian Bar Association

WA Pro Bono Coordinators meeting:

- Kylie Groves, Counsel Squire Sanders
- Allens and Overy
- Tamara Sweeny, DLA Piper
- Elspeth Hensler, WABA
- David Cox, Jackson McDonald
- Aly Matich and Lyn Ladhams, King & Wood Mallesons
- Adam Levine, K&L Gates
- Stacy Gardner, Corrs Chambers Wesgarth
- David Jenaway, Herbert Smith Freehills
- Georgina Perry and Jared Clemets, Ashurst

WA Pro Bono Coordinators Focus Group:

- Lyn Ladhams and Ali Matich, Pro Bono Coordinators, King Wood Mallesons
- Tori MacMillan, Pro Bono Coordinator, Corrs Chambers Wesgarth
- Iain Freeman, Pro Bono Coordinator, Lavan Legal
- Jillian Howard, Pro Bono Coordinator, Squire Sanders
- Melissa Oliveri, Pro Bono Coordinator, Allen Overy
- Tamara Sweeny, Pro Bono Coordinator, DLA Piper
- David Jenaway, Pro Bono Coordinator, Herbert Smith Freehills

APPENDIX THREE - ARTICLE IN BRIEF

FEATURE



Pro Bono — Where to Next in Western Australia?

In November 1991 the then President of the Law Society of Western Australia, (now), Justice John Chaney, announced a new pro bono initiative to be launched in early 1992. The Law Access Pro Bono Clearing House was the culmination of a year's work by the Law Society's Pro Bono Committee. At the time the initiative was seen as a means to "rationalise the provision of pro bono services within the community by the legal profession," as well as an opportunity to raise public awareness of the pro bono services provided by the legal profession in Western Australia. Today Law Access continues to operate with the support of practitioners who respond to weekly requests for pro bono assistance, once members of the Access to Justice Committee have assessed applications.

Some 30 years before the launch of Law Access, in 1960 the Law Society of Western Australia established an earlier legal assistance scheme for persons who could not afford legal representation. That scheme was run with "little financial backing from the State Government and practitioners received no payment of fees unless costs were recovered from the other side."¹ To some extent this early scheme was a forerunner to the reforms undertaken in the 1970s, which eventually saw the introduction of state-supported legal aid services and the first Legal Aid Commission being established in Western Australia in 1977.

Significant cost cutting to state-funded legal services in the 1990s in turn has led to an increased focus upon the role of pro bono work as part of the suite of services directed at addressing the unmet legal needs of those in our community who cannot afford private legal representation.

This brief history reveals that the provision of pro bono services by members of the Western Australian legal profession is by no means a recent invention. There is a long history of Western Australian lawyers providing pro bono services, volunteering their time and resources, whether this is through the Western Australian Bar Association pro bono scheme, or work undertaken with and for community legal centres, through in-house pro bono schemes, or court-based pro bono schemes, not to mention the many uncounted and unacknowledged hours that many practitioners provide on a daily basis.

Today, pro bono services in Western Australia are provided through a range of diverse mechanisms and schemes. Absent from the jurisdiction has been a single entity that brings together these various schemes and pro bono services so as to provide a coordinated

and strategic approach to the promotion and delivery of pro bono services in Western Australia. It is against this backdrop that the Law Society and the Association of Community Legal Centres of WA have come together in a joint initiative to undertake a feasibility study to re-examine the current pro bono landscape in Western Australia and to consider whether a new entity or collaboration is required. The project is funded through a grant provided by Lotterywest and is being overseen by a steering committee made up of representatives from private practice, Legal Aid WA, the Aboriginal Legal Service, the Law Society and the Association of Community Legal Centres WA.

Kalico Consulting has been appointed to undertake the study, which includes the following scope:

1. Map and describe current pro bono service in Western Australia.
2. Identify and discuss issues arising from existing pro bono service provision arrangements for Western Australia. This discussion will include (but is not limited to) issues pertaining to efficiencies and duplication of existing services.
3. Identify unmet need for pro bono services in Western Australia.
4. Review existing pro bono delivery service arrangements in other national and international jurisdictions and discuss their appropriateness and applicability to the Western Australian context.
5. Identify models suitable to the Western Australian context, which bring together a range of providers.

Consultations have been undertaken over March to May 2013. On Wednesday 31 July 2013 the Law Society will be hosting a forum of interested stakeholders to review and discuss recommended models identified by the consultants. The forum will take place in the training room on Level 5, 160 St George's Terrace. Feedback from this forum will be incorporated into the final report that is presented to the project steering committee in August 2013.

If you would like to participate in the forum, please contact maxina@kalicoconsulting.com.au by close of business 24 July 2013 to indicate your attendance.

For more information or if you have any thoughts or input that you would like to share with the consultants in relation to this project, please contact Maxina Martellotta at maxina@kalicoconsulting.com.au or 0439 191 616.

The Law Society of Western Australia and the Association of Community Legal Centres WA acknowledge the assistance provided by Lotterywest for this project.

NOTES

1. "Blazing the Pro Bono Trail", Brief, November 1991, p. 6.
2. Coates, R, *A History of Legal Aid in Australia*, paper delivered at the 4th Annual Colloquium of the Judicial Conference of Australia.

Significant cost cutting to state funded legal services in the 1990s in turn has led to an increased focus upon the role of pro bono work

APPENDIX FOUR - KEY DATES IN PRO BONO

Provided by the National Pro Bono Resource Centre

Structured law firm pro bono programs in Australia - Some key dates	
<p>Whilst lawyers have been providing pro bono legal services for a very long time, the growth of a structured approach to pro bono by law firms is a relatively recent occurrence. What follows is a chronology of some events that witness the growth and development of the "pro bono movement" among the larger law firms in Australia.</p>	
1967	Apartheid protests in NSW — Dawson Waldron had a roster of solicitors attending central local court.
1980s	Blakes had a lawyer on secondment at Port Hedland assisting Cambodian refugees.
1989	First pro bono clinic was established in Perth by Freehills.
1991	The NSW Law Society develops its first pro bono policy.
1992	<ul style="list-style-type: none"> • The Public Interest Law Clearing House (PILCH) was established in NSW. • Freehills established its first secondment to Kingsford Legal Centre. • The Law Access service was established in WA. • The Law Council of Australia publishes its first definition of pro bono.
1993	Freehills established the Shopfront Youth Legal Centre in Darlinghurst, Sydney in partnership with Mission Australia to provide legal services for homeless and disadvantaged youth.
1994	<ul style="list-style-type: none"> • The Access to Justice Advisory Committee chaired by Justice Ronald Sackville reports to the A-G on ways to improve access to justice, but there is no mention of pro bono legal services. • PILCH (VIC) is established. • The NSW Bar Legal Assistance Referral Scheme is established.
1996	Gilbert+Tobin appoint the first firm pro bono coordinator in Australia.
1996	The Australian Legal Aid Office is closed and Legal Aid funding for Commonwealth "matters" rather than "persons" becomes the rationale for Commonwealth legal aid funding.
1998	Order 80 Federal Court Rules Scheme (Court appointed referral for legal assistance) commenced. Voluntas (project of the VLF) established in Victoria as a Pro Bono Secretariat.
2000	<ul style="list-style-type: none"> • (August) First National Pro Bono Conference held. • Law Institute of Victoria Legal Assistance Scheme (LIVLAS) established. • Australian Law Reform Commission (ALRC) conducts <i>Managing Justice</i> inquiry, which notes concern that the ethic and culture of professional service is being eroded or lost and recommends that professional associations should urge members to undertake pro bono work each year in terms similar to that stated in American Bar Association Model rules of professional conduct.
2001	<ul style="list-style-type: none"> • QPILCH established. • Report of the National Pro Bono Task Force to the Cth A-G is completed and tabled. • (October) Homeless Persons' Legal Service (HPLS) established in Victoria.
2002	<ul style="list-style-type: none"> • (August) National Pro Bono Resource Centre established. The Victorian Government Pro Bono Secondment Scheme commences. • (December) QPILCH homeless persons legal service commenced. • Victorian Government commences "pro bono" conditions in their govt legal services panel arrangements.
2003	The Second National Pro Bono Conference 2003 was held in Sydney.
2004	<ul style="list-style-type: none"> • (November) Senate Legal Aid and Constitutional Committee Inquiry into Legal Aid and Access to Justice devotes a chapter to pro bono services. • ACT pro bono clearing house launched.

	<ul style="list-style-type: none"> • (May) HPLS established in NSW.
2005	Victoria Law Foundation holds its first pro bono workshop.
2006	<ul style="list-style-type: none"> • (January) Clayton Utz first firm to appoint a pro bono partner. • Human Rights Law Resource Centre established in Victoria. • (August) Inaugural Access to Justice and Pro Bono Conference held in Melbourne. • Homeless Persons" Legal Clinic (HPLC) established in SA.
2007	<ul style="list-style-type: none"> • (January) National Pro Bono Aspirational Target of 35 hours per year introduced. • (March) — Blake Dawson Waldron appoint a pro bono partner. • (August) — Homeless Persons' Legal Clinic HPLC (Vic) hold no forwarding address photographic exhibition. • Report completed on establishing a specialized Community Organisation legal service in Victoria. • (October) Vic pro bono workshop held.
2008	<ul style="list-style-type: none"> • (May) Inaugural Walk for Justice held in Melbourne, Brisbane, Adelaide and Sydney • (July) - Gilbert + Tobin appoint a pro bono partner • (September) The National Pro Bono Resource Centre releases its first biannual National Law Firm Pro Bono Survey. The 25 large law firm respondents provided approx 194,000 hours of pro bono work, or a median of 21 hours per lawyer per year. • (November) Second National Access to Justice and Pro Bono Conference held in Sydney.
2009	<ul style="list-style-type: none"> • (March) Bushfire Legal Help clinics, staffed from volunteer lawyers, are established in response to the Black Saturday Victorian bushfires. • (May) the National Pro Bono Resource Centre announces the new National Pro Bono Professional Indemnity Insurance Scheme, which will insure in-house lawyers from civil claims arising from their pro bono work. The scheme hopes to encourage more in-house lawyers to take up pro bono work. • (July) An Australian Bureau of Statistics survey indicates lawyers did 955,400 hours of pro bono work in 2007 and 2008. • (July) A new pro bono clearing house, JusticeNet SA, is launched in SA. • (August) The Cancer Council Legal Referral Service is launched in Sydney.
2010	<ul style="list-style-type: none"> • (May) The Law Society of Tasmania launches a pro bono clearing house. • (August) The Third National Access to Justice and Pro Bono Conference is held in Brisbane. • (December) The National Pro Bono Resource Centre releases its second biannual National Law Firm Pro Bono Survey. The 29 large law firm respondents provided 322,343 hours of pro bono work, or an average of 29 hours per lawyer per year.
2011	<ul style="list-style-type: none"> • (February) Key Queensland legal organisations establish the Flood and Cyclone Legal Help pro bono legal response to assist disadvantaged Queenslanders affected by the floods and cyclones Anthony and Yasi. • "Social Justice Opportunities – A Guide for Law Students and New Lawyers" and the accompanying website (www.sjopps.net.au) were launched, with the aim of providing to law students and young lawyers about opportunities to be involved in furthering social justice throughout their legal career. • (July) Salvos Legal is launched, a not-for-profit practice specialising in areas of commercial and property transactional law.
2012	<ul style="list-style-type: none"> • (March) The Commonwealth introduces its new 'legal services multi-use list' (LSMUL). Law firms must apply for inclusion on this list, and will be assessed on their capacity to meet the requirements of the Legal Services Directions, which includes a commitment to pro bono legal work. • (May) Victoria amends the Legal Profession Act 2004 to remove restrictions that prevented holders of corporate practicing certificates from engaging in pro bono legal practice. • (July) The Centre for Asia Pacific Pro Bono is launched, seeking to provide a single entry point for government and private bodies in the Asia-Pacific region to contact providers of pro bono legal services in Australia. • (October) The National Pro Bono Resource Centre releases its third biannual National Law Firm Pro Bono Survey. The 36 large law firm respondents provided 343,058 hours of pro bono work, or an average of 29.9 hours per lawyer per year, up 0.9 hours from 2010. • (November) PILCH Vic announces that it will amalgamate with PILCH NSW, with the new entity to commence operation from 1 July 2013.
2013	<ul style="list-style-type: none"> • (March) The Fourth National Access to Justice & Pro Bono Conference is held in Melbourne.

APPENDIX FIVE – CORRESPONDENCE RECEIVED



CHIEF JUSTICE OF WESTERN AUSTRALIA

Chief Justice's Chambers, Supreme Court of Western Australia,
Stirling Gardens, Barrack Street,
Perth, Western Australia 6000

Telephone: +(08) 9421 5337 Fax: +(08) 9221 3833
Email: chief.justice.chambers@justice.wa.gov.au

Our ref: LSWA1001

22 July 2013

Mr Craig Slater
President
The Law Society of Western Australia
PO Box Z5345
St George's Tce
PERTH WA 6000



Dear *Craig*,

Pro Bono Where to Next in Western Australia?

Thank you for your letter of 18 July 2013.

I regret that prior commitments will preclude my attendance at the forum to be held on 31 July 2013.

I have reviewed the discussion paper enclosed with your letter which I found most interesting. It is, I think, clear from that paper that the primary responsibility for any structural changes which would enhance the efficiency and scope of the delivery of pro bono services in Western Australia must rest with the profession rather than the courts. However, if and to the extent that any aspect of the proposed changes requires any support or assistance from the courts, I believe that you could reasonably expect such assistance and support to be forthcoming.

Might I take the opportunity to commend the Society on this initiative. This review of the delivery of pro bono services in Western Australia has the capacity to enhance the efficiency and breadth of the delivery of those services, thereby diminishing some of the current barriers to access to justice.

Yours sincerely

The Hon Wayne Martin AC
Chief Justice of Western Australia

Steven Penglis
Barrister

Level 4
40 St Georges Terrace
PERTH WA 6000

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Email: steven@penglis.com.au

1 August 2013

Maxina Martellotta
Kalico Consulting
PO Box 311
NORTH PERTH WA 6906

By email: maxina@kalicoconsulting.com.au

Dear Maxina

Pro bono co-ordination options for Western Australia

I refer to the discussion paper dated July 2013 and the forum scheduled for yesterday afternoon.

Unfortunately, I was unable to attend the forum as I was involved in the hearing of an application for an interlocutory injunction before Le Miere J at 2.15pm and then had to attend meetings which I had deferred to facilitate that hearing.

I thought I would therefore set out my views in this matter (which I have informally communicated to the President and Junior Vice President of the Law Society and the Convenor of the Society's Access to Justice Committee.

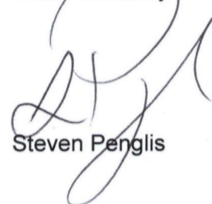
I am confident that you are aware of my long and passionate involvement in the formalisation and implementation of pro bono services in Western Australia spanning over 2 decades.

In short, for the following reasons, I do not support the establishment of a new public interest clearing house in Western Australia:

- from my understanding and observations, Law Access is in large part meeting the needs for a central pro bono co-ordination agency in Western Australia;
- Law Access's "deficiencies" (perceived and real) can be fixed by some tweaking (including additional funding);
- I do not believe, therefore, that there is a need to create a new bureaucracy to do what Law Access is presently doing and I do not believe that such a creature would necessarily be more efficient than Law Access;
- indeed, I have real reservations about the creation of a larger and new bureaucracy being less efficient and more costly than Law Access. I say this by reference to what I have heard over the years from some of my former partners who were closely involved in PILCH in Victoria (including on the Board of Management).

I would be happy to make myself available to discuss my views should that be of assistance.

Yours sincerely



Steven Penglis

APPENDIX SIX – FORUM REGISTRATIONS

Maryse ARANDA	Dan DRAGOVIC	Gary NEWCOMBE
Brendan ASHDOWN	Paul FAIRALL	Peter NEIL
Judy BERRY	Arlia FLEMING	Steven PENGLIS
David BLADES	Wendy FRANKLIN	John PERRETT
Greg BOLAND	Ian FREEMAN	Melissa RAYNES
Stephen BOYLEN	Rainer GILICH	Sarouche RAZI
Jesse BRENNAN	Heidi GULDBAEK	Jasmine RHODES
Charlie BROWN	Dominique HANSEN	Courtney ROBERTSON
Emma CAVANAGH	Pamela HENRY	Brent SCAFIDAS
San Ling CHAN	Elspeth HENSLER	Caitlin SHARP
Faith CHEOK	Tomas JACOBS	Judy STEVENS
Felicity CLARKE	David JENAWAY	Justin STEVENSON
Jared CLEMENTS	Peter JENSEN	Shayla STRAPPS
Mal COOKE	Matt KEOGH	Tamara SWEENEY
John CORKER	Catherine LEACH	Jane TIMMERMANIS
Rick CULLEN	Lyn LADHAMS	Anne WALLACE
Robert CUNNINGHAM	Maria LAMATTINA	Charlotte WALLACE
	Fiona McLEAY	Zoe WISZNIEWSKA
	Brian LEVESON	Jo WYNADEN
	Adam LEVINE	
	Gary MACK	
	Ali MATICH	
	Ian McLEOD	

APPENDIX SEVEN – JUSTICE CONNECT PAPER

Discussion Paper on Possible Options for Justice Connect supporting Pro Bono in WA

Introduction

Set out below are some preliminary ideas about ways in which Justice Connect could support the pro bono culture and activities of lawyers in WA and assist in the provision of pro bono legal services to people experiencing disadvantage and the community organisations that support them.

The paper sets out some “guiding principles” which would govern any Justice Connect activity in WA. It then goes on to outline one possible model of Justice Connect activity in WA. It is intended to encourage and assist further discussion and is not presented as a prescription for how a model might work. It is not intended to define the nature of any service or preclude discussion about other models or options. Further discussion and consultation would be required before any more detailed model could be proposed.

Guiding Principles

1. A physical local presence in WA, including at a minimum 2 staff (which could include law firm secondees) to be a key point of contact for inquiries from people seeking pro bono assistance and for lawyers wanting to do pro bono work.
2. A presumption that attempts to refer requests for pro bono assistance in WA would first be made to WA members of Justice Connect, and then to WA participants in Law Access, Law Society of WA pro bono program and then to the interstate offices of Justice Connect members.
3. The appointment of a WA based member of the Justice Connect board, subject to a candidate with necessary and appropriate skills being identified.
4. The establishment of a WA State Committee of the Justice Connect board.
5. Requests for pro bono assistance would be assessed in accordance with Justice Connect’s guidelines to achieve consistency and efficiency in processes and cases would be managed using Justice Connect’s systems, including its electronic case management system.
6. Staff would be employed by Justice Connect (or if on secondment, would be seconded to Justice Connect) and would be part of the relevant team within Justice Connect (eg the referral team or the NFP Law team).

Outline of possible service structure

Justice Connect provides access to justice through pro bono legal services to disadvantaged people and the community organisations that support them. It does this in three ways:

1. By building, supporting and engaging a strong commitment to lawyers’ pro bono responsibility
2. By delivering access to justice through pro bono legal services, via referral to pro bono lawyers and through the development of programs which focus on particular groups or legal issues
3. By challenging and changing unjust and unfair laws and policies

Justice Connect aims to bring a strategic and cohesive approach to the management of pro bono legal services, including by having guidelines and policies for determining whether a matter is appropriate for

pro bono assistance and by having detailed and up to date knowledge about the pro bono programs of individual law firms.

Justice Connect could support improved coordination and efficiency in pro bono services in WA and help provide greater strategic focus by working with existing pro bono programs, in particular Law Access and by offering aspects of our current services to WA lawyers and firms. Set out below is one indicative proposal for what this could look like.

- Justice Connect could support the existing pro bono work undertaken for individuals by establishing a referral program which focused on public interest referrals and referrals in the areas of civil and administrative law (credit and debt, tenancy, housing and property, contract and consumer law, refugees and asylum seekers). This work would be done in collaboration with Law Access, to ensure coordination of approaches to firms and ensure that there was no overlap in service delivery.
- Justice Connect could also establish its NFP Law program, for not-for-profit community organizations. This would involve developing information materials which deal with specific WA legal issues for NFPs, to compliment the federal materials already on NFP Law's website. Training could also be offered to WA based NFPs, using NFP Law's existing resources and the expertise of WA lawyers. Referrals for legal advice could be made to Justice Connect's WA based members.
- Justice Connect could provide assistance to law firms wishing to develop their pro bono programs, by offering policy advice, training, networking and mentoring of pro bono champions and coordinators in law firms. Where opportunities arise, Justice Connect could also contribute to policy and law reform discussions on issues relating to access to justice in WA.

The resources to provide this level of activity would come from Justice Connect's own reserves, as well as through seeking a contribution from WA law firms, either as a membership amount or a donation. Justice Connect has strong expertise in obtaining funding for philanthropic trusts and foundations (it currently raises in excess of \$1 million per year from this source) and it would also seek funds from this source to support the work.

Grant Application Budget Template

Name of Funder:

Title of Grant:

		Salary+Salary Oncosts	Salary+Salary Oncosts+CPI Increase	Salary+Salary Oncosts+CPI Increase	3-years
		Full Year FY14	Full Year FY15	Full Year FY16	
		\$	\$	\$	\$
	Salary (or EFT equivalent)				
<i>Program Manager F/T x 1</i>	89,900	103,385	108,554	113,982	325,921
Senior Lawyer (Level 3)		0	0	0	0
Lawyer (Level 2)		0	0	0	0
Lawyer (Level 1)		0	0	0	0
Social Worker		0	0	0	0
Administrator		0	0	0	0
Total Salaries		103,385	108,554	113,982	325,921
Supported Services		41,354	43,422	45,593	130,368
Total Salaries & Supported Services		144,739	151,976	159,575	456,290
Plus					
Communications & Marketing		0	0	0	0
External Evaluation		0	0	0	0
Website Development		0	0	0	0
Training Materials		0	0	0	0
Total		0	0	0	0
Overall Total (with no GST)		144,739	151,976	159,575	456,290
GST if applicable		14,474	15,198	15,957	45,629
Total inc. GST		159,213	167,174	175,532	501,919

Salary: Salary/Salaries of the staff to be employed directly by the grant. If you are applying for multi-year funding, you will need to factor in CPI increases in salaries and any other known future changes to salary levels.

Total Salaries = Salary + 15% Oncosts: Salary oncosts include superannuation, workcover, annual leave loading, casual staff loading, etc.

Supported Services = 40% of Total Salaries: Supported services include rent, ICT facilities (computers & phones), finance/ICT/office management services, office equipment and supplies, travel, recruitment, professional development, internal evaluation etc.

+ Any additional costs: Services such as interpreter services, external evaluation, communication & marketing costs, website development, etc. should be included here

+ GST if applicable: As per the Grant Application & Agreement Policy, the Finance Manager must be consulted in the development of the Grant Application Budget

= Total Grant Funding sought

APPENDIX EIGHT – COMPARATIVE TABLES FOR PILCHS

Structure

	VIC PILCH	QPILCH	NSW PILCH	JUSTICE NET SA	JUSTICE CONNECT
NFP incorporated association (state)	✓	✓	✓	✓	
Public company limited by guarantee					✓
Other					
Established		2002	1992		
DGR	✓				

Membership

	VIC PILCH	QPILCH	NSW PILCH	JUSTICE NET SA	JUSTICE CONNECT
Law Firms	✓	✓	✓	✓	✓
Individuals		✓	✓	✓	✓
Corporates	✓	✓	✓	✓	✓
Universities	✓	✓	✓	✓	✓
Professional Organisations (eg – Law Society and Bar Associations)	✓	✓	✓	Partners and Supporters – LSSA. SA Law Foundation	✓
CLCs	✓			✓	✓
Legal Aid		✓			✓

Staffing

	VIC PILCH	QPILCH	NSW PILCH	JUSTICE NET SA	JUSTICE CONNECT
Total Staff	Now merged	9FTE 2PTE	Now merged	2.1FTE	34FTE
Volunteer program			✓	✓	
Secondment program	✓	✓	✓	✓	✓

Income sources

	VIC PILCH	QPILCH	NSW PILCH	JUSTICE NET SA
Total Income (2011/12)	\$3,219,752	\$1,205,014	(2010/2011 FY) \$453,773	\$161,227
Total Expenditure	\$2,314,940	\$1,300,474	\$441,504	\$141,930
Cwth Funding (eg CLSP, Fed AG)	✓	✓ 6%		
State Funding – Dept Justice /AG	✓	20%		
State Funding – Other Govt Dept eg: Dept of Communities	✓	✓ 16%		
Legal Practitioner Trust Account Funds		✓ 33% recurrent 22% other	✓ 31.8%	
Legal Aid	✓		✓	
Grants		✓ 4%	✓ 1%	✓ 26.5%
Membership	✓ 12%	✓ 7%	✓ 53%	✓ 22.3%
Law Society/Institute	✓ 12%			
Bar Association	✓ 13%			
Donations/Philanthropic	✓ 17%	✓ 5%		✓ 31%
Training Fees	✓ 2%		✓ 1%	
Management Fees	✓ 5%			
University		✓ 7%		
Corporate	✓ 6%			
Service Programs	✓ 11%		✓ 7.8%	
Fundraising			✓ 4%	✓ 19%
Other	✓ 2%		✓ 2%	✓ 1.12%

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