

FAL Lawyers: Pro bono at a boutique firm and the Free the Flag Campaign



L-R: Peter Francis (FAL Lawyers), Sarah Sheridan (Clothing the Gap), the Hon. Linda Burney MP, Laura Thompson (Clothing the Gap).

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FAL Lawyers is a boutique law firm committed to supporting our community wherever it can. We provide pro bono legal services to a range of organisations and individuals to ensure access to justice.

In our view, a meaningful commitment to pro bono requires:

- (a) the firm, at all levels, to accept that acting pro bono is part and parcel of being in the legal profession;
- (b) the firm to set, and commit to achieving, annual pro bono targets;
- (c) the firm to make its pro bono commitment clear on its website, in its induction programs and in its internal reporting. Our motto in this respect is: ‘what gets measured, gets done’;
- (d) pro bono work to be promoted as being just as important as billable work and recognised in individual and group performance expectations; and
- (e) everyone, from partners to trainees, to be involved.

The setting and monitoring of pro bono targets by FAL is informed by our appointment to several government

legal service panels, with each panel establishing its own minimum pro bono requirements as part of that appointment. These minimum requirements are nevertheless comfortably met when a general commitment to pro bono work forms part of the corporate personality of a law firm.

Sourcing pro bono work

Consistent with the above, FAL have been a member of Justice Connect – an organisation committed to connecting community groups with free legal assistance – for over ten years. Through that relationship we are often referred matters involving aspects of intellectual property, but referrals from Justice Connect may involve any number of commercial considerations that are both stimulating and rewarding.

In addition to our relationship with Justice Connect, FAL Lawyers commonly identifies opportunities for pro bono work through its existing charity law practice, and personal relationships developed over time. Many of our lawyers are directors of

FREE THE FLAG

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registered charities who either: require their own pro bono assistance, or are connected to entities requiring similar help. Active monitoring of Australian media outlets provides another way to identify those in need of legal assistance.

‘Free the Flag’ campaign

In mid-2019, Peter Francis, a Partner here at FAL Lawyers, contacted Laura Thompson (an Aboriginal woman and founder of Clothing the Gap) in response to a media interview where Laura explained her mission to ‘free’ the Aboriginal Flag.

Laura’s ‘Free the Flag’ campaign began after Clothing the Gap received a cease and desist letter from WAM Clothing Pty Ltd (the purported exclusive licensee of copyright subsisting in the Aboriginal Flag). The letter required Clothing the Gap to cease sales of all clothing bearing the Aboriginal Flag, which Clothing the Gap sold to fund social activities supporting Aboriginal Australians.

It should be noted FAL Lawyers was not the only law firm to offer support to Laura following her interview – a testament to the broader community commitment to pro bono work. However, in this case, what impressed Laura was that Peter called and spoke with Laura directly, while other firms generally reached out via emails sent by legal assistants.

Since that call in 2019, FAL Lawyers has assisted in efforts to Free the Flag by providing legal services as well as contributing to the broader political campaign which most recently led to establishing a Federal Senate Select Committee to consider the issue. FAL’s assistance has included:

- responding to specific cease and desist letters sent by WAM Clothing Pty Ltd and Harold Thomas (the artist who created the Aboriginal Flag);
- appearing before the Senate Select Committee on the Aboriginal Flag;
- providing numerous media interviews and travelling to meet with politicians and Aboriginal leaders across Australia; and
- securing the pro bono assistance of other practitioners including Julian Burnside QC, Susan Gatford, and Alan Ford (each of Counsel).

With the recent publication of findings by the Senate Select Committee, the Free the Flag campaign is now considering legal avenues to press its objectives (following on from political steps as already taken).

In addition to supporting current efforts to Free the Flag, FAL has assisted Clothing the Gap in defending oppositions to registration of its ‘Clothing the Gap’ trade mark applications. Those oppositions were brought on by Gap (ITM) Inc on the basis that the ‘Clothing the Gap’ trade marks were confusingly similar to the ‘Gap’ trade marks held by Gap (ITM) Inc. FAL Lawyers is grateful for the pro bono assistance of counsel, Susan Gatford in these oppositions which are currently being considered by the oppositions hearing officer. ■



Peter Francis is highly sought for his business acumen, strategic insights and lateral thinking in complex transactions. He is one of Australia’s pre-eminent lawyers on technology commercialisation. He is considered a true expert with years of experience regularly advising Commonwealth and State Government departments and agencies, healthcare institutions, and funded research bodies.