



AUSTRALIAN
PRO BONO CENTRE

PRO BONO LEGAL WORK

A GUIDE FOR IN-HOUSE
CORPORATE LAWYERS

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CORPORATE LAWYERS



ISBN: 978-0-6481337-0-4

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FOREWORD

The concept of pro bono legal work is deeply enmeshed in the profession and these days represents a fundamental strand in the practice of many lawyers.

The value in undertaking legal pro bono work for in-house lawyers, legal functions and organisations is undisputed. Pro bono legal work not only involves giving back to the community but it can also enhance job fulfilment, help lawyers to hone their legal and professional skills and offers a variety of experiences, including litigation and transactional work, which often cannot be duplicated elsewhere. More importantly, it reminds in-house lawyers why they chose the legal profession and enables them to fulfil their ethical obligations as lawyers.

The benefits that pro bono work brings to in-house lawyers also flow through to the legal functions and the organisations they represent. Aside from playing a part in fulfilling an organisation's corporate social responsibility, pro bono legal work can positively influence the culture of an in-house department to bring long term benefits for the organisation. It provides an opportunity to build engagement, encourages team work and can promote an organisation's standing in the community.

This guide builds on DLA Piper's 2013 publication, *The Australian In-house Legal Counsel Pro Bono Guide*, and provides detailed insights for the in-house profession. It includes case studies of pro bono legal services provided by some of Australia's top organisations and guidance on how to create an effective in-house pro bono program.

While many legal functions have already embedded a strong pro bono program within their organisations, I commend the publication of this guide in encouraging more in-house lawyers and legal functions to pursue pro bono legal work and in illustrating the ease in which in-house lawyers and their departments can give back to their community.

This guide provides practical guidance to the in-house profession in undertaking pro bono legal work. It draws from the extensive experience of key organisations working with and in legal pro bono who have dedicated time and effort to the Australian Pro Bono Centre to ensure that this guide is a 'must have' reference for the in-house profession. I congratulate all those who have been involved in developing this invaluable guide.

Brian Salter

Group General Counsel, AMP Limited, and Chairperson, ACC Australia GC100



ACKNOWLEDGEMENTS

Pro Bono Legal Work – A guide for in-house corporate lawyers (Guide) builds on two previous guides on pro bono for Australian in-house legal counsel published by DLA Piper (April 2009 and August 2013). The Australian Pro Bono Centre (**Centre**) thanks DLA Piper for its permission to use the material in these guides in this latest publication.

The following organisations and individuals participated in consultations, provided feedback on earlier drafts, provided example precedents and made many other invaluable contributions to this edition of the Guide. The Centre wishes to thank all those who contributed for their generosity and time.

- Leanne Clark, Senior Legal Counsel (Retail Banking Legal, Group Corporate Affairs), Commonwealth Australia Bank
- Tanya Khan, Vice President and Managing Director, and Deon Wong, Senior Legal and Advocacy Counsel, Association of Corporate Counsel Australia
- Coralie Kenny, Chair, Law Society of NSW's Corporate Lawyers Committee
- The 2017 Corporate Lawyers Committee of the Law Society of NSW
- Matthew Keeley, Director, National Children's and Youth Law Centre
- Sue Woodward, Director-National Projects, Not-for-Profit Law, and Rebecca McMahon, Director, Not-for-Profit Law, Justice Connect
- Robyn Ayres, CEO, Arts Law Centre
- Brooke Massender, Head of Pro Bono, Herbert Smith Freehills
- Leanne Collingburn, National Pro Bono Executive, Norton Rose Fulbright
- Garth Tinsley, Pro Bono Manager, Australia, Ashurst Australia
- Phillip Cornwell, Chair, Australian Pro Bono Centre
- Afton Fife, Former Senior Policy Officer, Australian Pro Bono Centre

ABBREVIATIONS

Centre	Australian Pro Bono Centre, formerly the National Pro Bono Resource Centre
CSR	Corporate social responsibility
DRS	Document Review Service available to Arts Law Centre subscribers
FTE	Full time equivalent
Guide	<i>Pro Bono Legal Work – A guide for in-house corporate lawyers</i>
K&WM	King & Wood Mallesons
NCYLC	National Children's and Youth Law Centre
NFP Law	Justice Connect's Not-for-profit Law service
Scheme	National Pro Bono Professional Indemnity Insurance Scheme
Target	National Pro Bono Aspirational Target



1. INTRODUCTION

'Pro bono' comes from the Latin phrase 'pro bono publico' which means 'for the public good'. In the legal context it generally means the provision of free legal services to those who would not otherwise be able to access the legal system, or whose matter raises an issue of public interest.

It can take many forms including the provision of community legal education, reviewing documents, advising individuals in clinics, providing legal advice, and court representation.

While there is no universally accepted definition of what is meant by 'pro bono', the definition of 'pro bono legal services' adopted by the Australian Pro Bono Centre¹ is widely accepted in Australia. It includes legal assistance provided for free or at a substantially reduced fee for not-for-profit organisations that 'work for the public good'.

An organisation's in-house legal team can play a unique role in helping to build, strengthen and complement the organisation's corporate social responsibility (CSR) strategy. Organisations are expanding their CSR programs to include impact investment and other forms of support for social enterprises (which aim to secure social returns as well as profits) and may choose to adopt a broader concept of pro bono to include support for some social enterprises. Further, CSR programs are increasingly setting standards for sustainable supply chains. In this way corporations can choose to follow the lead of various government agencies by using their buying power to encourage their legal service providers to do pro bono legal work.

In recent years, in-house lawyers in Australia have started to become involved in pro bono legal work in a more structured way, as outlined in the case studies in section 7 **Case studies**.

For any initiative of this type it is beneficial to have quantifiable targets so that progress can be monitored. For example, approximately 150 corporations (that provide pro bono services in more than 44 countries) have adopted the Corporate Pro Bono Challenge® Statement² where signatories agree to use their best efforts to encourage their staff, including at least half of their legal staff, to support and participate in pro bono service (and encourage the outside law firms with whom they work to acknowledge publicly their support for pro bono). When selecting a benchmark, such as participation rates, the target could ramp up over a period of years.

Approximately 25 percent of Australian lawyers work as in-house lawyers, either within corporations or government.³ This represents over 16,500 lawyers, a number which continues to grow.⁴ In-house lawyers possess expertise and skills which they can use to assist disadvantaged and marginalised individuals and the organisations that assist them. In addition to general drafting, legal research, commercial and presentation skills, in-house lawyers often have expertise in, for example, contract law, employment arrangements, legal and business structures, property and leasing, risk management, insurance and intellectual property. Participation in well-managed pro bono programs and clinics can also broaden and enhance in-house lawyers' skills and expertise in new areas of law and practice.

1 See <http://www.probonocentre.org.au/information-on-pro-bono/definition/>
2 See <http://www.cpbo.org/cpbo-challenge/>
3 Urbis, 2014 *Law Society National Profile – Final Report* (April 2015) at 2 and 15.
4 As above.

2. WHY ESTABLISH AN IN-HOUSE PRO BONO PROGRAM?

There are **four** key reasons why an organisation should establish an in-house pro bono program:



1. To support the professional responsibility of its lawyers

The primary reason for undertaking pro bono legal work is the individual ethical and professional responsibility that each lawyer has to ensure equal access to justice given their privileged position as a member of the profession having the exclusive right to practise law. This is often referred to as the 'pro bono ethos' and was eloquently summarised by the Honourable Murray Gleeson, then Chief Justice of the High Court of Australia, in a speech delivered to the National Access to Justice and Pro Bono Conference in Melbourne on 11 August 2006:

“The legal profession is a profession and not only a business; that its members have a duty to temper the pursuit of individual self-interest; and that they have a collective obligation to do their best to make legal services available to needy people. Collectively, this is a matter of duty, not generosity.”⁵

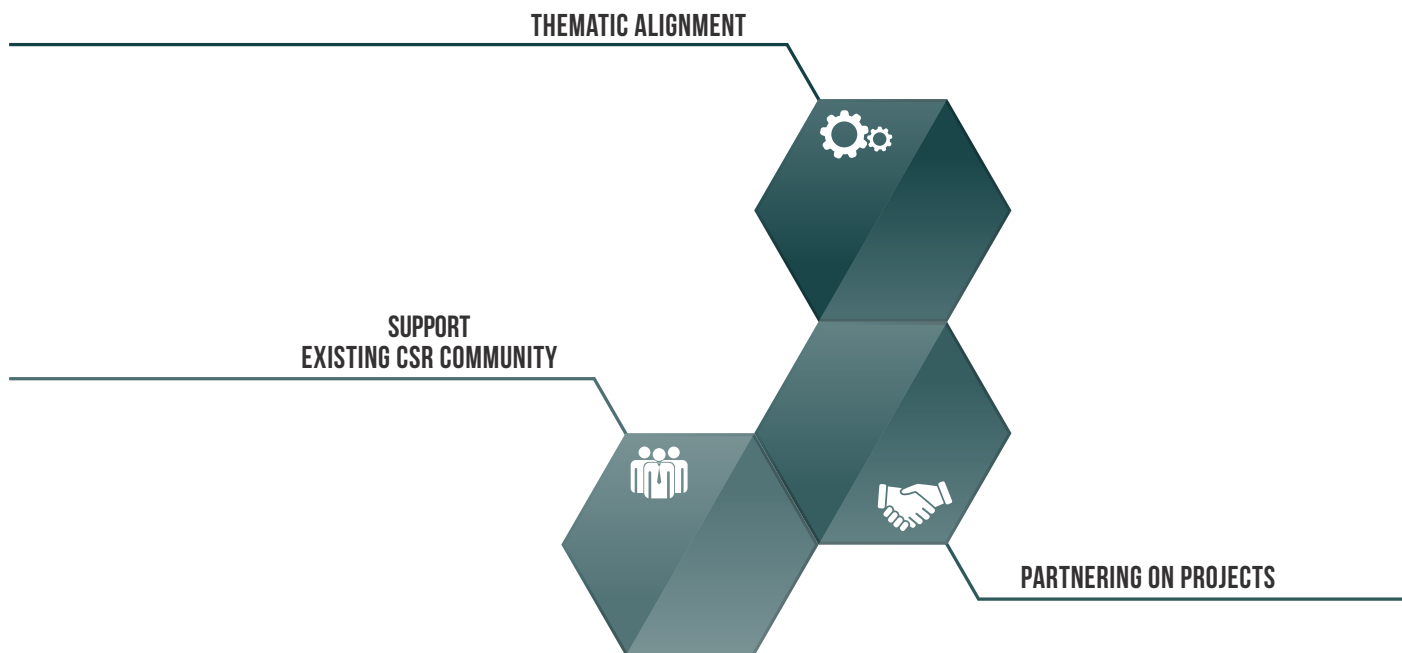


A key way in which an organisation can contribute to the community is to facilitate greater access to justice through the development of a structured in-house pro bono program, which will enable its lawyers to provide pro bono legal assistance.

2. To strengthen and complement its corporate social responsibility program

Organisations recognise the importance of good corporate citizenship and community engagement. Most CSR strategies address the organisation's relationship with the community with regard to volunteering, charitable giving, diversity and sustainability.

Through a structured in-house pro bono program, the legal team can assist individuals and not-for-profit organisations within the organisation's CSR community, providing pro bono legal services to the beneficiaries of the organisation's CSR program. Thematic alignment can be achieved by the organisation identifying projects that support, or are consistent with, the focus of its CSR program. It is possible for in-house lawyers to partner with other staff within the organisation to work together on skills-based volunteer projects. The in-house legal team's contribution to the organisation's CSR goals reinforces and acts as a clear demonstration of the organisation's values.





3. It makes good business sense

An in-house pro-bono program for lawyers can also have a positive impact on an organisation's business operations.

Some of the benefits that a pro bono program can have for an organisation include:⁶

- making the legal team more attractive to high quality legal recruits;
- enhancing staff morale, loyalty, and the retention of valued employees; and
- demonstrating the organisation's commitment to the principles outlined in its CSR policies.

A pro bono program also has direct benefits for the lawyers who participate, which in turn benefits the organisation. These include:⁷

- the development of professional skills and confidence, and a broader perspective, which can then be applied to in-house legal work;
- making a tangible contribution to the organisation's CSR strategy; and
- strengthening the in-house legal team's relationships with:
 - » internal clients, particularly when the legal team's work complements the charitable or volunteer activities of other teams;
 - » each other, as it is an activity done outside of each team member's 'day job'; and
 - » panel law firms, when they undertake pro bono legal projects together.

4. Most regulatory barriers have been removed

Advocacy undertaken by the Australian Pro Bono Centre and others has reduced the regulatory barriers that previously prevented in-house lawyers participating in pro bono legal work.

Now, in most jurisdictions:

- lawyers who hold corporate and government practising certificates (or their equivalent) are permitted to undertake pro bono legal work; and
- in-house lawyers can access free professional indemnity insurance through the Centre's National Pro Bono Professional Indemnity Insurance Scheme (**Scheme**), which is underwritten by Lawcover Pty Ltd, the New South Wales legal professional indemnity insurer.

See section 5 **What regulatory requirements apply to pro bono legal work?** for further details.

6 See E Lardent, *The Business Case for In-house Pro Bono*, 2006 at http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/06-1_preventing_runaway_arbitration_authcheckdam.pdf

7 As above



3. WHAT ARE THE MODELS OF IN-HOUSE PRO BONO?

There are many different ways that an in-house legal team can undertake pro bono legal work – many of which can be done without leaving the office.

Models of in-house pro bono participation in Australia vary but can be broadly categorised as:

1. Partnering with a not-for-profit organisation.

This could be an existing CSR partner organisation. For example:

- QBE Insurance's pro bono legal support for the McGrath Foundation; and
- Commonwealth Bank of Australia's support for Salvos Legal Humanitarian.

2. Partnering with a generalist or specialist community legal centre (CLC) as part of a regular roster or by accepting referrals.

For example:

- Telstra and ASIC's participation in the National Children's and Youth Law Centre's Cyberlaw Volunteer Project (see case study A in section 7 **Case studies**);
- Macquarie Bank Limited's participation in the Public Interest Advocacy Centre's Homeless Persons' Legal Service; and
- LexisNexis, Beyond International and Hewlett Packard Enterprise's participation in Arts Law Centre's Document Review Service (see case study B).

If an in-house legal team is proposing to undertake pro bono legal work in an unfamiliar area of law, partnering with another organisation (CLC, pro bono referral organisation or law firm) that has significant expertise in this area is recommended. Through this partnership appropriate training and supervision can be provided.

3. Partnering with one or more panel firms to work on a law firm pro bono project or establish a joint project.

For example, Norton Rose Fulbright's collaboration with the legal team at Carnival Australia to assist clients of the Refugee and Advice Casework Service (RACS) complete applications for asylum.



4. **Membership of a pro bono referral organisation** (such as Justice Connect, Law Right or Justice NetSA) through which referrals can be obtained.

For example, the Westpac legal team's membership of Justice Connect and their agreement to take referrals through Justice Connect's Not-for-profit Law service (see case study C).

5. **Taking referrals from other pro bono referral agencies** such as law society referral schemes or the Cancer Council Legal Referral Service.

For example, referrals taken in the past by the in-house legal teams at Ramsay Health and Perpetual through the Cancer Council Pro Bono Program.

6. **Auspicing and supporting the independent volunteer pro bono legal work** of individual members of the legal team.

For example, encouraging individual lawyers to volunteer on their own time at a CLC or for the Inhouse Pro Bono Desk at Salvos Legal Humanitarian.

7. **Seconding in-house lawyers to work with community or not-for-profit organisations.**

For example, Australian Government Solicitor secondments to a number of CLCs.

8. **Contributing to the development of continuing legal education resources.**

For example, through Justice Connect's Not-for-profit Law service which produces information resources for charities and not-for-profits including model constitutions and guides to tax concessions.



4. HOW DO WE ESTABLISH A PRO BONO PROGRAM?

The key steps for establishing an in-house pro bono program are outlined below.

The time and resources invested in each step will depend in large part on the size and culture of the organisation and its legal team. For example, it might be a relatively quick process to reach the stage of preparing a proposal for the program or project if an in-house legal team is partnering with another organisation, or if a member of the legal team has identified a suitable project upfront.

Whilst it is ideal to establish a formal pro bono program for the reasons above, lawyers within an organisation can of course still undertake pro bono legal work independently on an informal basis subject to compliance with applicable internal controls.

Key steps for establishing an in-house pro bono program:





A. ESTABLISH ORGANISATIONAL SUPPORT



Before a pro bono program can be established there should ideally be organisational support for the initiative from key individuals including the Chief Executive Officer, General Counsel, Head of Legal and others such as the Head of CSR. Support at the highest levels of an organisation is critical to ensure there is enthusiasm for, and encouragement of, pro bono work, particularly in global organisations.

If there is a lack of organisational support for the program support could be harnessed by developing a program proposal that takes into account any concerns raised (see section 6 **Frequently asked questions**), or identifying a senior member of the team to champion the program.

B. SCOPE THE PROPOSED PROGRAM



To develop a program proposal, start by learning more about the pro bono legal work that the in-house legal team may be interested in, and capable of, undertaking. Below are some suggestions about how a program could be scoped. It is not necessary to take all of these steps and, if an idea has already been presented which has general interest, only minimal scoping may be required. It is also helpful to consider section 3 **What are the models of in-house pro bono?** and Appendix A **Current Opportunities**.

The program could be scoped by:

- Surveying the legal team to find out:
 - » whether they undertake pro bono legal work on an individual basis;
 - » if they have any suggestions for the program;
 - » what they are interested in; and
 - » what pro bono requirements apply to panel firms (who could also be canvassed to suggest pro bono partnership opportunities).

This does not have to be a formal survey but could take the form of short discussions or even comprise part of a team meeting. It is a helpful way of ensuring ongoing support for the program.
- Requesting ideas for the program from:
 - » other groups within the organisation, including the CSR team (to identify existing community relationships that might be strengthened by the offer of legal assistance); and
 - » the General Counsel.
- Identifying the legal skills and areas of expertise that exist within the in-house legal team and considering how they might be used in a pro bono context.
- Discussing opportunities for partnering with pro bono coordinators from external panel law firms.
- Discussing opportunities for partnering with organisations in the legal assistance sector, such as CLCs, pro bono referral organisations and the Centre, or working on already established projects.
- Talking to in-house legal teams who have established pro bono programs.



C. PREPARE A PROPOSAL



The next step after the scoping phase is to develop a program proposal to submit to the General Counsel, CEO and/or the Board. If the existence of organisational support is unclear, or there is no organisational support, the proposal could be framed as a pilot. This can help build support and interest.

The proposal should:

- explain the role of pro bono legal work in the context of the organisation's commercial objectives and CSR policy;
- outline the benefits of an in-house pro bono program for the organisation and the organisation's lawyers;
- describe the pro bono legal work that will be undertaken as part of the pro bono program;
- include measurable objectives for the program, such as team member participation rates, perhaps escalating over a period or subject to regular review;
- address the resource commitment associated with the proposal;
- outline possible proposed changes to legal panel terms; and
- indicate that regulatory requirements have been considered and that a Pro Bono Policy has been drafted to support the program and ensure any requirements are met.

A discussion of other issues that are relevant to the organisation, or the industry in which it operates, could also be included.

See Appendix B **Precedent Memorandum to the General Counsel, CEO and/or Board**, which outlines a program proposal.

D. DEVELOP A DRAFT PRO BONO POLICY



A draft Pro Bono Policy can be developed in conjunction with the program proposal. See Appendix C **Precedent Pro Bono Policy**.

An in-house Pro Bono Policy should include:

- an outline of why the organisation should have a pro bono program, its objectives and how it complements its broader CSR policy;
- a description of the program, including key projects or focus areas;
- statements that confirm the organisation's expectations of lawyers participating in the pro bono program. For example, that pro bono legal work should be performed to the same standard as in-house legal work;
- a definition of 'pro bono legal work' consistent with the Centre's definition (and identifying any extensions, e.g. to include advice to selected social enterprises);
- a framework for coordinating the program;
- the aspirational team member participation rate, if set;
- an approval/rejection process for requests for assistance, including identifying potential conflicts;



- protocols for ensuring that any regulatory requirements are met;
- record keeping and file management processes;
- any reporting obligations; and
- a mechanism for tracking and measuring the impact (internally and externally) of the organisation's pro bono work, which may be helpful in demonstrating the case for investing time in pro bono activities.

E. OBTAIN APPROVAL FOR THE PROPOSAL AND PRO BONO POLICY



Once the proposal and draft Pro Bono Policy have been prepared they should be submitted to the General Counsel/CEO and then the Board (where required) for approval.

The Pro Bono Policy should then be formalised in line with the organisation's usual processes.

F. PROVIDE PRO BONO LEGAL ASSISTANCE



Once the proposal and Pro Bono Policy have been approved, any necessary internal systems established and any regulatory requirements met, the in-house legal team can begin providing pro bono legal assistance.

Remember that it takes time to develop a pro bono program and the relationships which support the referral of work.

If the corporation chooses to vary its legal panel terms to encourage its panel firms to undertake pro bono work, see section 8 **Pro bono and panel law firms** and Appendix E **Sample Questions for Panel Law Firms**.



5. WHAT REGULATORY REQUIREMENTS APPLY TO PRO BONO LEGAL WORK?

When establishing and developing a pro bono program consideration should be given to the regulatory requirements of the local jurisdiction. Over recent years most of the regulatory barriers that previously prevented in-house lawyers participating in pro bono legal work have been removed. However, restrictions remain in some jurisdictions. Three key requirements to consider are those that relate to:

- practising certificates;
- professional indemnity insurance; and
- letters of engagement/costs agreements.

See Appendix D **Practising Certificates and Professional Indemnity Insurance** for information on the regulatory position in each State and Territory as at 1 July 2017.

A. PRACTISING CERTIFICATES

In most jurisdictions, corporate practising certificates (or their equivalent) allow in-house lawyers to undertake pro bono legal work. However, it is important to note that depending on the jurisdiction:

- the pro bono legal work that is permitted may vary;
- the type of practising certificate and the conditions authorising the holder to do pro bono work may vary; and
- limitations which attach to supervised or restricted practising certificates will be relevant.

Before commencing pro bono legal work the regulatory position should be confirmed with the local law society or regulatory authority.

B. PROFESSIONAL INDEMNITY INSURANCE

As outlined above, there are a variety of ways in which in-house lawyers can be involved in pro bono legal work. If an in-house legal team is partnering with a CLC or law firm or working in a clinic, the in-house lawyers may be covered by the partner organisation's professional indemnity insurance. This should be checked with the partner organisation. For projects that are being conducted independently, professional indemnity insurance will need to be arranged.

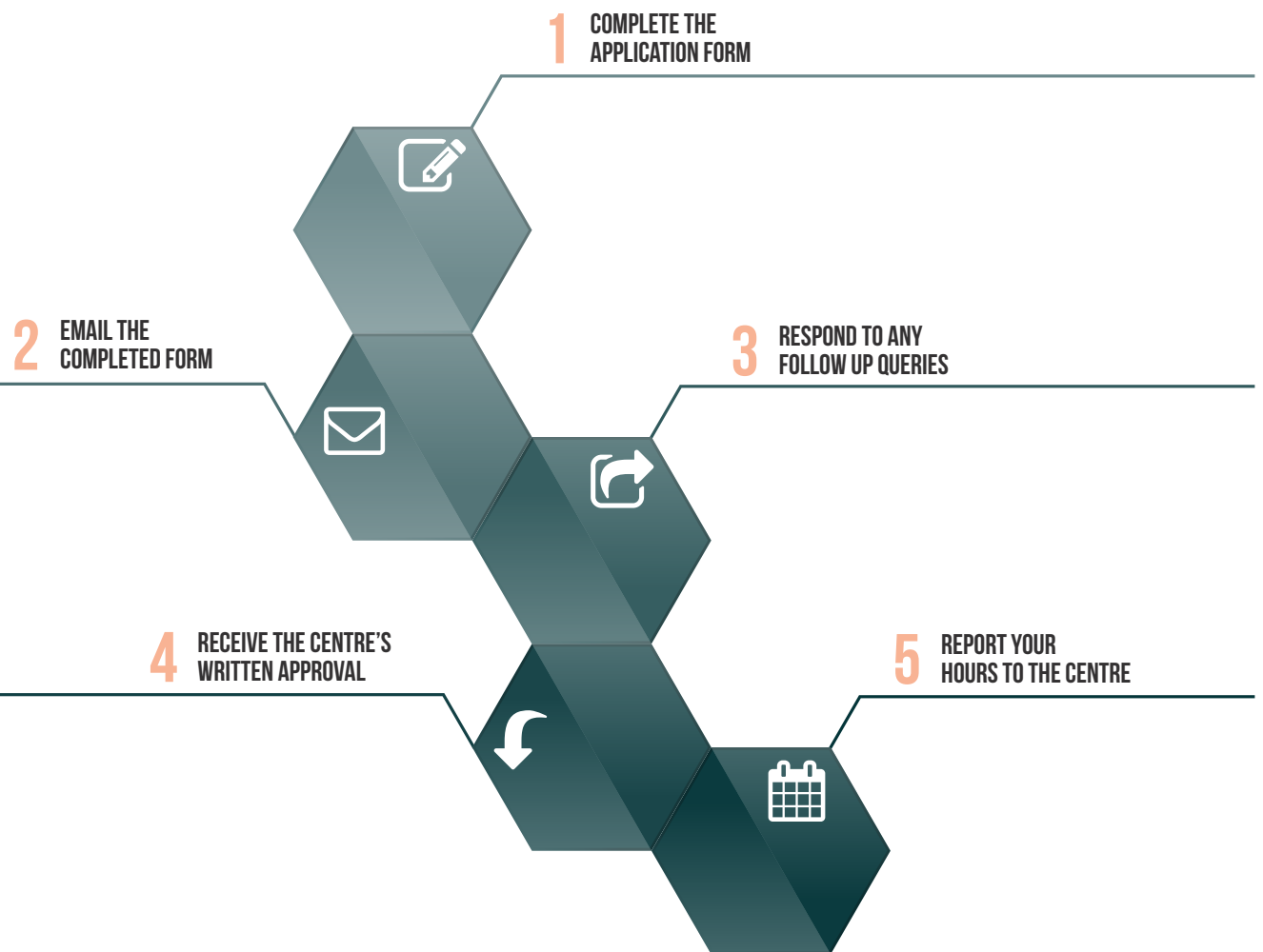
The cost of professional indemnity insurance was historically a barrier to participating in pro bono legal work for in-house lawyers. To address this, the Centre, with the Law Society of NSW and DLA Piper, established the National Pro Bono Professional Indemnity Insurance



Scheme (**Scheme**) in 2009, which provides free professional indemnity insurance to lawyers, and paralegals, working on pro bono projects approved by the Centre. To facilitate the Scheme the Centre holds a policy with Lawcover Pty Ltd, the New South Wales legal professional indemnity insurer.

Currently, Australian in-house lawyers, other than those in Western Australia, the Northern Territory and Tasmania, can access free professional indemnity insurance through the Scheme. Notification requirements exist in some jurisdictions.

How do I apply for insurance under the National Pro Bono Professional Indemnity Insurance Scheme?





1. Complete the Application Form available on the Centre's website, www.probonocentre.org.au/provide-pro-bono/pi-insurance-scheme/.

When completing the Application Form consider:

- the definition of 'pro bono legal services' contained in the Lawcover policy; and
- 'Guidelines for considering a proposed Pro Bono Project by In-house counsel providing free legal advice and/or representation to charitable and community organisations' on the Centre's website.⁸



2. Email the completed form to info@probonocentre.org.au.



3. Respond to any follow up queries.



4. Receive the Centre's written approval of your pro bono project, confirming it is covered under the Scheme.

You, and the other lawyers and paralegals working on the project will be insured from the date of the approval letter.



5. Report your pro bono hours to the Centre every 6 months (or as otherwise required).

In terms of professional indemnity insurance the risk of a claim arising is low. As at the date of publication, the Centre is not aware of any legal work done on a pro bono basis in Australia where a claim has been made for loss as a result of the professional negligence of the lawyers involved.



C. LETTERS OF ENGAGEMENT AND COSTS AGREEMENTS

When an in-house lawyer is directly engaged by a pro bono client it is important to enter into an agreement which sets out the terms on which legal advice and/or representation will be provided. This agreement will usually take the form of a letter of engagement, which may also serve as a costs agreement, particularly in litigious matters where the recovery of costs is relevant. The regulatory requirements of the relevant jurisdiction should be considered when preparing this agreement to ensure compliance.

If an in-house legal team is partnering with another organisation, for example as part of a clinic, the partner organisation may arrange the necessary letter of engagement or cost agreement. The party who is responsible for preparing the letter or engagement/costs agreement in the partnership context should be confirmed prior to commencing any pro bono legal work.

If an in-house legal team is collaborating with a law firm on one of their projects, the firm may prepare a basic term sheet agreement that sets out the obligations and responsibilities of the firm and the in-house lawyers.

Further information on letters of engagement and costs agreements (including precedents) can be found in section 2.1.5 and Appendix 1 of the *Australian Pro Bono Manual*.⁹



6. FREQUENTLY ASKED QUESTIONS

A. ESTABLISHING ORGANISATIONAL SUPPORT

1. We already have a CSR program. How do I make a case for a separate pro bono legal program?

The pro bono program should strengthen and complement the CSR program. Aligning the focus areas of the pro bono program with those of the CSR program — for example, they might both aim to assist children in need — may be helpful. One way to develop the initiative is to get the “buy-in” of key influencers in the organisation, including the CSR team and the CSR champions, by involving them in the scoping.

2. Will pro bono work expose our lawyers to risk?

Professional indemnity insurance cover is available without charge to most in-house lawyers in Australia who wish to do pro bono legal work.

In many cases, if the pro bono work is done under the auspices of a pro bono referral organisation or CLC, it will be covered by that organisation’s professional indemnity insurance. The organisation should confirm whether its in-house lawyers are covered.

If not, in-house lawyers can apply to the Centre for cover under the National Pro Bono Professional Indemnity Insurance Scheme. The Scheme provides free professional indemnity insurance to lawyers and paralegals working on pro bono projects approved by the Centre, and is available in every Australian jurisdiction except Western Australia, the Northern Territory and Tasmania.¹⁰

3. Realistically, it’s unlikely we’ll get approval for a formal pro bono program. What are the options for our lawyers?

In the absence of a formal pro bono program, team members can still do pro bono work as individuals, whether that work is auspiced by the organisation and done in normal business hours, or done after hours through individual volunteering.

Opportunities for individual-based pro bono legal work include:

- participating in a CLC clinic or volunteering at a community organisation;¹¹
- starting an individual project (perhaps based on the lawyer’s contacts in their community) and seeking professional indemnity insurance through the National Pro Bono professional indemnity Insurance Scheme; or
- registering to help with a law society pro bono referral scheme.

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See <https://www.probonocentre.org.au/provide-pro-bono/pi-insurance-scheme/>
See www.clcvolunteers.net.au



B. SCOPING THE PROGRAM

4. Our organisation limits the amount of pro bono work we can take on. What opportunities are available?

If capacity to do pro bono legal work is very limited, one option is to focus on project-based work, such as conducting research or writing fact-sheets for a CLC. One CLC, for example, has used pro bono lawyers to update the legal information on its website. Building a relationship with a CLC may also lead to opportunities for lawyers to volunteer as individuals.

Another option is to partner with a panel law firm, which may assist the team's lawyers to regulate their commitment according to available capacity.

Pro bono projects do not need to be long-term. Many discrete, time-limited opportunities exist that allow team members to be involved without agreeing to open-ended commitments.

It is also possible to contribute financially to the costs of organisations coordinating or conducting pro-bono activities and/or otherwise to organisations working for the public good.

5. Our areas of legal expertise are corporate and commercial law. What opportunities are there for us to do pro bono work?

Pro bono referral organisations, which focus on assisting those experiencing disadvantage or marginalisation, will usually refer matters that match the pre-existing expertise of the recipient lawyers. See Appendix A **Current Opportunities**.

In some cases, training in the relevant areas of law will be provided by the partner you work with.

A panel law firm that has an established pro bono practice will have faced these issues in the work they do for their pro bono clients, and may be able to offer guidance and support.

Alternatively, some CLCs have pro bono programs that cater for in-house legal teams and will provide training as required. The National Association of Community Legal Centres (www.naclc.org.au) provides a directory of regionally-based and specialised CLCs.

Another option is to provide pro bono assistance to a CLC or community organisation as your client, for example, by advising in relation to the CLC's corporate governance or commercial transactions. Justice Connect provides referrals to these opportunities through its Not-for-profit Law program, which specialises in assisting charities and other not-for-profit organisations ('helping the helpers').



6. Our legal team is very small. What pro bono opportunities are there for us?

Appendix A **Current Opportunities** lists several referral organisations that provide pro bono opportunities to in-house lawyers and legal teams, including small teams. Referrals can be accepted or declined according to the capacity of your team at the time.

C. PROVIDING PRO BONO LEGAL ASSISTANCE

7. How do we find pro bono clients?

The approach to sourcing clients may be informed by the pro bono program's focus areas — the areas of unmet legal need that its program aims to address — as set out in the organisation's pro bono policy. Potential sources of clients include:

- panel law firms with established pro bono programs;
- pro bono referral organisations, established programs in CLCs and community organisations (see Appendix A **Current Opportunities**); and
- suitable organisations with which your organisation has an existing relationship (e.g. through its CSR program).

For example, if the focus of the pro bono program is on addressing the legal needs of refugees, sources of clients might include the Refugee and Advice Casework Service (NSW), Refugee Legal (Victoria) or the Humanitarian Group (WA).

8. How do we balance the competing demands of pro bono work with our usual workload?

Set clear expectations as to how much time legal staff will spend on pro bono work, and how and when this work will be done, to ensure that pro bono work does not interfere with the team's usual work. It is helpful if the program has a coordinator who is responsible for managing the balance and assessing the team's capacity to take on pro bono legal work at any particular time. It can be useful to speak to the pro bono coordinator of a panel firm and to draw on their experience.

It is also important to develop clear processes for crediting and recognising pro bono legal work in accordance with the organisation's legal time recording policy. Pro bono legal work should be recorded, credited and recognised equally with the team's usual legal work.

9. Our team is not used to working with clients experiencing disadvantage or vulnerability. Are there particular issues we should be aware of?

Clients experiencing disadvantage or vulnerability may have particular needs concerning their cultural or linguistic background, their physical or cognitive capabilities, and/or their mental health. These needs can affect the client's ability to give instructions or their legal



capacity. Specific training will often help lawyers to recognise and respond to these needs effectively.

This type of training may be provided by the CLC or pro bono referral organisation you are working with.

Alternatively, appropriate training could be developed in-house. *Client management and self-care — a guide for pro bono lawyers* is a training resource developed by law firm pro bono coordinators, with input from lawyers in the legal assistance sector. The guide can be downloaded from the Centre's website¹² at no charge, and adapted for use by in-house teams.



7. CASE STUDIES

A. CYBERLAW VOLUNTEER PROJECT — TELSTRA, KING & WOOD MALLESONS AND THE NATIONAL CHILDREN'S AND YOUTH LAW CENTRE

Telstra provides pro bono legal advice, via email, as part of the National Children's and Youth Law Centre (**NCYLC**) and King & Wood Mallesons (**K&WM**) Cyberlaw Volunteer Project.

NCYLC offers online legal information and advice to children and young people through their Lawstuff website and LawMail. Telstra legal employees participate as cyber-volunteer lawyers who update and maintain the Lawstuff website, and read and respond to LawMails. They volunteer two hours each month either from their desk or in the office at the nearest K&WM office.

Telstra's participation in the Cyberlaw Volunteer Project, and its pro bono program, began when Fiona Robson (Supervising Counsel, Finance and Strategy, Legal Services), along with one of her colleagues, approached law firms on their panel to discuss what a pro bono program would involve. They realised it would be difficult for Telstra to run a pro bono program on its own since its in-house legal team was not administratively resourced to manage the relationships with community partners and otherwise support a pro bono program.

As a result, it was decided that it would be more realistic to 'piggy-back' off one of the law firms' programs, giving Telstra's lawyers the opportunity to participate in pro bono legal work, with limited administrative impact. This approach meant that a dedicated pro bono coordinator was not required to manage the relationships with the organisations they were helping. The Cyberlaw Volunteer Project, operated by NCYLC and K&WM, was a natural fit.

FEATURES THAT MAKE IT EFFECTIVE

- **The time commitment** of around two hours a month is **relatively small** and manageable for all lawyers — particularly those working part-time.
- **The work can be done via the internet.** NCYLC and K&WM like volunteers to do their first five sessions onsite in their training room so they have face-to-face support while they are becoming familiar with the work, but after that, the work can be done remotely.
- **The work is interesting and important.** It involves issues ranging from family violence to online harassment and employment. The volunteers are exposed to new areas of law, which expands their skills and experience. The work is rewarding and enjoyable.
- **Conflicts of interest are addressed upfront with a policy** explicitly agreed on before commencing work.
- **There is great support from NCYLC** which provides guidance, pro forma advice, and Lawstuff resources that assist the volunteers when they are drafting responses. There is a quarterly meeting with the project partners to discuss how the project is going. NCYLC provides excellent feedback, including the results



from a children's survey with positive feedback on the impact the advice has had on them.

- **The project is national** so Telstra employees in every jurisdiction can become involved.
- **Telstra's Group General Counsel supports the program** and has endorsed the work being done within work hours.

B. ARTS LAW CENTRE'S DOCUMENT REVIEW SERVICE

Corporations such as LexisNexis, Beyond International and Hewlett Packard Enterprise provide pro bono legal advice through Arts Law's Document Review Service (**DRS**).¹³

Arts Law Centre gives legal advice to artists and arts organisations across all art forms on a wide range of arts-related legal and business matters. Such matters include contracts, copyright, moral rights, trademarks, business names and structures, defamation, insurance and employment. Legal advice is free or low-cost depending on the nature of the enquiry. Arts Law Centre accepts requests for legal advice by phone or through an online form, and assists clients by either providing telephone legal advice or a document review (depending on whether the provision of legal advice involves reviewing any documentation).

The DRS is available to Arts Law Centre subscribers. Subscribers send any document that they want explained to Arts Law Centre. An Arts Law Centre lawyer (in-house, external volunteer lawyer or law firm acting on behalf of Arts Law Centre) then reviews the document and holds a review consultation with the subscriber to explain the document and provide legal advice in relation to that document.

The DRS was originally provided in night-time advice sessions staffed by individual volunteer lawyers. The DRS and telephone advice service is now supported by a panel of around 200 lawyers around Australia who are prepared to review contracts and give advice. Among these lawyers there are a number of in-house corporate lawyers, sole practitioners, small boutique firms, and several large law firms.

FEATURES THAT MAKE IT EFFECTIVE

- **The match between the legal needs of clients with the skills of lawyers.** Even though the clients are not commercial, the nature of the legal assistance they need is commercial. For example, advice on contracts, copyright and business structures.
- Arts Law Centre undertakes **training for volunteer lawyers.** When a new pro bono relationship with a law firm or corporate is established, Arts Law Centre provides volunteer lawyers with a short training session about how the DRS service works, the types of legal issues Arts Law Centre is likely to refer and the resources Arts Law Centre has available to assist clients, for example, it's information sheets, checklists and guides and contract templates.



- Arts Law Centre provides **an easy 'package'** for pro bono lawyers (with a summary of the matter, clear instructions and the relevant documents).
- Arts Law Centre has an **established process for monitoring the quality of pro bono legal work** and for discontinuing the use of volunteers who are not delivering services at the required standard. Arts Law Centre has an automated message system that sends reminders to the lawyers to provide file notes. If lawyers do not provide file notes, Arts Law Centre applies a 'three strikes and you are suspended' policy.
- Arts Law Centre **constantly nurtures its pro bono relationships** and seeks to extend its network.

C. JUSTICE CONNECT'S NOT-FOR-PROFIT LAW SERVICE – PRO BONO FOR IN-HOUSE LAWYERS

Corporations such as Westpac, Bendigo Bank, ANZ, Telstra, Hewlett Packard Enterprise and Vicinity Centres provide or have provided pro bono legal advice to not-for-profit organisations as part of Justice Connect's Not-for-profit Law's In-House Lawyer Project (**Project**).

Justice Connect's Not-for-profit Law (**NFP Law**) is a specialist legal service established to provide free and low cost legal assistance to not-for-profit community organisations. NFP Law helps with legal issues across the 'life-cycle' of running a community organisation. These include key areas of expertise for in-house lawyers like employment arrangements, property and leasing, privacy, commercial contracts, risk management and insurance and intellectual property.

During 2015-2016 NFP Law had a funded project to engage in-house lawyers in pro bono work for community organisations. Although that project is now complete, NFP Law has continued to work with those corporates who had signed up to the project, and is still keen to hear from any in-house lawyers who want to consider this type of pro bono work.

NFP Law does the front-end triage work for each matter, such as looking at the nature (eligibility) of the organisation, considering the legal merit of the matter, and then assessing what legal assistance is needed. Once this assessment has occurred, NFP Law packages discrete legal matters and refers these to in-house legal teams. The in-house lawyer/team then has the direct lawyer-client relationship with the community organisation to provide them with advice on that matter. NFP Law's staff lawyers are able to support participating in-house lawyers, particularly in relation to charity-specific legal issues or working with a particular client.

In-house corporate legal teams can also participate in other aspects of NFP Law's work, including drafting and reviewing legal information for the NFP Law Information Hub¹⁴ which has more than 260 resources for community groups and receives over 300,000 views a year.



NFP Law has also worked with the Centre, Association of Corporate Counsel and leaders from in-house legal teams to build a community of interest about in-house pro bono, including discussion forums.

Many of the in-house legal teams who work with NFP Law are insured through the Centre's National Pro Bono Professional Indemnity Insurance Scheme.

FEATURES THAT MAKE IT EFFECTIVE

- The legal needs of not-for-profit community organisations **fit well with the full range of legal issues in-house lawyers deal with daily**. In-house lawyers are particularly skilled at developing practical business solutions.
- NFP Law arranges the pro bono legal work in a way that **suits in-house corporate lawyers' expertise and capacity**. Lawyers can do the pro bono legal work **flexibly** with minimal impact on their in-house role.
- NFP Law undertakes a range of work to support community organisations, including information, training and advice. This allows for the **development of tailored opportunities**. In-house legal teams are able to participate in different aspects of the NFP Law service in a way that suits their teams, provides variety and facilitates professional development opportunities.
- NFP Law provides **training** on not-for-profit legal issues, templates and tips for working with community organisation clients, and other support as required.
- NFP Law clients are charitable organisations that do important work in the community. These organisations cannot access high quality legal help without pro bono support. They are typically very appreciative of the assistance provided. With pro bono advice work lawyers get direct client experience, and the **satisfaction of utilising their skills to assist the community**.



8. PRO BONO AND PANEL LAW FIRMS

As part of their procurement processes many corporations ask law firms questions about the firms' commitment to corporate social responsibility, sustainability, diversity and inclusion, and value-added services. These can be quite general in nature and may or may not mention pro bono legal services. These questions would be usually found in a Request For Proposal (**RFP**) document.

Corporations can choose to play a role in standardising an approach to this matter that encourages a commitment from the firms they work with by specifying that panel firms are expected to subscribe to (and use their best efforts to achieve) the National Pro Bono Aspirational Target (**Target**) of at least 35 pro bono hours per FTE lawyer, or at least by asking about a firm's pro bono performance and commitment. While the questions asked may vary, it is suggested that at least one question asks about the firm's performance measured in total hours, and average hours per full time equivalent (**FTE**) lawyer per annum¹⁵ and other questions focus on the nature of the pro bono work the firm undertakes, and how it is managed.

See suggested questions in Appendix E **Sample Questions for Panel Law Firms**.

Further, these requirements will only be meaningful if both (1) the pro bono performance has some weight in the panel decision; and (2) there is some follow-up to monitor whether firms not achieving the Target are adopting measures to rectify this.

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This is the measure upon which the National Pro Bono Aspirational Target is based, and is the required measure of the Commonwealth and NSW governments when the firms on their List and Panel, respectively, are reporting their pro bono performance.



9. OTHER RESOURCES

The **Australian Pro Bono Centre** has a number of resources that support pro bono legal work by corporate in-house lawyers:

- Chapter 15 (In-house/corporate lawyers) of *Pro bono partnerships and models – a Practical Guide to What Works*.¹⁶
- *The Australian Pro Bono Manual – a practice guide and resource kit for law firms*.¹⁷ Much of the commentary in the *Manual* is also relevant to in-house pro bono programs; and
- the in-house lawyer page on the Centre's website¹⁸ which includes information about the National Pro Bono Professional Indemnity Insurance Scheme.

As part of its In-house Lawyer Project, **Justice Connect** has an in-house counsel page on its website¹⁹ that supports in-house pro bono legal work.

The Pro Bono Institute (through Corporate Pro Bono),²⁰ the American Bar Association,²¹ the Association of Corporate Counsel²² and the Association of Pro Bono Counsel²³ also have in-house resources to assist in-house lawyers establishing and managing a pro bono practice.

16 <http://www.probonocentre.org.au/whatworks/>
17 <http://www.probonocentre.org.au/aus-pro-bono-manual/>
18 <https://www.probonocentre.org.au/provide-pro-bono/in-house/>
19 <https://justiceconnect.org.au/get-involved/lawyers-and-barristers/house-counsel-pro-bono-work>
20 <http://www.probonoinst.org/projects/corporate-pro-bono/>
21 <https://www.americanbar.org/aba.html>
22 <https://www.acc.com>
23 <https://www.apbcp.org>



Appendix A

CURRENT OPPORTUNITIES

The organisations listed below may be able to provide in-house legal teams with pro bono opportunities.

Arts Law Centre

Arts Law Centre makes pro bono referrals to in-house lawyers through its Document Review Service. See case study in section 7 **Case studies**. Please visit <https://www.artslaw.com.au/> or contact artslaw@artslaw.com.au or 02 9356 2566 for more information.

Cancer Council

The Cancer Council Pro Bono Program is a national program through which people affected by cancer are connected with professionals who volunteer their time to provide legal, financial, small business and workplace advice to clients who otherwise wouldn't be able to afford to pay for that advice. It welcomes support from in-house lawyers, particularly lawyers with expertise in employment, insurance and estate planning matters. Please visit <https://www.cancercouncil.com.au/31192/get-support/practical-support-services-get-support/legal-financial-support/pac/> or email probono@cancercouncil.org.au for more information.

Justice Connect

Justice Connect places referrals received through its national Not-for-profit Law service with in-house legal teams (primarily in Victoria and NSW, but also in the ACT, Tasmania and the Northern Territory). In-house teams can also assist by reviewing and drafting legal resources for the Not-for-profit Law Information Hub. See case study in section 7 **Case studies**. In-house teams may also be interested in supporting Justice Connect's work helping individuals experiencing disadvantage. Please visit <https://www.justiceconnect.org.au> or contact admin@justiceconnect.org.au or 03 8636 4400 for more information.

JusticeNet SA

JusticeNet SA is the pro bono referral organisation for South Australia and makes direct pro bono referrals to corporate members. Please visit <http://www.justicenet.org.au/> or contact admin@justicenet.org.au or 08 83135005 for more information.

Law Access (Western Australia)

Law Access is the pro bono referral program for Western Australia. Please visit <http://www.lawsocietywa.asn.au/law-access> or contact lawaccess@lawaccess.com.au or 08 9324 8600 for more information.



LawRight (Queensland)

LawRight is the pro bono referral organisation for Queensland and makes direct pro bono referrals to corporate members. In-house legal teams may also be interested in participating in Law Right's Homeless Persons' Legal Clinic in Queensland. Please visit <http://www.lawright.org.au/> or contact admin@lawright.org.au (Attn: Sue Garlick and Linda Macpherson (joint directors)) or 07 3846 6317 for more information.

National Children's and Youth Law Centre

The National Children's and Youth Law Centre (**NCYLC**) is a Community Legal Centre dedicated to addressing human rights issues for children and young people in Australia through legal change. Both in its core services and project activities, NCYLC is sponsored by a host of organisations including in-house counsel. See case study in section 7 **Case studies**. Please visit <http://www.lawstuff.org.au/> or contact matthew.keeley@ncylc.org.au or 02 9385 9585 for more information.

Public Interest Advocacy Centre

The Public Interest Advocacy Centre operates the Homeless Persons' Legal Service in New South Wales and encourages participation by in-house lawyers. Please visit <https://www.piac.asn.au/> or contact homelessproject@piac.asn.au or 02 8898 6545 for more information.

Salvos Legal

Salvos Legal's Inhouse Pro Bono Desk is staffed by in-house lawyers across both the corporate and government sectors. Lawyers volunteering at the Desk can work on a diverse range of matters across the organisation's Humanitarian practice. In-house lawyers can also volunteer at Salvos Legal's Advice Bureaus where they provide free legal advice. Interested in-house lawyers can either volunteer in their own time, or with the permission of their employer to undertake the pro bono work as part of their official employment. Please visit <https://www.salvoslegal.com.au/careers/corporate-pro-bono-opportunities/> for more information or email probonodesk@salvoslegal.com.au, setting out: your name; position and employer; contact details; any particular area of law or case you wish to experience at the Desk (Salvos Legal will try its best to accommodate); the number of hours you wish to volunteer at the Desk; and the dates you wish to work at the Desk (if known).

N.B. This Guide may be updated from time to time. New opportunities for lawyers to participate in pro bono programs and projects may also appear on the Centre's website²⁴ and from time to time in the Australian Pro Bono News published by the Centre.



Appendix B

PRECEDENT MEMORANDUM TO THE GENERAL COUNSEL, CEO AND/OR BOARD

GUIDANCE NOTE

This precedent Memorandum to the General Counsel, CEO and/or Board can be used to seek approval for the proposed pro bono program.

It is assumed that before seeking approval the General Counsel, legal team and other interested parties (for example, the head of CSR) will have considered the different ways in which the organisation's legal team can become involved in pro bono legal work through a formal program and will have determined the best way to do this.

PROPOSAL FOR THE ESTABLISHMENT OF A FORMAL PRO BONO PROGRAM

Executive summary

This memorandum outlines a proposal for the establishment of a formal pro bono program at [organisation name].

Based on the research undertaken by the legal team, [in consultation with panel firms, and the legal assistance sector], the most efficient and effective way for [organisation name] to establish a pro bono program that supports our corporate and corporate social responsibility (CSR) objectives is to [insert program description – see below for some options].

[Include when sending to the Board]

This proposal has the full support of the General Counsel/CEO and the Board's approval is now sought.



Objectives

[*Organisation name*] operates within the broader community and recognises the importance of supporting this community in a variety of ways, in line with its CSR policy.

A key way in which [*organisation name*] can contribute to the community is to facilitate greater access to justice through the development of a formal pro bono program. Many [of our competitors]/[large organisations] already have formal programs in place [*insert examples*]. [*Organisation name*] can also encourage its panel law firms to undertake pro bono work.

[As part of the establishment of a formal pro bono program, [*organisation name*] will use its best efforts to encourage at least [X] percent of the members of its legal team to participate in the pro bono program each year - *if applicable.*]

Benefits of a structured pro bono program

In addition to delivering benefits to the community a structured pro bono program can deliver many benefits to [*organisation name*] and our lawyers.

Lawyers	[<i>Organisation</i>]
<ul style="list-style-type: none">• Allows [<i>organisation name</i>]'s lawyers to fulfil their ethical obligation.• Provides opportunities for [<i>organisation name</i>]'s lawyers to develop professional skills and confidence.• Allows [<i>organisation name</i>]'s lawyers to make a tangible contribution to the organisation's CSR strategy.• Assists [<i>organisation name</i>]'s lawyers to strengthen their relationships with panel law firms and internal clients.	<ul style="list-style-type: none">• Demonstrates [<i>organisation name</i>]'s commitment to the principles outlined in its CSR policy.• Makes the legal team attractive to high quality legal recruits.• Enhances staff morale, loyalty, and retention of valued employees.• Ensures that [<i>organisation name</i>] is keeping pace with its competitors' CSR contributions.



Proposed program

Based on the research undertaken by the legal team, in consultation with panel firms and the legal assistance sector, the most efficient and effective way for [organisation name] to establish a pro bono program that supports our corporate and CSR objectives is to [insert program description – see below for some options].

Option 1 – become a member of Justice Connect and take on referrals through Not-for-profit Law.

Option 2 – partner with [insert law firm] and work with them on [insert].

Option 3 – provide legal advice to [insert name of charity or not-for-profit organisation that the organisation already supports].

Option 4 – partner with [insert] Community Legal Centre to support their advice night/clinics/other work.

Option 5 – partner with the Public Interest Advocacy Centre (NSW)/ Justice Connect (Vic)/Law Right (Qld) to provide advice through their Homeless Persons' Legal Service.

Please see **attached** a draft of the Pro Bono Policy which outlines how the program will be managed.

Resource commitment

All [organisation name] legal team members will be encouraged to participate in the pro bono program. This will ensure that the work is spread amongst the legal team, minimise the impact on any one department or lawyer, [and help to facilitate [organisation name]'s aim that [X] percent of legal team members participate in the program]. The Pro Bono Coordinator will also play a key role in ensuring that only those with capacity to undertake pro bono legal work participate. The pro bono program will be supported by the [organisation name]'s other departments in accordance with [organisation name]'s resource policies and practices.

Regulatory requirements – practicing certificates, insurance and letters of engagement/costs agreements

Prior to any pro bono legal work being undertaken the Pro Bono Coordinator will ensure that:

- professional indemnity insurance is in place, either free of charge through the Australian Pro Bono Centre, or otherwise;
- each participating lawyer holds a practising certificate which permits pro bono legal work; and
- where appropriate, a letter of engagement/costs agreement is sent to the pro bono client.

These issues are specifically addressed in the draft Pro Bono Policy (see **attached**).

All correspondence will include wording which makes it clear that responsibility for the pro bono legal advice provided rests with the supervising lawyer for the work and not with the organisation.



Legal panel terms

Most panel firms are already signatories to the National Pro Bono Aspirational Target (**Target**) administered by the Australian Pro Bono Centre. To reinforce this we propose that the panel terms be amended to require that:

*[refer section 8 **Pro bono and panel law firms** and Appendix E **Sample Questions for Panel Law Firms**]*

Request for approval

The General Counsel/CEO/Board's approval of the proposal for a formal in-house pro bono program and the draft Pro Bono Policy (**attached**) is now requested.

[insert date]



Appendix C

PRECEDENT PRO BONO POLICY

GUIDANCE NOTE

This precedent Pro Bono Policy can be adapted by any organisation seeking to establish an in-house pro bono program so that it reflects the organisation's structure, culture, systems and size. It may also be supplemented with more detailed guidelines.

The role of the Pro Bono Policy is to:

- *demonstrate the organisation's commitment to, and support for, pro bono legal work;*
- *communicate to the organisation, in particular its lawyers, the purpose of the pro bono program and how it operates;*
- *provide a framework for the coordination and organisation of the pro bono program;*
- *communicate the organisation's expectations about the program to its employees, especially its lawyers; and*
- *act as a document against which requests for assistance can be assessed and justified.*

For other example pro bono policies please see Corporate Pro Bono on the Pro Bono Institute's website.²⁵ The Centre acknowledges the Pro Bono Institute's sample documents in informing this precedent policy.

Please also refer to the Australian Pro Bono Manual²⁶ for other law firm based precedents which can be adapted to the in-house context.

25 <http://www.probonoinst.org/projects/corporate-pro-bono/>
26 <https://www.probonocentre.org.au/aus-pro-bono-manual/>



IN-HOUSE PRO BONO POLICY

1. Objectives

GUIDANCE NOTE

A discussion about particular areas of law (e.g. employment, victims compensation) or client groups (e.g. women and children, homeless persons or senior citizens) the program will focus on can also be included. See section 1.7 below.

GUIDANCE NOTE

It may also be advisable to develop a 'pre-approval' list of Approved Project Partners to facilitate the approval process and ensure that other organisations that are assisted through the pro bono program share the organisation's values. This may include particular not-for-profit organisations, CLCs and/or the local pro bono referral organisation. See section 1.6 below.

- 1.1. [Organisation name] operates within the broader community and recognises the importance of supporting this community in a variety of ways, in line with its corporate social responsibility policy (outlined separately in policy [insert]).
- 1.2. A key way in which [organisation name] can contribute to the community is to facilitate greater access to justice through the development of a program that facilitates participation by its legal team in pro bono legal work, the scope of which is outlined in this Pro Bono Policy.
- 1.3. Lawyers have an ethical and professional responsibility to provide legal assistance to those who would not otherwise be able to access justice. This is a service that lawyers are uniquely positioned to provide.
- 1.4. [Organisation name] strongly encourages members of its legal team to participate in the pro bono program, although participation is not mandatory.
- 1.5. [As part of its role in supporting and facilitating the performance of pro bono legal work by members of its legal team [organisation name] seeks to meet a target of at least [X] percent of the members of its legal team undertaking pro bono legal work through the pro bono program each year - *if applicable*].



- 1.6. [Organisation name]'s role in [industry] and our commitment to [insert area of need] as part of our broader corporate social responsibility policy, means that pro bono legal work which provides assistance to [insert description] or Approved Project Partners will be given priority.
- 1.7. **Approved Project Partners** include [insert names of organisations that are pre-approved as recipients of pro bono legal assistance through the pro bono program.]

2. 'Pro bono legal work' defined

- 2.1. For the purpose of [organisation name]'s pro bono program 'pro bono legal work' is defined in accordance with the Statement of Principles for the National Pro Bono Aspirational Target developed by the Australian Pro Bono Centre:
 - a) Giving legal assistance for free or at a substantially reduced fee to:
 - i. individuals who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or
 - ii. individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
 - iii. charities or other non-profit organisations which work on behalf of low income or disadvantaged members of the community or for the public good;
 - b) Conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
 - c) Participating in the provision of free community legal education on issues affecting low income or disadvantaged members of the community or on issues of public interest; or
 - d) Providing a lawyer on secondment at a community organisation (including a community legal organisation) or at a referral service provider.
- 2.2. The following is not regarded as pro bono work for the purposes of this statement:
 - a) giving legal assistance to any person for free or at a reduced fee without reference to whether he/she can afford to pay for that legal assistance or whether his/her case raises an issue of public interest;



- b) free first consultations with clients who are otherwise billed at a firm's normal rates;
- c) legal assistance provided under a grant of legal assistance from Legal Aid;
- d) contingency fee arrangements or other speculative work which is undertaken with a commercial expectation of a fee;
- e) the sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; or
- f) time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

3. Coordination of the program – Pro Bono Coordinator

GUIDANCE NOTE

For smaller teams it may not be necessary to have all of these elements of coordination. For larger legal teams it may be helpful to have a Pro Bono Committee to provide strategic guidance as well.

- 3.1. [Organisation name]'s pro bono program is coordinated and administered by the Pro Bono Coordinator, as appointed by the General Counsel.
- 3.2. It is the Pro Bono Coordinator's role to:
 - a) manage the day to day operation of the pro bono program, including:
 - i. sourcing pro bono legal work;
 - ii. approving and allocating matters;
 - iii. drafting memoranda of understanding, secondment agreements and other partnership agreements for review by the General Counsel;
 - iv. developing and implementing processes to support the efficient and effective operation of the program; and
 - v. Determining whether there is sufficient capacity at any time to take on the work;
 - b) promote participation in the pro bono program, in line with [organisation name]'s goal of at least [X] percent of the members of its legal team undertaking pro bono legal work each year;



- c) foster and develop relationships between [organisation name] and its referrers [and Approved Project Partners];
- d) confirm that professional indemnity insurance is in place for the pro bono legal work undertaken as part of the program;
- e) confirm that lawyers participating in the program hold an appropriate practising certificate;
- f) confirm that, where appropriate, a letter of engagement has been sent to the pro bono client;
- g) arrange appropriate training;
- h) track, measure and report on the pro bono legal work undertaken as part of the pro bono program; and
- i) keep the General Counsel informed of the work of the pro bono program.

4. Assessment of requests for pro bono assistance

- 4.1. It is the Pro Bono Coordinator's role to assess requests for pro bono assistance, with support from the General Counsel as required.
- 4.2. The Pro Bono Coordinator is responsible for:
 - a) being the contact point for community and/or law firm partners in relation to [organisation's name]'s pro bono program;
 - b) assessing any requests for assistance against the definition of 'pro bono legal work' adopted in this Policy, [together with the organisation's key focus areas];
 - c) confirming that the proposed work does not create a conflict of interest and seeking advice when necessary;
 - d) identifying a lawyer (or lawyers) and a supervising lawyer in the team to work on each approved pro bono matter, taking into account capacity and expertise;
 - e) ensuring that the lawyers working on a matter are aware of their practising certificate and professional indemnity insurance obligations;
 - f) confirming with the pro bono client that assistance can be provided through the program, or communicating why the request for assistance has been declined;



- g) providing the pro bono client with their lawyer's contact details; and
- h) where appropriate, asking the lawyer responsible for the matter to prepare an engagement letter, including outlining the approach to any costs and disbursements, and ensuring that this occurs.

5. Pro bono legal work and service standards

- 5.1 Pro bono legal work undertaken as part of the pro bono program can be carried out during normal business hours.
- 5.2 Pro bono legal work is to be carried out in the same way, and with the same diligence, as other legal work carried out by the team.
- 5.3 Pro bono legal work will be credited and recognised in accordance with the organisation's legal time recording policy.

6. Professional indemnity insurance

- 6.1 Before a lawyer commences pro bono legal work as part of the organisation's pro bono program, professional indemnity insurance must be in place.
- 6.2 Where the pro bono legal work is part of a partnership with another organisation that carries its own professional indemnity insurance (for example, a law firm, community legal centre or pro bono referral organisation) the partner's policy is likely to provide coverage. This should be confirmed in writing prior to any work being undertaken.
- 6.3 Where the project is being undertaken by [organisation name] independently the Pro Bono Coordinator should obtain coverage under the National Pro Bono Professional Indemnity Insurance Scheme by applying to the Australian Pro Bono Centre. Work should not commence until an approval letter is received confirming that coverage is in place.

7. Practising certificates

Before commencing any pro bono legal work each lawyer must confirm that their practising certificate permits this work.



8. Letter of engagement or memorandum of understanding

- 8.1 Before commencing any pro bono legal work, the lawyer responsible for the work should determine if a letter of engagement or memorandum of understanding is required.
- 8.2 If a letter of engagement is required, the lawyer responsible for the work should prepare the letter and send it to the client.
- 8.3 If a memorandum of understanding is required, the lawyer responsible for the work should prepare the memorandum and send it to the partner organisation.

9. Use of organisation resources

Lawyers participating in the pro bono program are permitted to use the organisation's resources in the same manner as they would for any other legal work being undertaken by [organisation name]. In this regard policy [insert resources policy number] applies.

10. Reporting

GUIDANCE NOTE

To ensure accountability and to provide additional structure to the data collection it may be advisable to set specific dates, which align with other corporate reporting deadlines. For example, 1 January and 1 July each year.

- 10.1 All lawyers participating in the pro bono program must report the hours of pro bono legal work they have undertaken per matter to the Pro Bono Coordinator every six months, or as otherwise required.
- 10.2 The Pro Bono Coordinator is to provide the General Counsel with a summary of the hours of pro bono legal work undertaken as part of the pro bono program every six months, or as otherwise required.



11. Organisation affiliation

- 11.1 Although [organisation name] strongly endorses participation in the pro bono program, lawyers who participate in the program are not acting in their capacity as a lawyer for the organisation. They are acting in their personal capacity with support from the organisation.
- 11.2 To ensure that this is made clear to pro bono clients assisted through the [organisation name] pro bono program, where the project is insured through the National Pro Bono Professional Indemnity Insurance Scheme, the letterhead provided by the Centre should be used for all correspondence and the following words included:

I am providing this advice on my own account through a pro bono project approved by the Australian Pro Bono Centre. All queries in relation to the matter should be directed to me at [insert appropriate contact details].

- 11.3 Where the project or work is being insured through some other means, lawyers should discuss the appropriate wording to include in correspondence with the Pro Bono Coordinator.



Appendix D

PRACTISING CERTIFICATES AND PROFESSIONAL INDEMNITY INSURANCE

GUIDANCE NOTE

The purpose of this table is to provide general information on whether an in-house corporate lawyer's practising certificate allows them to undertake pro bono legal work and also whether they are able to access free professional indemnity insurance through the Centre's National Pro Bono Professional Indemnity Insurance Scheme.

We recommend that prior to commencing pro bono legal work the regulatory position is confirmed with the local law society or regulatory authority. Please note that supervision requirements for restricted practitioners also need to be considered.

To obtain professional indemnity insurance under the Scheme a lawyer must first complete the Application Form (available on the Centre's website) which will then be assessed by the Centre to determine if insurance can be provided.



Jurisdiction	Does my practising certificate allow me to do volunteer or pro bono legal work?	Can I apply to have my pro bono work covered by the National Pro Bono Professional Indemnity Insurance Scheme?
ACT	<p>Yes</p> <p><i>You can undertake pro bono legal work through the ACT Law Society's Legal Advice Bureau, as a volunteer for any "complying community legal centre" (as defined in section 208 of the Legal Profession Act 2006 (ACT)) or in any other capacity that is specifically approved by the ACT Law Society.</i></p>	Yes
NSW	<p>Yes</p> <p><i>You can provide legal services as a volunteer at a "community legal service" or "otherwise on a pro bono basis" (as defined in sections 6 and 8 of the Legal Profession Uniform Law 2014 (NSW) if you hold a current practising certificate as a corporate legal practitioner.</i></p>	Yes
NT	<p>Possibly</p> <p><i>You can assist with pro bono legal work which is duly supervised, e.g. research or providing opinions to another lawyer who is ultimately responsible for the matter or helping assess applications through the NT Law Society pro bono clearing house. Although generally a restricted corporate practising certificate only permits providing legal services to your employer (Legal Profession Regulations 2007 (NT) reg 7(4)), and it is an offence to engage in legal practice when not entitled (Legal Profession Act 2006 (NT) s 18(1)), it is a defence if the work was not done for fee, gain or reward (s 18(3)).</i></p>	No



Jurisdiction	Does my practising certificate allow me to do volunteer or pro bono legal work?	Can I apply to have my pro bono work covered by the National Pro Bono Professional Indemnity Insurance Scheme?
QLD	<p>Yes</p> <p><i>You can undertake pro bono legal work if you arrange for the Queensland Law Society to add the following condition to your practising certificate - the practising certificate holder is entitled to engage in legal practice for a corporation mentioned in section 6 of the Legal Profession Regulation 2007 (Qld) and/or a pro bono project approved by the Centre.</i></p>	Yes
SA	<p>Yes</p> <p><i>You can undertake pro bono legal work but, assuming this work is not part of an existing law practice, you are required to notify The Law Society of South Australia's Ethics & Practice Unit when you commence and/or cease that work (see regulation 4(3) of the Legal Practitioner Regulations 2014 (SA)).</i></p>	Yes
TAS	<p>No</p> <p><i>You are restricted to providing legal services to your employer only.</i></p>	No
VIC	<p>Yes</p> <p><i>You can undertake pro bono legal work as a volunteer at a "community legal service" or otherwise on a "pro bono basis" (as defined in sections 6 and 8 of the Legal Profession Uniform Law 2014 (Vic)).</i></p>	Yes
WA	<p>Yes</p> <p><i>You can undertake pro bono legal work but you must first notify the Legal Practice Board of Western Australia (see Legal Profession Regulations 2009 (WA) reg 97(h)). Notification can be provided by emailing general@lpbwa.com.</i></p>	No



Appendix E

SAMPLE QUESTIONS FOR PANEL LAW FIRMS

1. Is your firm a signatory to the National Pro Bono Aspirational Target (**Target**) (of at least 35 hours per lawyer per annum) administered by the Australian Pro Bono Centre?
2. What was:
 - a. the total number of pro bono hours; and
 - b. the average number of pro bono hours per full-time equivalent (FTE) lawyer undertaken by the firm's lawyers in the last financial year, using the definitions and methodology applying under the Target?
3. If your firm did not meet the Target in the last year, what measures is your firm implementing to endeavour to meet the Target in the current year?
4. Briefly tell us about any recent successful pro bono projects, matters or initiatives of your firm.
5. Please outline any secondments, legal clinics or significant/ongoing pro bono projects of your firm.
6. Does your firm have a dedicated pro bono leader/team and a specific pro bono policy/strategic plan to support the development of a pro bono practice?
7. Can you outline any opportunities for your firm to assist members of our legal department to engage in pro bono legal work?

PRO BONO LEGAL WORK

A GUIDE FOR IN-HOUSE CORPORATE LAWYERS

Pro Bono Legal Work – *A Guide for In-house Corporate Lawyers* is an invaluable guide and essential reference point for corporations looking to establish, manage or refine in-house pro bono legal programs and individual in-house corporate lawyers seeking involvement in pro bono legal work.

Topics include:

- the benefits of establishing a pro bono program
- pro bono and corporate social responsibility
- the current models of in-house pro bono
- tips on how to establish a pro bono program
- the regulatory requirements applying to pro bono legal work by in-house lawyers
- in-house pro bono FAQs
- case studies on successful in-house pro bono partnerships
- organisations currently providing in-house legal teams with pro bono opportunities

The *Guide* draws on the extensive experience of key corporations with existing pro bono legal programs. It includes proposal and policy precedents to help corporations set up, manage and evaluate their pro bono programs.

'I commend the publication of this Guide in encouraging more in-house lawyers and legal functions to pursue pro bono legal work and in illustrating the ease in which in-house lawyers and their departments can give back to their community.'

Brian Salter, Group General Counsel, AMP Limited, and Chairperson, ACC Australia GC100

'Telstra Legal Services has had a long-standing commitment to support the community through its pro bono legal program. This Guide helps to enable any in-house legal team, regardless of size, to participate in pro bono legal work. It provides a great opportunity for in-house legal employees to experience the rewards and engagement that come from using their skills to give back to the community.'

Carmel Mulhern, Group General Counsel, Legal Services, Telstra Corporation Limited

'The Law Society of New South Wales is proud to present this Guide together with the Australian Pro Bono Centre and the Association of Corporate Counsel. The opportunity to support and facilitate in-house corporate lawyers in providing pro bono legal services demonstrates a welcome collaborative exercise for this segment of the profession.'

Coralie Kenny, Chair, Law Society of New South Wales Corporate Lawyers Committee
