



## What is best practice in pro bono?

This guide outlines the key elements of a best practice pro bono program in a large or mid-size law firm.

The guide draws on the experiences of Australian pro bono practitioners, data from the *Eighth National Law Firm Pro Bono Survey — Australian firms with fifty or more lawyers*,<sup>1</sup> and the Centre's expertise.<sup>2</sup>

The key elements are:

### 1. A strong social justice and pro bono culture supported by management

The firm's leaders should commit to helping its lawyers fulfil their professional responsibility to make the law available to those who could not otherwise access it, particularly the disadvantaged and marginalised.

A best practice firm should identify the social justice ideals that drive the delivery of its pro bono program and have them accepted throughout the firm.

The firm's leaders should provide consistent, unambiguous, visible and ongoing support for the firm's pro bono program as the separate and distinct core of the firm's corporate responsibility or community engagement strategy.

The firm's leaders (including managing partners, board members, practice group heads and senior partners) should lead by example by undertaking pro bono legal work as well as actively encouraging lawyers to participate in pro bono legal work. They should communicate about the firm's pro bono program through the firm's usual lines of communication for matters affecting all staff.

Pro bono should be regarded as a practice area of the firm.

### 2. A dedicated pro bono leader

There should be at least one pro bono leader of seniority<sup>3</sup> whose sole or main job is to manage the pro bono practice. Pro bono leaders should be regarded as leaders of a practice area and treated as equal to other practice area leaders.

The pro bono leader should proactively manage and oversee all elements of the program in keeping with their role as the practice head. He or she may be supported by a team of pro bono lawyers<sup>4</sup> and/or a pro bono committee (comprising at least one partner in each office).



*One firm recognises the key pro bono leader/coordinator as a national practice group leader in the management team of the firm.*

<sup>1</sup> *Fourth National Law Firm Pro Bono Survey — Australian firms with fifty or more lawyers (December 2014) ("Survey")*. The Survey is conducted biennially by the Australian Pro Bono Centre.

<sup>2</sup> The Centre was established as a centre of expertise in 2002.

<sup>3</sup> The Survey indicated that 17% of 'dedicated pro bono lawyers' were partners and 28% were senior associates.

<sup>4</sup> In the 2014 financial year respondents to the Survey reported law firms with an average of 2.1 FTE dedicated pro bono lawyers or 2.6 FTE staff (including administration staff) per firm in 56 percent of large law firms.



### 3. Broad awareness of the pro bono program

There should be a clear understanding throughout the firm that all lawyers are expected and encouraged to do pro bono legal work, while recognising it is not compulsory.

Best practice includes:

- surveying, generating and responding to interest in the firm;
- ensuring staff know how to get involved in the firm's pro bono program;
- communicating with staff regularly about the program, including goals, expectations, success stories and new opportunities;
- providing leadership about the importance of the pro bono program to the firm; and
- involving operational teams in pro bono management, for example, corporate services, finance, and communications.

### 4. Broad engagement of staff

The firm should have a system for:

- adequately crediting and recognising pro bono legal work (see element 7 below);
- encouraging lawyers to participate<sup>5</sup> and ensuring it is straightforward for them to do so;
- ensuring that staff are properly supported in their pro bono legal work.

It is important to have “pro bono champions” in practice groups who promote pro bono legal work as well as participating themselves. One way of engaging staff is to provide a diverse range of opportunities.

### 5. A pro bono policy and strategic plan

A clear and comprehensive pro bono policy with specific intake criteria is an essential element of best practice for law firms. It demonstrates the firm's commitment to pro bono legal work, and builds understanding of the program and its objectives.

Best practice requires that the overarching goal of a pro bono program is to facilitate access to justice for disadvantaged and marginalised individuals and the not-for-profit organisations that assist them. Best practice requires that a significant component of a pro bono program should be work for individuals.<sup>6</sup> If social enterprises are proposed as clients, it is important to define them.

A pro bono policy and strategic plan should:

- include a **definition** of pro bono aligned with the definition of “pro bono legal services” used by the Australian Pro Bono Centre in the Statement of Principles for the National Pro Bono Aspirational Target. This definition should be one of the criteria against which requests for assistance are assessed;

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<sup>5</sup> In the 2014 financial year respondents to the Survey reported participation rates of greater than 80 percent in 7.3 percent of firms (the highest being 89.1 percent), and participation rates above 70 percent in 26.8 percent of firms.

<sup>6</sup> Respondents to the Survey indicated that 25.6 percent of large law firms undertook 50 percent or more work for individuals with the average across all firms being 35 for individuals, and 65 percent for organisations.



- include a firm-wide **target number of hours** of pro bono legal work per lawyer per year. See element 8 below;
- outline the pro bono program's **objectives**; and
- identify specific **areas of unmet legal need**, groups of disadvantaged persons or causes the firm's pro bono program will support.

## 6. Performance of pro bono legal work to the same standard as commercial work

Best practice requires that pro bono legal work should always be performed and supervised to the same standard as, and given the same priority as, commercial work.



*Some firms prepare bills for pro bono matters which are then reviewed by partners in the same way as fee earning matters.*

## 7. Adequate crediting and recognition of pro bono legal work

Pro bono legal work should be given full billable hour credit as if it were commercial work: that is, fully credited for the purpose of both individual lawyer hourly and financial targets. This demonstrates the firm's commitment to pro bono legal work and conveys a clear message to each practice group, and individual lawyer, that the work is regarded as an integral part of a lawyer's practice.

Pro bono legal work should also play a meaningful role in a lawyer's performance assessment, advancement, and bonuses.

Pro bono legal work should be indistinguishable from commercial work at a lawyer, practice group and firm level.



*One firm credits pro bono legal work for the lawyer, practice group and office in the same way as commercial work, then the notional pro bono billings are subtracted as a total figure from the firm's total billings at the end of each month.*

*One firm requires the achievement of a particular 'pro bono hours per annum' target by an individual lawyer as a pre-condition for the awarding of a bonus.*

## 8. Setting a firm-wide pro bono target and budget<sup>7</sup>

Best practice requires setting, and being accountable, internally and externally for a firm-wide minimum "hours per lawyer per year" target for pro bono legal work. The National Pro Bono Aspirational Target of at least 35 hours per lawyer per year is best practice and provides a benchmark for most large and mid-sized law firms<sup>8</sup>. Best practice firms set internal targets higher than 35 hours once this milestone is reached.

Each firm should recognise the actual cost of running its pro bono program, and set an annual operational budget for the program, in the same way that a budget is set for any other practice group.



*One firm sets minimum targets for each law firm office and practice group as internal benchmarks.*

<sup>7</sup> Respondents to the Survey indicated that the highest pro bono hours per lawyer figure for a firm was 67.4 hours per lawyer. The average across all respondent firms was 31.7 hours per lawyer.

<sup>8</sup> Nineteen of Australia's 20 largest law firms were signatories to the Target as at 30 June 2015.



Examples of items that may be included in the operational budget for a pro bono program are:

- salaries of staff and secondees and employment on-costs;
- the cost of sponsorships to facilitate pro bono relationships;
- travel and accommodation costs;
- the cost of disbursements associated with matters;
- occupancy costs;
- training costs; and
- membership fees for pro bono referral organisations.



*One firm budgets for pro bono secondees in the budget for the general secondment group with commercial secondees so their budgeted fees foregone (when they go on secondment) do not impact on the commercial team's budget.*

The internal cost budget for the pro bono practice should be set by the finance team, and reported to the Board, as it is for other practice groups. Lawyers in the pro bono practice team should have the same entitlements as lawyers in each practice group.

## 9. Strong and deep relationships with community partners

Best practice requires:

- building and maintaining relationships of trust and respect with community partners, such as pro bono clearing houses, referral organisations and schemes, community legal centres, Aboriginal and Torres Strait Islander Legal Services, and Legal Aid Commissions in order to support these organisations, facilitate appropriate referrals, and obtain an insight into areas of unmet legal need and ways in which pro bono assistance may be provided to address this need;
- participating in the pro bono community by promoting pro bono throughout the profession, supporting other practitioners and initiatives in a collegiate way; and
- nurturing long-term and sustainable relationships in order to facilitate appropriate pro bono referrals.



*One firm has had a relationship with a community legal centre that has provided a rolling six-monthly secondee arrangement for many years*

## 10. Appropriate training

Where there are areas of legal need outside the existing expertise of the firm, best practice is to provide training to enable interested lawyers to do this work. This provides firms with a diverse program which seeks to address unmet legal need and encourages all lawyers to participate. In these circumstances, training may be best provided by a community partner with relevant experience.

Where lawyers undertaking pro bono work will be working with persons experiencing mental health problems or in stressful or traumatic situations, it is also best practice to provide these lawyers with mental health education and self-care training.



*One firm has trained staff to be Migration Agents in order to establish an after-hours clinic to assist asylum seekers.*

*One firm has a small team,*

*including partners, who are trained and ready to respond when a request for initiating litigation in a migration matter is received.*

*One firm's lawyers, who are experienced in running Supreme Court litigation,*

*undertook training to be able to take on a range of matters in that court not ordinarily within their expertise.*

*Some firm's lawyers were trained to argue an objection to a subpoena in criminal law proceedings for medical and*

*counselling records of victims of sexual assault.*

*Some firm's lawyers were trained to undertake Victims Compensation work, and to seek Apprehended Violence Orders.*



## 11. A strategic risk management plan

Best practice requires:

- a firm to have an authoritative and responsive **assessment and approval process** for pro bono matters;
- all pro bono matters to be **supervised** and supported by a partner who is responsible for, and takes an active role in, each matter;
- using precedent **letters of engagement** for litigious and non-litigious pro bono matters, which set out the scope of the matter, a protocol for dealing with cost recovery in litigation in the event of a favourable costs order, and whether internal and/or external disbursements are payable by the client or the firm;
- pro bono matters to be integrated into the firm's **file management and billing systems**: for example, around file opening, matter management, fee estimates, billing alerts and accountability through bill narratives. These systems should allow for the following questions to be answered:
  - Have fee estimates been exceeded?
  - Is the time spent on the matter reasonable?
  - Have disbursements been paid or written off?
  - Has the matter been closed?
  - If the matter has been closed, has a closing letter been sent?;
- **conflicts** to be addressed in the same way as any other request for legal assistance. While providing a robust system for discussing whether an apparent commercial conflict presents a barrier to acting in the matter, having regard to the 'public good' aspect of a pro bono matter; and
- seeking **support** in the form of input from pro bono coordinators in other firms to help address problems or challenges and to explore possible cooperative models of pro bono provision. Support is also available through the Australian Pro Bono Centre, and through pro bono referral organisations and schemes.



*One firm has delegated the authority to approve a pro bono request to pro bono team members within the parameters set by the firm's policy and budget.*

*One firm seeks approval from pro bono committee members, by providing voting buttons in an email, with a turnaround time of less than one day.*

*One firm sends an automated quarterly email to all lawyers holding pro bono files asking them to provide an update on the matter. These updates are reviewed by the pro bono team that includes a partner.*

*One firm provides detailed precedents and checklists for its lawyers for types of matters outside the firm's core practice, to ensure work is done to a high standard. For example, wills and victims compensation applications.*

*One firm has established a standing conflicts clearance from a major client, such as a bank or a utility provider, to allow advice to be provided to clients at a Homeless Persons Legal Centre on disputes with that bank or utility provider.*

## 12. Accurate record keeping and a regular evaluation process

Best practice requires:

- individual lawyers, practice groups, and offices to **maintain accurate records** of time spent on pro bono matters, together with other relevant metrics such as the number of clients assisted, sources of referral, areas of law in which assistance was provided, and the number of participants in the pro bono program;
- ensuring that the **objectives** set out in the pro bono policy or strategic plan are met, reviewed annually and kept up to date;
- **generating and reviewing detailed reports** of pro bono legal work as required for reporting to government, clients and the legal profession;
- **reporting annually to the Board** on key pro bono metrics and the pro bono program's strategic plan; and
- **seeking feedback** from the community and community legal partners on the firm's pro bono program and the service offered.



*One firm generates a monthly summary of its pro bono practice including time spent on all pro bono matters and work completed by individual lawyers. The key numbers from the monthly report are summarised and distributed to the firm's practice group leaders for review.*

*One firm engaged a senior partner to undertake an evaluation of a pro bono project which involved talking to law firm staff and the pro bono client to prepare an evaluation report that was provided to, and discussed by the top management team of the firm.*



### 13. Secondments

Best practice in relation to secondments involves:

- having a written secondment agreement with the placement organisation;
- the secondment supporting the objectives of the firm's pro bono program;
- the secondment enhancing the capacity of the organisation;
- the secondment being of sufficient length of time to be of value to the organisation;
- the secondee having sufficient experience for the role;
- the secondee being adequately supported by the pro bono team and the firm; and
- the secondee doing meaningful work that utilises the skills of the lawyer.



*One firm ensures that a pro bono leader from the firm visits the secondee at the host organisation once they settle in.*

*One firm sets out the process of addressing conflicts with the firm's clients in the secondment agreement.*

*One firm ensures that each pro bono secondee provides a report of the matters they have worked on and the skills they have obtained which is then used to promote further pro bono secondments within the firm.*

### 14. A clear relationship between a firm's pro bono program and its corporate social responsibility program

In some firms, the pro bono legal program and corporate social responsibility program are completely separate. In others they are intertwined but a pro bono program should have its own objectives and budget, and be evaluated separately, as it is legal services that lawyers are uniquely positioned to provide.

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#### Notes

A. **'The Australian Pro Bono Manual – A practice guide and resource kit for law firms'** contains various precedent documents to support best practice, such as law firm pro bono policies and litigious and non-litigious letters of engagement. Its companion publication, **'Pro Bono Partnerships and Models – A practical guide to What Works'** provides examples of benefits, challenges and effective features of pro bono partnerships and models.

B. It is proposed that this document be reviewed every two years in light of the analysis of data collected in the biennial survey of firms in Australia with 50 or more lawyers.

C. There is a two-page abbreviated version of this guide available on the Australian Pro Bono Centre website.