

**WESTERN AUSTRALIAN
PRO BONO SERVICES MODEL
REPORT ON PRO BONO FOR
FINANCIAL YEAR ENDING 30 JUNE 2021**

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ATTACHMENT 1 - WA Pro Bono Model and Guidelines

1. Introduction

Continuous pro bono contributions by lawyers and private law firms make a significant contribution to improving access to justice. Pro bono contributions raise awareness of the myriad complex issues that affect access to legal advice, assistance and the legal system.

There are a range of pro bono arrangements and initiatives currently in place in Western Australia. The Western Australian Pro Bono Legal Services Model ("**WA Pro Bono Model**") is only one of these arrangements.

Pro bono services are an adjunct to, and never a substitute for, publicly funded legal aid. The WA Pro Bono Model does not replace the responsibilities of State and national governments to provide legal assistance.

1.1. About this report

Under the WA Pro Bono Model, law firms who provide legal services to Government are required to report within 12 weeks of the completion of the financial year:

1. Confirmation that the firm is a signatory to the National Pro Bono Target.
2. The total amount of legal fees charged by the firm to the Government during the completed financial year.
3. The total amount of pro bono legal services provided by the firm for "approved causes" during the completed financial year broken down into the total dollar amount of work provided for individual pro bono clients and for organisation clients.

Law firms are not required to disclose the names of their pro bono clients in the reporting.

The Attorney General stated that reports using disaggregated data, collected from law firm reporting, will be published annually by the State Solicitor's Office, and tabled in Parliament. This is the first report and covers the financial year 1 July 2020 to 30 June 2021 ("**Reporting Period**"). As such, this report includes data from years affected by the COVID-19 pandemic.

This report gives a brief overview of the WA Pro Bono Services Model and provides key findings about the types of pro bono services provided by private law firms.

This report focuses on fees earned for legal services on the contracts issued and completed in the Reporting Period. As such, this report does not include fees acquired by firms for work that was not completed by the end of the Reporting Period. Further, this report does not include legal services provided by barristers to Government departments and agencies, because the WA Pro Bono Model does not apply to barristers.

A three year transition period is a feature of the WA Pro Bono Model to enable assessment of the effectiveness of its objectives and reporting requirements, as well as the identification of key matters to enhance access to legal services. As such, the report is indicative of the types of pro bono legal services that have been provided during the Reporting Period.

2. Overview of the Western Australian Pro Bono Services Model

The WA Pro Bono Model seeks to build strong pro bono practices with law firms who provide legal services to Government.

Under the WA Pro Bono Model, law firms who provide legal services to Government are required to be a signatory to the Australian Pro Bono Centre's National Pro Bono Target and to commit to undertake pro bono work for "approved causes" in Western Australia, to the value of at least 10% of the value of each firm's Government legal work. The WA Pro Bono Model and Guidelines are at Attachment 1.

The pro bono requirements under the WA Pro Bono Model took effect as of 1 July 2020, during the COVID-19 Pandemic.

2.1. Approved Causes

The WA Pro Bono Model specifically includes "approved causes" to ensure that legal assistance and advice is more accessible to the most disadvantaged and marginalised people, and not-for-profit organisations in Western Australia. Approved causes are defined to mean the provision of pro bono legal services:

- a) to people in Western Australia who cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial or other hardship;
- b) which will enhance access to justice for disadvantaged people in Western Australia;
- c) to Law Access, a community legal centre, the Aboriginal Legal Services of Western Australia, and to bodies whose primary focus is representation of Aboriginal people; or
- d) by way of secondment of legal staff to Law Access, a community legal centre, the Aboriginal Legal Services of Western Australia, or bodies whose primary focus is representation of Aboriginal people.

2.2. Disadvantaged People

The WA Pro Bono Model does not define "disadvantaged people". This is due both to the complexities and limitations of a fixed definition. There are myriad definitions about what constitutes "disadvantage". Research entities use terms such as "vulnerable", "marginalised" and "social exclusion" to assess the individuals, communities and groups whose access to services is limited.

There are various ways in which "disadvantage" or "social exclusion" is measured. A social inclusion index, for example, covers a broad array of social inclusion indicators from the attitudes to, and experiences of minorities to people on low incomes. The groups who are considered "disadvantaged", while relatively consistent despite the efforts of governments, can change at different times.

For instance, a recent report by the Organisation for Economic Co-operation and Development and the Law & Justice Foundation of New South Wales suggests that "the [COVID-19] crisis is exacerbating the vulnerabilities of individuals that were already at higher risk, including the elderly, women, children, detainees, ethnical and racial minorities, indigenous communities, those living in remote locations and other marginalised people... In legal need and access to justice terms, this means that these

disadvantaged groups are likely to experience increased legal needs just at a time when services are harder to reach".¹ This research indicates that women and children are also at risk of not accessing legal assistance.

The Interim Report of the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry on homelessness in Australia noted that the onset of COVID-19 impacted on the management of short-term accommodation, and how that had affected continuity of services at a time when, in general, demand had increased.²

The decision of leave "disadvantage" loosely defined was made to enable law firms, with the assistance of Law Access, to enhance access to justice, without being constrained by changing and emerging circumstances.

2.3. Bodies within the WA Pro Bono Model

To enable law firms to more easily provide services to disadvantaged people, Law Access is funded by the Department of Justice. Law Access is a gateway, or referral service that matches applications for pro bono legal assistance from individuals and not for profit organisations to lawyers. The service is available for cases with legal merit where all other efforts to obtain funding, including from Legal Aid WA, the Aboriginal Legal Service of WA and community legal centres, have been exhausted.

Law Access publishes an annual Impact Report which measures Law Access's impact to enhance access to justice for its clients and the sustainability of its services. Law Access receives applications for pro bono assistance from individuals, Not-For-Profit organisations and Community Legal Centres.

Western Australia's twenty-six Community Legal Centres and the Aboriginal Legal Service utilise the WA Pro Bono Model to help deliver essential legal services to vulnerable Western Australians.

Most, if not all Community Legal Centres have long standing arrangements with private law firms to assist their operations on a regular basis, such as sending lawyers to attend evening legal information sessions at their centres and provide legal advice to local community members. Some of these arrangements are coordinated by Law Access while others are the result of relationships built over time, between the centres and law firms.

Pro Bono services provided by law firms to Community Legal Centres include representation, trial work, and other services to fill gaps in expertise. Some private lawyers are seconded by their law firms to work in a Community Legal Centre for a defined number of hours each week. Private law firms also provide Community Legal Centres administrative support, including through providing the Community Legal Centres the use of the law firm's resources. Training is provided to private lawyers in delivering services in a trauma setting as well as the use of interpreters for culturally and linguistically diverse clients.

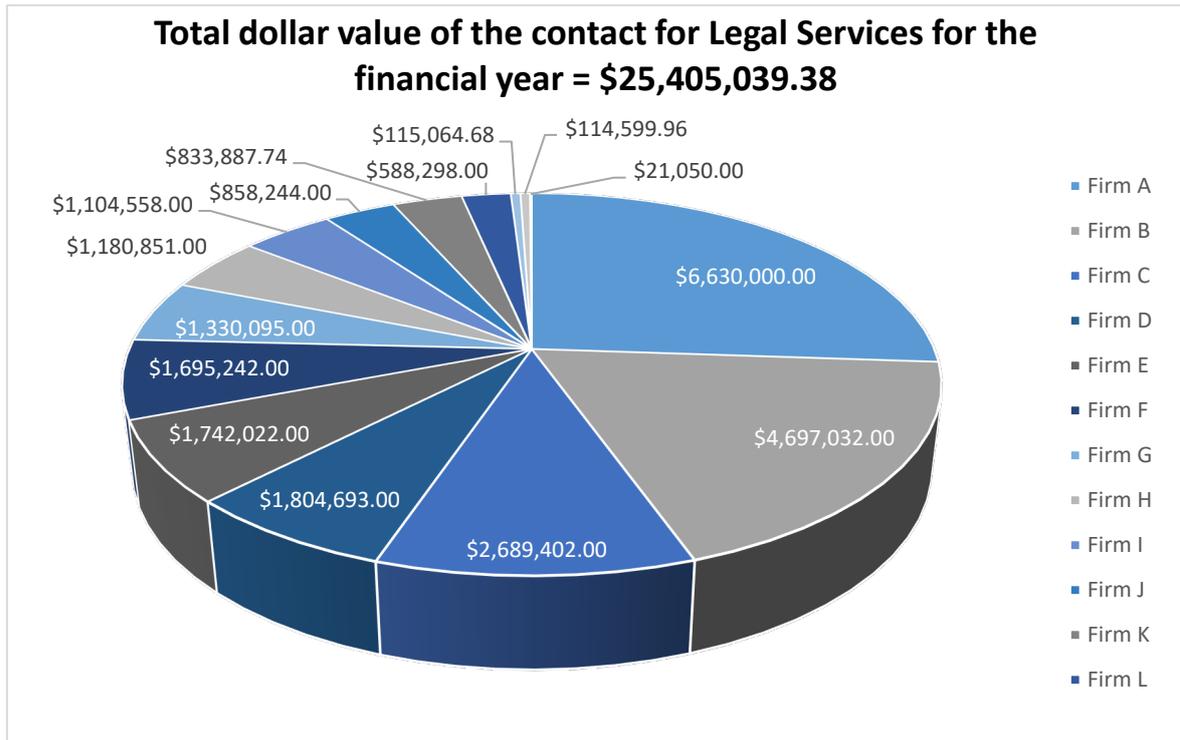
¹ Organisation for Economic Co-operation and Development and the Law & Justice Foundation of New South Wales, 'Access to justice and the COVID-19 pandemic', *Tackling Coronavirus (COVID-19): Contributing to a Global Effort* (Policy Brief, 25 September 2020) 3 <[http://www.lawfoundation.net.au/lif/site/articleIds/5BEBDA8F5FA5EF7E852586B100025DB7/\\$file/oecd-access-to-justice-covid19.pdf](http://www.lawfoundation.net.au/lif/site/articleIds/5BEBDA8F5FA5EF7E852586B100025DB7/$file/oecd-access-to-justice-covid19.pdf)>

² House of Representatives Standing Committee on Social Policy and Legal Affairs, *Inquiry into Homelessness in Australia* (Interim Report, October 2020) 1.68 <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024523/toc_pdf/Shelterinthestorm%e2%80%93COVID-19andhomelessness.pdf;fileType=application%2Fpdf>.

3. Provision of Pro Bono Legal Services

Fifteen law firms provided reports to the State Solicitor's Office in accordance with Table 1 – Pro Bono Reporting Template in the WA Pro Bono Model Guidelines.

The fifteen law firms completed work during the Reporting Period for over 30 different Government Departments and agencies, including Busselton Water, Department of Communities, Economic Regulation Authority, Electricity Networks Corporation (Western Power), Insurance Commission of WA, Pilbara Ports Authority, Racing and Wagering WA, various Universities, WA Health and the Water Corporation. The total value of legal advice during the Reporting Period was \$25,405,039.38.



3.1. Signatory to the National Pro Bono Target requirement

All fifteen law firms have complied with the commitment to be a signatory to the Australian Pro Bono Centre's National Pro Bono Target.

3.2. Provision of Pro Bono Legal Services to approved causes requirement

Thirteen of the law firms say they complied with the commitment to provide pro bono work for "approved causes" in Western Australia, to the value of at least 10% of the value of each firm's Government legal work.³

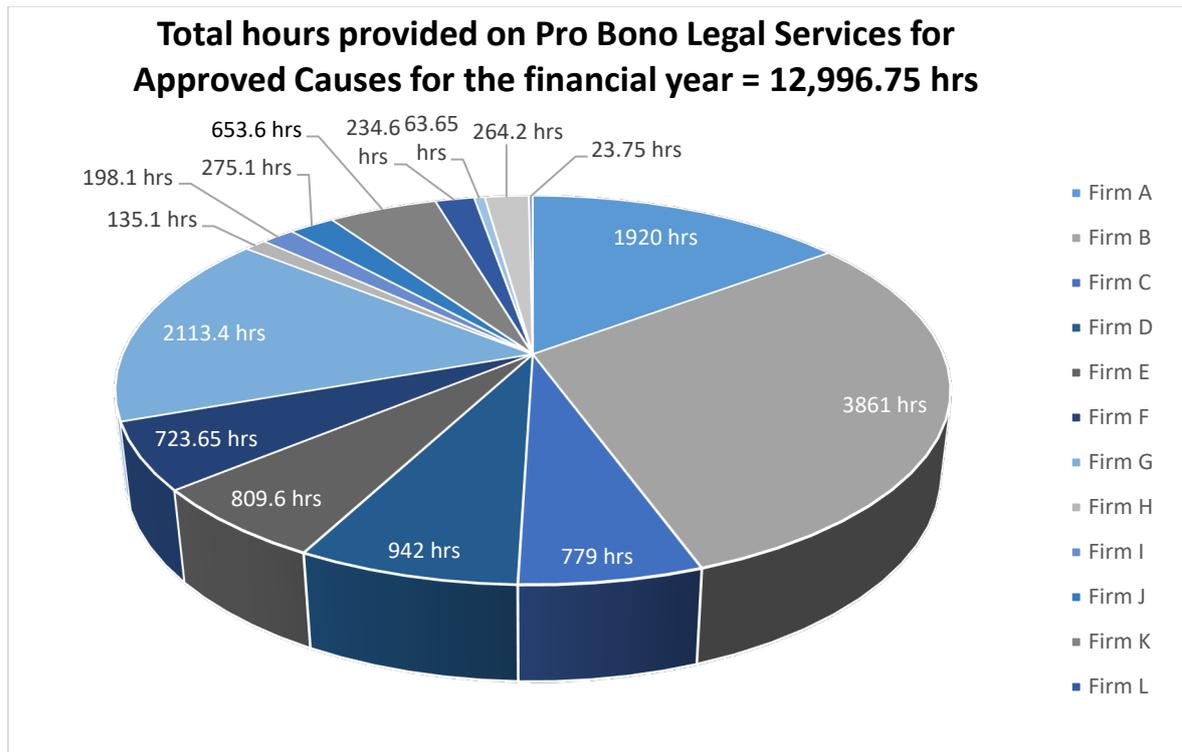
³ Noting that one law firm reported compliance with the commitment, but their reported aggregate figures for pro bono work undertaken for approved causes apportioned to each Government department and agencies for which it performed legal work did not meet the 10% threshold for four of those Government departments and agencies.

3.3. Amount of Pro Bono Legal Services provided to approved causes

The reported amount of pro bono work for approved causes in WA undertaken by each law firm ranged:

- a) from as little as 3.45 hours, valued at \$1,863, for a contract for legal services for the Reporting Period with a total value of \$15,250;
- b) to upwards of 809 hours, valued at \$255,429, for a contract for legal services for the Reporting Period 2020-2021 with a total value of \$1,742,022.

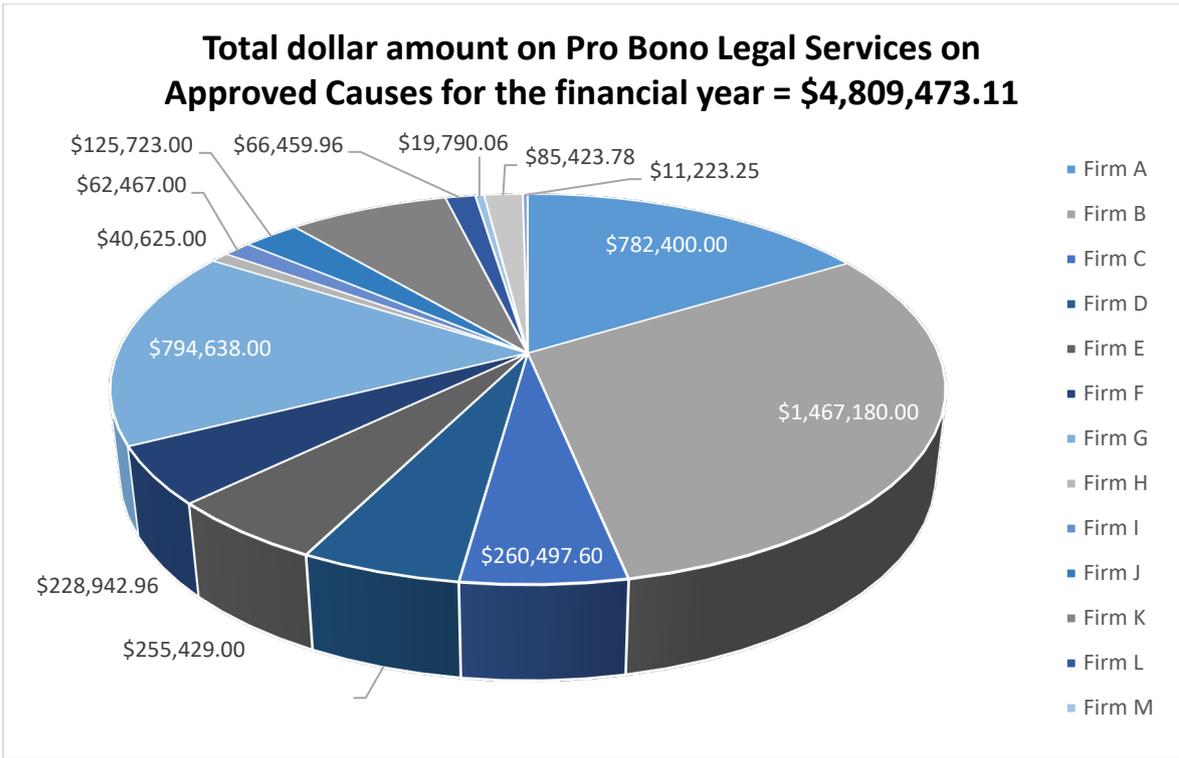
The total hours of pro bono work for approved causes in WA undertaken by all law firms was 12,996.75 hours. This is equivalent to 7.22 lawyers working full time on pro bono work for approved causes.⁴



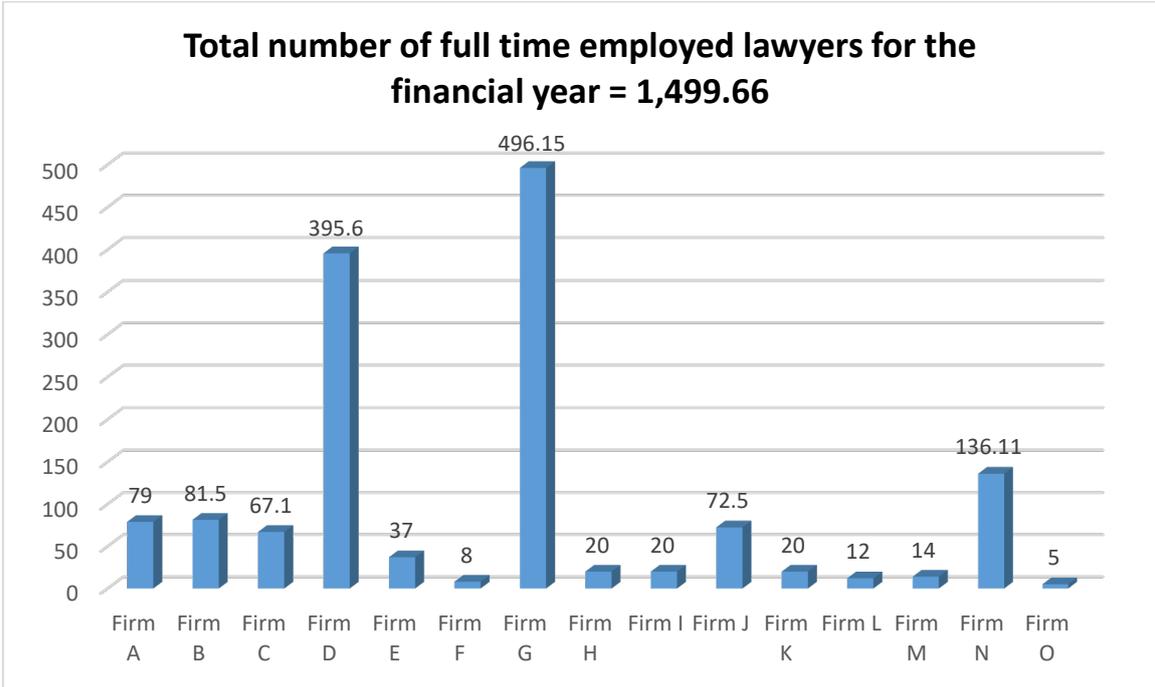
The total value of pro bono work for approved causes in WA undertaken by all law firms was valued at around \$4,809,473.11. This is equivalent to around 18.93% of the total value of work performed for Government Departments and agencies in the Reporting Period.⁵

⁴ Calculated on the basis of a 37.5 hour working week over 48 weeks.

⁵ Calculated as \$4,809,473.11/\$25,405,039.38 x 100.



The total number of full time employed lawyers at these fifteen law firms was 1,499.66 lawyers.⁶



Based on the total hours of pro bono work for approved causes and the total number of full time lawyers, the average hours of pro bono work for approved causes for each full time lawyer is around 8.67 hours.

⁶ Noting that two law firms seem to have reported all of their full time employed lawyers in Australia, and not just full time employed lawyers in WA.

3.4. Nature of Pro Bono work for approved causes

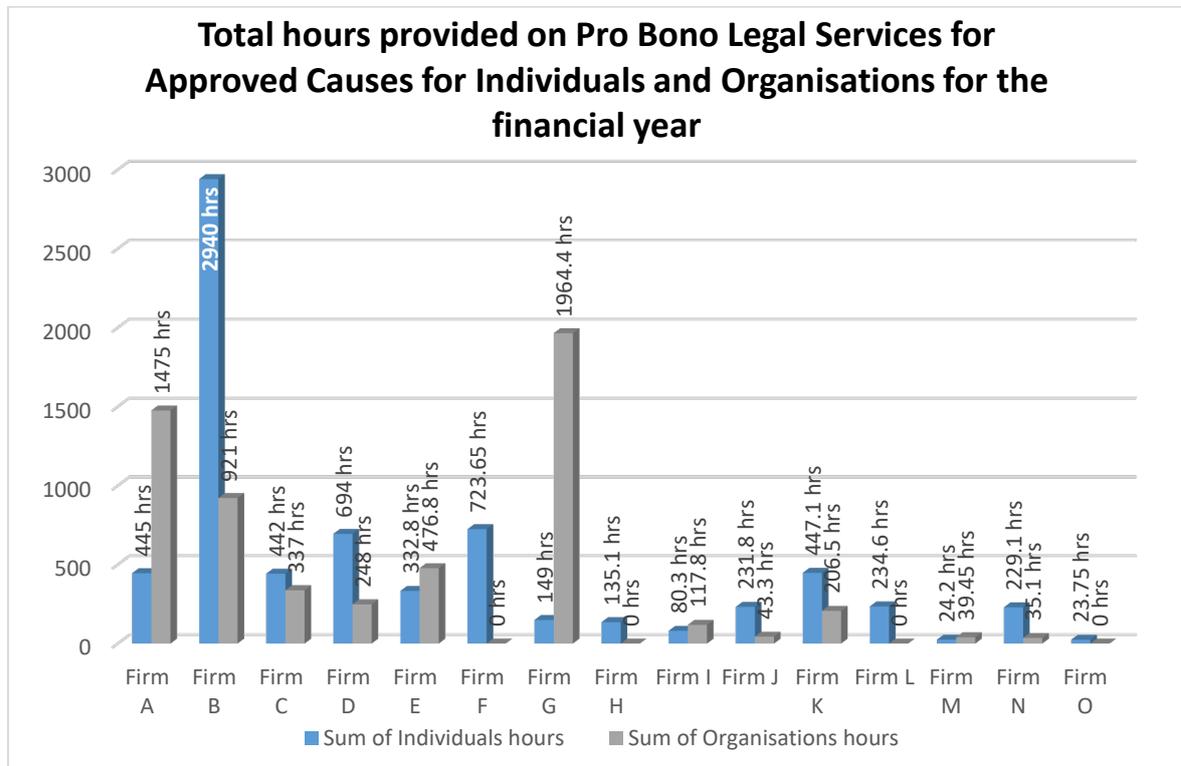
Nine of the law firms provided more pro bono work for approved causes for individuals than for approved causes for organisations.

The areas of law in which pro bono work was undertaken included civil litigation, credit and debt, criminal injuries compensation, deceased estates, guardianship and administration, insurance, local government, personal injury, redundancy, residential tenancy, superannuation, taxation, unfair dismissal and underpayment, and wills and estate planning.

The types of pro bono work undertaken included capacity building, clinics, community legal education, court attendances, document preparation and lodgement, law reform, legal advice, legal research, litigation settlement, mediation services, negotiation, and pro bono secondments.

The disadvantaged people assisted by law firms by the undertaking of pro bono work for approved causes included Aboriginal people, domestic violence survivors, elderly people, people with disability and illness such as cancer, people with limited English Language skills, people with mental illness, and people without homes.

The bodies assisted by law firms by the undertaking of pro bono work for approved cases included Law Access, the Aboriginal Legal Service and Community Legal Centres including Circle Green Community Legal, Mental Health Law Centre WA, South West Community Legal Centre, Street Law Centre, and Subiaco Justice Centre.



Eight of the law firms provided pro bono assistance for approved causes by way of secondments to Law Access and various Community Legal Centres.

3.5. Case studies

3.5.1. Approved Causes

The following case studies have been prepared to give a sense of the types of pro bono legal services undertaken by law firms.

One law firm provided pro bono legal services to a client who could not obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship. The law firm provided advice to the client on the right to carry out monument work on a grave for cultural purposes.

Another law firm provided pro bono legal services to a client with limited English language skills and on a short term visa. The law firm assisted the client to recover monies owed to him by his employer, who had been underpaying him over many years.

A law firm provided pro bono legal services to clients who were disadvantaged persons by reason of being elderly and regionally located. The law firm provided pro bono legal services by establishing a wills clinic with South West Community Legal, to assist elderly community members in Bridgetown and Bunbury.

3.5.2. Legal Needs Response Team and Cyclone Seroja

The Legal Needs Response Team is a collaboration of Community Legal Centres and their peak body Community Legal Western Australia, Legal Aid Western Australia, Aboriginal Legal Services, Law Access, the Law Society of Western Australia, and Financial Counsellors' Association of Western Australia, who come together following unforeseen events to deliver a swift and coordinated response to vulnerable Western Australians in emergency circumstances.

Earlier this year, Tropical Cyclone Seroja caused widespread devastation to residents, farms and businesses in the mid-west of Western Australia. With financial support from the Department of Justice, the Legal Needs Response Team worked closely with participating private law firms as well as related Government agencies and shires, as well as not-for-profit service providers.

Over two weeks, the team visited almost a dozen affected towns to support residents in crisis, performing legal health checks, providing advice, and connecting people to ongoing services where needed. A total of 81 clients were seen over the period, with more than half requiring legal advice or referrals or both, particularly in the areas of insurance and tenancy law.

3.6. Comparison of Pro Bono Legal Services undertaken in other jurisdictions

In Victoria, according to the Legal Services Panel 2017-2018 annual report, in the 2016-17 financial year, Panel firms provided \$25M in pro bono services under the Panel contact, and the actual amount of pro bono services provided by all Panel firms in 2015-16 was equivalent to 28 per cent of legal fees, and in 2016-17 was equivalent to 29 per cent of legal fees.⁷ These figures are larger than the WA 18.93% figure for the total value of work performed for Government Departments and agencies in the Reporting Period. However, the Panel firms referred to in the 2017-2018 annual report contracted to provide pro bono legal services, on average, equivalent to 20 per cent of revenue earned from Panel work.

⁷ Victorian Government Legal Services Panel, *2017-18 Annual Report* (Report, March 2019) 4, 9 <<https://www.justice.vic.gov.au/victorian-government-legal-services-panel-2017-18-annual-report>>.

This target is higher than the target value of at least 10% of the value of each firm's Government legal work under the WA Pro Bono Model.

In New South Wales, according to the NSW Government Legal Services Panel Annual Report for the 2019-2020 financial year, panel firms provided an average of 30.31 hours of pro bono services per lawyer, equating to 324,293 hours of pro bono services.⁸ These figures are larger than the around 8.67 hour's average pro bono work for approved causes for each full time lawyer in WA, and the 12,996.75 total hours of pro bono work for approved causes. However, the NSW Government Legal Services Panel Annual Report for the 2019-2020 financial year includes data reported by thirty firms, whereas this report is only able to consider data as reported by fifteen firms.

The Law Access 2020 Impact Report indicates that applications to Law Access for pro bono referrals and the applications to Law Access that were referred for pro bono services increased from 2019 to 2020. Law Access reported receiving 552 applications (a 7% increase on the previous financial year) and 239 (or 43%) of applications were assessed as meeting our referral guidelines. Law Access reported placing 216 of these applications with appropriately skilled pro bono lawyers or to funded legal assistance services. Law Access reported being unable to refer 23 (or 10%) of meritorious matters. Of these meritorious matters that Law Access could not suitably place, 13 were Family Law matters; three were Immigration matters and seven were in other areas of law.⁹

The Australian Pro Bono Centre's 14th Annual Performance Report of the National Pro Bono Target stated that the signatories reported 47,474 hours of pro bono work completed in Western Australia.¹⁰ This figure is larger than the 12,996.75 total hours of pro bono work for approved causes reported by law firms in accordance the WA Pro Bono Model. However, the Australian Pro Bono Centre had 161 signatories reporting, whereas this report is only able to consider data as reported by fifteen firms. Additionally, the law firms reporting to the Australian Pro Bono Centre are not limited to those performing legal services for the Government, the WA Pro Bono Model reporting requirements are limited to law firms providing legal services to the Western Australian Government.

⁸ New South Wales Legal Services Panel, *Annual Report 1 July 2019 – 30 June 2020* (Report, May 2021) 3-5, 11 <<https://www.justice.nsw.gov.au/legal-services-coordination/Documents/nsw-government-legal-services-panel-annual-report-2019-2020.pdf>>.

⁹ Law Access, *2020 Law Access Impact Report* (Report, 2020) 5-6 <<https://lawaccess.org.au/lawp/wp-content/uploads/2020/12/Law-Access-Impact-Report-2020.pdf>>.

¹⁰ Australian Pro Bono Centre, *14th Annual Performance Report of the National Pro Bono Target* (Report, September 2021) 9 <<https://www.probonocentre.org.au/wp-content/uploads/2021/09/14th-Annual-Target-Performance-Report.pdf>>.

4. Conclusion

Based on this data, the Pro Bono Model reached disadvantaged people including Aboriginal people, domestic violence survivors, elderly people, people with disability and illness such as cancer, people with limited English Language skills, people with mental illness, and people without homes. However, other disadvantaged people who were not reported as being assisted including detainees, ethnic and racial minorities other than Aboriginal people, people suffering substance abuse issues, and survivors of abuse and trauma.

The WA Pro Bono Model is currently being evaluated to ascertain the effectiveness of the Model in terms of the equitable access to services. The focus points of the evaluation include the effectiveness of the model at facilitating pro bono services reaching the most disadvantaged groups, and assessing and addressing any mismatch in demand for pro bono services and expertise of law firms providing pro bono services under the Model. The WA Pro Bono Model evaluation is aimed at improving the model to further enhance access to justice for all Western Australians.