



APPENDIX A ATTORNEY-GENERAL'S DEPARTMENT - 'GUIDANCE NOTE – AGD LAWYERS AND PRO BONO LEGAL WORK'

1. The purpose of this Guidance Note is to provide information and guidance, and address some common questions for Departmental staff who wish to undertake pro bono legal work in a personal capacity. These may include:
 - A. What is pro bono legal work?
 - B. Do I need approval to undertake pro bono legal work?
 - C. What types of leave are available to undertake pro bono legal work?
 - D. Do I need a practising certificate to undertake pro bono legal work?
 - E. What if I need to attend training that relates to pro bono legal work?
 - F. Where can I find more information about pro bono legal work that has been undertaken by other Departmental staff?
 - G. Can I use Departmental resources for pro bono legal work?
 - H. Do I need insurance while carrying out pro bono legal work?
 - I. How should I manage conflicts of interest and my obligations under the APS Values and Code of Conduct when considering undertaking pro bono legal work?
2. The Department encourages staff to become involved in pro bono legal work and acknowledges the efforts and commitment of those who are currently involved in this work.
3. Please forward any queries about the material contained in this Guidance Note to Human Resources at HR.Assist@ag.gov.au.

Introduction

4. The Australian Government and the Attorney-General support and encourage pro bono legal initiatives, particularly those targeted at promoting access to justice for disadvantaged people both in Australian and in our region. The Department recognises that some of its employees already undertake pro bono legal work in their personal capacity, on an ad hoc or regular basis.
5. Pro bono legal work provides an opportunity for staff to broaden their experiences and develop their skills in areas outside their usual working environment.
6. While this Guidance Note focuses on pro bono legal work, the Department also recognises that some staff, whether they have legal qualifications or not, are involved in a variety of volunteering activities in their personal capacity. This work can make a valuable contribution to communities in need and the Department encourages and supports the volunteering commitment of its staff through various policies. For more information please refer to the Employee Relations Advices: *Health and Wellbeing* and *Leave Policy*.



A. What is pro bono legal work?

7. There are many definitions of pro bono legal work. This Guidance Note refers to the definition expressed in the National Pro Bono Resource Centre's Statement of Principles for its Aspirational Pro Bono Target.

Pro Bono legal work includes:

1. Giving legal assistance for free or at a substantially reduced fee to:-
 - (a) 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
 - (b) individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
 - (c) charities or other non-profit organisations which work on behalf of low income or disadvantaged members of the community or for the public good;
2. Conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
3. 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;

For the purposes of this Guidance Note, pro bono legal work can encompass capacity building activities for non-profit and community organisations either in Australia or overseas, and for legal and governmental institutions in developing countries.

Capacity building includes assisting individuals and organisations to develop legal skills and capacity through training, mentoring and other development opportunities, to perform core work and responsibilities with competence and effectiveness.

8. For practical purposes, in many instances pro bono legal work will involve volunteering at evening clinics run by organisations such as community legal centres or for the ACT Law Society telephone advice service. It may also include accepting a volunteer placement with an organisation involved in capacity building work or in delivering legal assistance to disadvantaged individuals or groups, either in Australia or overseas.

B. Do I need approval to undertake pro bono legal work?

9. If you wish to undertake pro bono legal work in a personal capacity you are generally under no obligation to seek approval for such work. However in some cases undertaking pro bono legal work may constitute employment outside the Department. Accordingly, you should read this Guidance Note in conjunction with Employee Relations Advice: *Employment Outside the Department*.



10. You must also comply with your obligations under the APS Values and the Code of Conduct (see Section I below). If you propose to undertake pro bono legal work in a personal capacity during work hours, you should seek approved leave from your manager.

C. What types of leave are available to undertake pro bono legal work?

11. Annual Leave, Flexitime, Time off in Lieu (TOIL) and Leave without Pay (LWOP) are available if you wish to undertake pro bono legal work, subject to the operational requirements of the Department and the particular requirements for the type of leave sought. For information regarding the types of leave and eligibility, please refer to the Employee Relations Advice: *Leave Policy*. Any required leave should be sought through the normal Departmental process.

D. Do I need a practising certificate to undertake pro bono legal work?

12. If you do not hold a practising certificate you can still undertake certain forms of pro bono legal work. Government lawyers who do not hold a practising certificate can perform paralegal or legal work that does not include providing legal advice or legal representation services. Some services, including community legal centres, will also allow Government lawyers who do not hold a practising certificate to engage in legal work, such as providing legal advice, as long as the work is approved by the service's supervising lawyer. Practices will vary between services and will need to be considered on a case by case basis.
13. Please note that under the various Australian Legal Profession Acts a legal practitioner must hold a current practising certificate to be authorised to engage in legal practice. As many Government lawyers do not hold practising certificates and are therefore unable to engage in legal practice, apart from in their capacity as a Government employee, this is sometimes seen as a barrier to undertaking pro bono legal work. However, as in the circumstances above, this is not necessarily the case.
14. In cases where it is necessary to hold a practising certificate, if you have been admitted to practice, you are able to apply to the ACT Law Society for a Restricted Practising Certificate valid until the end of the relevant financial year period.
15. The Restricted Practising Certificate is specifically for Government and in-house practice lawyers. It enables lawyers to engage in legal practice not only in their capacity as a Government or in-house practice lawyer but also:
 - for the ACT Law Society's Legal Advice Bureau;
 - for any other "complying community legal centre" as defined in s208 *Legal Profession Act 2006* (ACT); and
 - in any other capacity that has been specifically approved by the ACT Law Society.



E. What if I need to attend training that relates to pro bono legal work?

- 16.** The Department recognises that work as a Government lawyer will not necessarily equip you with the necessary skills or experience to undertake pro bono legal work, particularly where this involves assisting individual members of the community with legal problems. In order to attend relevant training you may apply for Annual Leave, Flexitime, TOIL or LWOP.
- 17.** Any costs that may be associated with training for this purpose are your responsibility.

F. Where can I find more information about pro bono legal work and what activities have been undertaken by other Departmental staff?

- 18.** The Department maintains a register of staff who undertake pro bono legal work. The purpose of the register is to assist information sharing between staff members involved in or considering an involvement in such work.
- 19.** Inclusion on the register is entirely voluntary. If you wish to be included, you will need to email the Assistant Secretary, Indigenous and Community Legal Services Branch, SID with brief details of your pro bono legal work, including the name of the host organisation (where relevant), the nature of the work and the time involved.

G. Can I use Departmental resources for pro bono legal work?

- 20.** The Department generally does not allow the use of its resources for pro bono legal work, other than incidental use of email or telephone for contact purposes only. Stationery, photocopying, other phone and computer access should all be available through the service where pro bono work is conducted.

H. Do I need insurance while carrying out pro bono legal work?

- 21.** You will not be covered by Departmental insurance as pro bono legal work is undertaken in a personal capacity. The Department also assumes no liability for any injuries sustained by you while performing pro bono work. You must ensure that you have professional indemnity insurance coverage if required for the purposes of pro bono legal work.
- 22.** It would generally be expected that a service hosting a pro bono work arrangement would carry its own insurance to cover lawyers performing pro bono legal work. You are encouraged to ascertain the workplace liability cover of the service hosting the pro bono legal work arrangement and to undertake pro bono legal work with services which have existing insurance cover.



23. In circumstances where an organisation does not provide professional indemnity insurance for pro bono volunteers, the National Pro Bono Resource Centre has established a Professional Indemnity Insurance Scheme to encourage corporate and Government lawyers to undertake pro bono legal work.
24. Cover is available from the National Pro Bono Resource Centre at no charge to applicants from 1 July 2009.

Once approved, the Scheme will provide insurance cover, subject to certain terms and conditions, for all lawyers and paralegals working on that project. More information is available from the National Pro Bono Resource Centre website at:
<http://www.nationalprobono.org.au>.

Pro bono work that is of a capacity building nature will only be covered by the Resource Centre's Professional Indemnity Insurance Scheme if it entails the provision of legal advice or legal services.

I. How should I manage conflicts of interest and my obligations under the APS Values and Code of Conduct when considering undertaking pro bono legal work?

25. As an APS employee you are bound by the *Public Service Act 1999* (Cth) which incorporates the APS Code of Conduct.
26. Section 13 of the *Public Service Act* requires you to take reasonable steps to avoid any real or apparent conflict of interest in connection with your employment. This is your responsibility and applies when undertaking pro bono legal work. Where pro bono legal work involves law reform and/or policy work, particular attention should be paid to the potential for conflict of interest.
27. You must not engage in pro bono legal work which may potentially conflict with the operations of or damage the reputation of the Department. Some examples of conflicts of interest include situations where:
 1. the interests of the Department/Government and the host organisation conflict;
 2. you may be required to contribute to a policy process in your pro bono role in which you are also involved as a Government employee; or
 3. the pro bono legal work requires you to provide advice on potential legal proceedings against the Department or the Government.
28. While approval to undertake pro bono legal work in a personal capacity is not strictly required, it is recommended that you discuss any proposal with your line manager to reduce the potential for a conflict at a broader Departmental or Government level which may not relate to the work you currently do.



29. Information about the APS Values is available from the Australian Public Service Commission at <http://www.apsc.gov.au>.
30. Should a conflict of interest arise in the course of your pro bono legal work you should immediately withdraw from that work and notify your supervisor of the circumstances of the conflict.