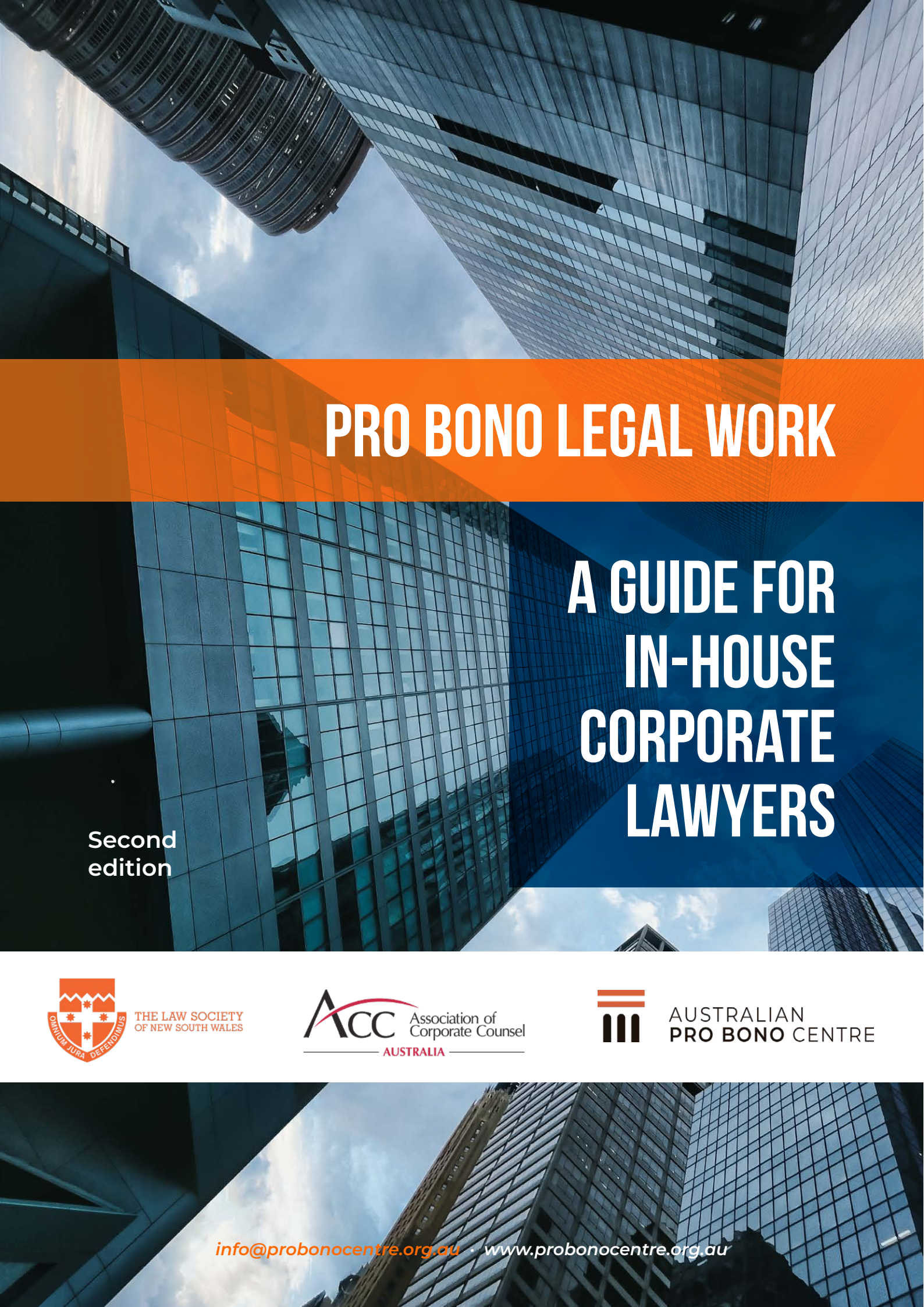

PRO BONO LEGAL WORK

A GUIDE FOR IN-HOUSE CORPORATE LAWYERS

Second edition

THE LAW SOCIETY OF NEW SOUTH WALES

ACC Association of Corporate Counsel AUSTRALIA

AUSTRALIAN PRO BONO CENTRE

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FOREWORD

It gives me great pleasure to introduce the 2023 refreshed version of the *Pro Bono Legal Work – A Guide for In-House Corporate Lawyers*.

Since the first edition of the Guide was published over 5 years ago, the communities that we live and work in have been greatly impacted by so many things - the COVID pandemic, natural disasters and the conflict in Ukraine, to name a few. Now is a time of great need for lawyers to help our communities. By way of response, more and more in-house lawyers are showing a strong desire to give back. As lawyers, we are the only ones who can practise law and by being able to service our communities, this not only enhances professional and personal development but can bring long term benefits to the organisations which support pro bono work. With corporations increasingly being challenged by multiple stakeholders to state where they stand on environmental and societal issues, pro bono involvement by their in-house legal teams can certainly be an excellent channel through which organisations can be truly active in their support for the 'E' and the 'S' in ESG and demonstrate how they are using their resources and influence to drive positive social change. Further, in recognition of the opportunity for in-house lawyers to become more involved in doing pro bono work, the Australian Pro Bono Centre's National Pro Bono Target was expanded in 2020 to include in-house legal teams, recognising the valuable contribution in-house lawyers can make.

Accessing pro bono work can be challenging for those who are not familiar with pro bono practice. In-house lawyers are typically "time poor", and in wanting to do pro bono work, raise concerns about things such as the availability of professional indemnity insurance and that they don't have the requisite skills to do the pro bono work that is needed. That is where this Guide comes in, providing valuable guidance to in-house lawyers looking to set up a pro bono practice or simply become more involved in pro bono work – whether as a team or an individual.

As Justice Michael Kirby so eloquently put it:

"And so I express appreciation for the ongoing work that lawyers give, often without any fee at all, for the good causes and the needs of people to get to law. What is the use of universal human rights if no one can afford to exert their rights? That is the question that is presented to our legal system, it's the challenge that is presented to us all and it is the undoubted important work that the Australian Pro Bono Centre performs in discharging the role that was conceived for it 20 years ago."

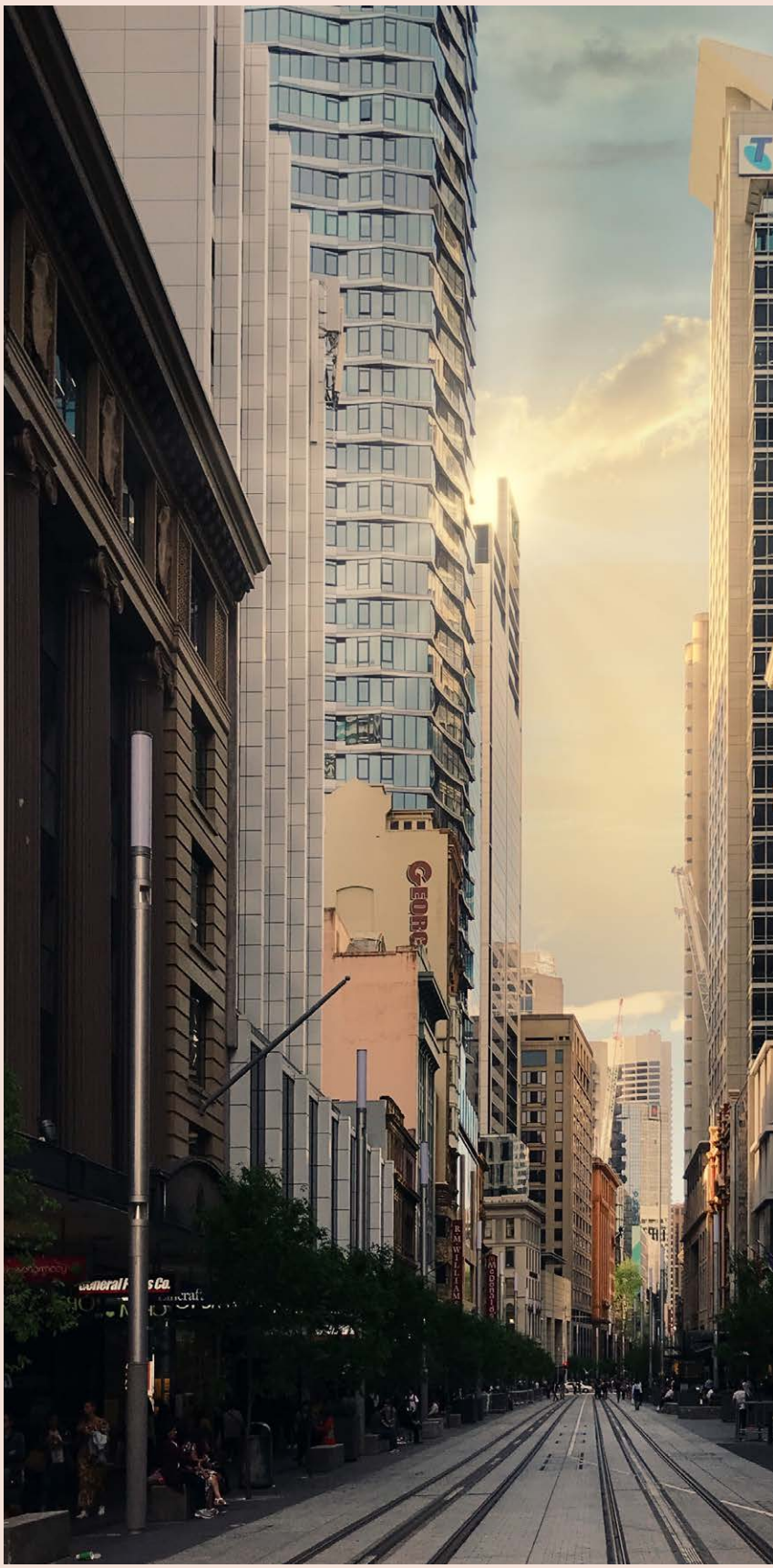
I commend the Australian Pro Bono Centre, the Association of Corporate Counsel and the Law Societies around Australia for their continued efforts to promote pro bono to in-house corporate lawyers and the ongoing commitment to making a difference in our communities through pro bono legal work.

Mei Ramsay
Group General Counsel, Medibank
President, Association of Corporate Counsel

ACKNOWLEDGEMENTS

The Australian Pro Bono Centre acknowledges the traditional custodians of the land on which it works, the Bedegal people of the Eora Nation. We pay our respects to the Elders – past, present and emerging – and the youth who are working towards a brighter tomorrow.

The Centre is grateful for the funding support it receives from the governments of the Commonwealth and Australian States and Territories. It is also grateful for the in-kind support it receives from the Commonwealth Attorney-General's Department, Australian Government Solicitor, private firms, volunteers and the Faculty of Law & Justice at UNSW Sydney, (which includes the use of the Faculty's premises and facilities, and support from student interns), Australian Government Solicitor, HWL Ebsworth, and volunteers.



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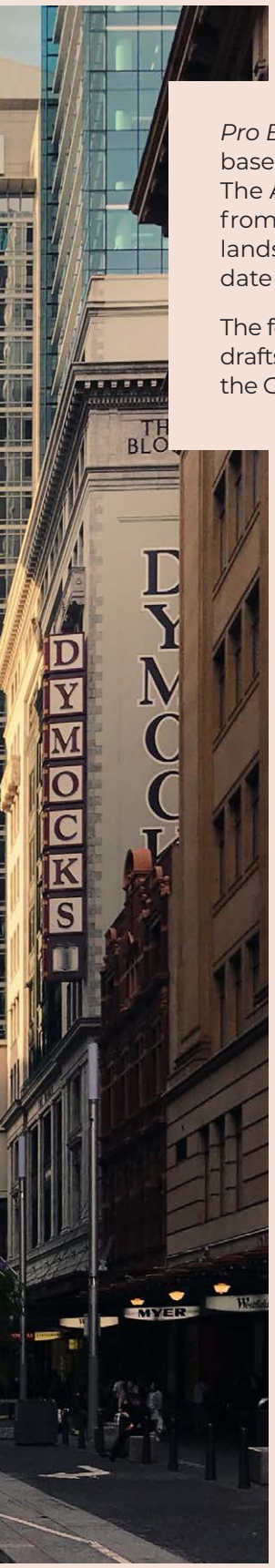

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Pro Bono Legal Work – A guide for in-house corporate lawyers (**Guide**) was first published in 2017, based on DLA Piper's 2013 publication, *The Australian In-house Legal Counsel Pro Bono Guide*. The Australian Pro Bono Centre (**Centre**) thanks DLA Piper for its permission to use material from the 2013 publication. The Guide has been updated in 2023 to reflect changes to the legal landscape, including increased focus by society on corporate social impact and to provide up-to-date templates and recent case studies of corporate pro bono practice.

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.

- Jon Downes, *General Counsel, MinterEllison, past President of the Association of Corporate Counsel Australia NSW, former member of the Australian Pro Bono Centre's In-House Steering Committee*
- Marina Yastreboff, *former member of the Australian Pro Bono Centre's In-House Steering Committee*
- Rania Tannous, *Head of Legal, Corporate and Commercial, AMP, former member of the Australian Pro Bono Centre's In-House Steering Committee*
- Nova Justen-Hoven, *Engagement Manager – Corporate and Government Lawyers, Law Society of NSW, former member of the Australian Pro Bono Centre's In-House Steering Committee*
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- Phillip Cornwell, *Chair, Australian Pro Bono Centre*
- Sue Mahony, *Senior Policy Officer, Australian Pro Bono Centre, On secondment from Attorney-General's Department*
- Alice Rolls, *Head of Policy and Strategy, Australian Pro Bono Centre*
- Gloria Deng, *former Operations & Communications Officer, Australian Pro Bono Centre*

1. WHAT IS PRO BONO?

'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 advice and representation in the legal system, or whose matter raises an issue of public interest.

The Centre defines 'pro bono legal services' as follows:

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;
    b. individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
    c. charities, other not-for-profit organisations or social enterprises, in each case where their sole or primary purpose is to work in the interests 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; or
4. Providing a lawyer on **secondment to a community organisation** (including a community legal organisation) or at a referral service provider such as a public interest law clearing house.[1]

The capacity of in-house legal teams to contribute to pro bono

Approximately 28% of Australian lawyers work as in-house lawyers, either within companies or government.[2] This represents approximately 23,400 lawyers, a number which continues to grow.[3] In-house lawyers possess expertise and skills which they can use to assist disadvantaged and marginalised individuals and the organisations that assist them.

In-house lawyers have expertise in general drafting, legal research, commercial and presentation skills, as well as contract law, employment arrangements, legal and business structures, property and leasing, risk management, insurance and intellectual property. These skills can be invaluable to community organisations including community legal centres (**CLCs**) and not-for-profits as they respond to operational issues. Obtaining pro bono assistance from subject matter experts frees up the time of the community organisation's lawyers to use their specialist skills to assist the organisation's clients.

Participation in well-managed pro bono practices and clinics can also broaden and enhance in-house lawyers' skills and expertise in new areas of law and practice.

Moreover, with the increase in remote working, pro bono practice can provide opportunities to connect with others in a very meaningful way, benefitting lawyers' mental health, morale and productivity and leading to better staff retention.

69.6% OF RESPONDENTS TO THE CENTRE'S SURVEY REPORTED PRO BONO IMPROVED THEIR RETENTION OF EXISTING STAFF. [4]

[1] For further information about the Centre's definition of 'pro bono legal work' and accompanying guidance notes, see https://www.probonocentre.org.au/information-on-pro-bono/definition/.

[2] Urbis for the Law Society of NSW, 2020 National Profile of Solicitors – Final Report (July 2021) at 23 and 25.

[3] As above.

[4] Report of the 8th National Law Firm Pro Bono Survey, 2023, Australian Pro Bono Centre, section 6.7.5.

Recently, in-house lawyers in Australia have become involved in pro bono legal work in a more structured way, commonly in an arrangement with a legal service provider and/ or a community legal centre, as outlined in the case studies in Section 8 Examples of successful pro bono projects of this Guide. Legal service providers have extensive experience in running pro bono practices and have established relationships with referrers of pro bono legal work.

For any initiative of this type, it is beneficial to have quantifiable targets so that progress can be monitored. For example, approximately 190 companies providing pro bono services in more than 40 countries have adopted the Corporate Pro Bono Challenge[5] Statement 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).

In Australia, in-house legal teams and individual in-house lawyers can sign up to the National Pro Bono Target.

National Pro Bono Target

The **National Pro Bono Target** is a voluntary target through which signatories agree to use *best endeavours* to undertake a prescribed number of hours of pro bono legal services per lawyer per year. Any legal practitioner can sign up to the Target. For lawyers in private practice and barristers, the Target is 35 hours per lawyer per year.

For in-house corporate and government lawyers, the National Pro Bono Target is a voluntary target of **20 hours** of pro bono legal services per lawyer per year. This Target has been open to in-house lawyers since 1 July 2020.

There is no obligation for signatories to reach the Target. Like any target it provides a goal to work towards. The Target has been a very popular and successful mechanism to build and maintain a thriving pro bono culture in Australia since it was established in 2007. More than 5.5 million hours of pro bono work have been done by signatories to the Target in its first 15 years.

The Centre welcomes in-house legal teams to sign up to the Target as they commence doing pro bono work. This is because the Target is aspirational in nature and sets a benchmark to work towards. In fact, many teams join the Target and set an internal goal which sees the team working towards the 20-hour benchmark over a series of years. Signing up to use best endeavours to work towards the Target will initiate many of the benefits that are discussed in Section 2 Why should we start doing pro bono?, especially in terms of staff engagement and wellbeing, and attracting and retaining staff.

For more information about the Target, see the Centre's **website**, particularly the section on **Frequently asked questions for in-house teams**.

How pro bono contributes to social impact

A company's in-house legal team can play a unique role in helping to build, strengthen and complement the company's social impact and environmental, social and governance (**ESG**) strategies. While a pro bono practice is distinct from a social impact program, there is a consistent aim, being to harness the resources and skills of the company to benefit the broader community. Pro bono delivery and program development can also involve a number of divisions within the company beyond the legal team, including human resources, insurance and management.

TIP! AS SOCIAL IMPACT PROGRAMS ARE TYPICALLY WELL-ESTABLISHED, SEEK OUT YOUR COMPANY'S SOCIAL IMPACT MANAGER FOR CONSULTATION OR TO COORDINATE EFFORTS WHEN ESTABLISHING A PRO BONO PRACTICE.

[5] http://www.cpbo.org/wp-content/uploads/2022/06/2022-CPBO-Challenge-Report.pdf.

2. WHY SHOULD WE START DOING PRO BONO?

There are many reasons why it makes sense for a company's legal team to do pro bono work. These include:

(1) **Pro bono work supports the professional responsibility of a company's lawyers**

All lawyers have an ethical and professional responsibility to promote equal access to justice. This responsibility stems from the privileged position of lawyers as members 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 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.*[6]

Supporting a company's lawyers to fulfil their ethical responsibility through their employment also confers the benefits outlined in the next two sections, in particular by contributing to employee wellbeing and loyalty and by building the company's social licence.

[6] Melbourne, 2006, http://probonocentre.org.au/information-on-pro-bono/conference/na2jpbc-2006/.

(2) **Pro bono work strengthens and complements a company's social impact program**

Companies have long recognised the importance of corporate citizenship and community engagement. Many companies have well-established social impact programs supporting community organisations that may be aligned with their location or culture. It can be a relatively simple step to expand the support that is provided to community organisations to include pro bono legal services - but there are important benefits for the company in approaching this task in a structured way.

As ESG considerations have become important quantitative markers of corporate value, greater rigour is being applied to the measurement of companies' social impact. Pro bono is now considered part of a company's ESG performance, aligned with and contributing to the company's social, and in some cases, environmental impact. But rather than developing a compliance or reporting focused program aimed towards ESG ratings alone, it has been argued that social impact efforts that are woven into company strategy at the highest level, and genuinely reflected in corporate purpose and culture, can create real corporate value beyond employee engagement and customer satisfaction.[7]

73.9% OF RESPONDENTS SAID THAT PRO BONO IMPROVED THE PUBLIC REPUTATION OF THE ORGANISATION.[8]

In relation to pro bono, a company might undertake research or consultation to identify how its lawyers' particular skillset can make the greatest contribution to society in a way that is consistent with the company's values.

The United Nations' 17 Sustainable Development Goals (**SDGs**) have become a framework for focusing companies' social impact efforts. These goals include 'no poverty', 'reduced inequality', 'quality education' and 'climate action', to name a few. Partnering with community organisations, CLCs or law firms on pro bono projects will also advance SDG Goal 17, 'partnerships for the goals'. Selecting one or more SDGs to be the focus of a pro bono program can result in pro bono providers:

> *"making the journey from pro bono support that was assumed to be 'doing good' to support which is aimed at achieving specific types of change in the wider world ....This implies a more strategic and collaborative approach to pro bono, in which the changes that this support aims to accomplish are identified in advance."*[9]

Having a more strategic approach to social impact programs and pro bono practice can make a company's narrative about its purpose and culture more compelling and more readily adopted by employees, customers and other stakeholders including financiers and shareholders; creating greater long-term value.[10]

Further, social impact / ESG programs are increasingly setting standards for sustainable supply chains. In this way, companies 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. The Centre has developed template questions for companies to ask prospective legal service providers about their pro bono performance; see Appendix D – Template pro bono questions for use by corporations in the engagement of law firms.

[7] George Serafeim "Social-Impact Efforts that Create Real Value" Harvard Business Review Sep -Oct 2020.

[8] Report on the 8th National Law Firm Pro Bono Survey, 2023, Australian Pro Bono Centre, section 6.7.5.

[9] ROLE UK "Pro bono and the Sustainable Development Goals" March 2018.

[10] As above, George Serafeim.

(3) **Pro bono work makes good business sense**

In-house pro-bono practice can also have a positive impact on a company's business operations. Some of the benefits that a pro bono practice can have for a company include:[11]

- making the legal team more attractive to high quality legal recruits;
- enhancing staff morale, loyalty and productivity and helping with retention of valued employees;[12]
- demonstrating the company's purpose and commitment to the principles outlined in its social impact goals and helping preserve its social licence; and
- enhancing the company's ESG ratings, potentially reducing risk ratings and financing costs, and increasing opportunities for socially responsible investment in the company.

78.3% OF RESPONDENTS SURVEYED SAID THAT PRO BONO INCREASED THE ORGANISATION'S ABILITY TO ATTRACT NEW STAFF.[13]

A pro bono practice also has direct benefits for the in-house lawyers who participate, which in turn benefits the company. These include:[14]

- the development of professional skills and confidence, capacity for innovation and a broader perspective, which can then be applied to in-house legal work;
- enhancing the mental health and wellbeing of in-house lawyers through greater connection to the community, and removing a potential stressor that lawyers may feel about wanting to contribute to society outside work; 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 provides opportunities for the legal team to work together on projects that are different to their day-to-day work; and
    - legal service providers, when they undertake pro bono legal projects together.

95.7% OF RESPONDENTS TO THE CENTRE'S SURVEY REPORTED THAT PRO BONO LED TO ADDITIONAL SKILL DEVELOPMENT IN THEIR LAWYERS.[15]

[11] See E Lardent, The Business Case for In-house Pro Bono, 2006 at http://www.cpbo.org/wp-content/uploads/2014/08/Business-Case-for-In-House-Pro-Bono-final.pdf.

[12] According to the Centre's Report on the 8th National Law Firm Pro Bono Survey, 2023 (Survey), 82.6% of firms reported pro bono increased staff satisfaction and 69.6% reported it increased staff retention. No less than 91% of firms reported that it increased pride in the firm.

[13] Report on the 8th National Law Firm Pro Bono Survey, 2023 Australian Pro Bono Centre, section 6.7.5.

[14] As above, E Lardent.

[15] Report on the 8th National Law Firm Pro Bono Survey, 2023, Australian Pro Bono Centre, section 6.7.5.

3. WHAT ARE SOME PRACTICAL WAYS TO DELIVER PRO BONO?

There are many different ways that an in-house legal team can undertake pro bono legal work – some of which can be done without leaving the office. A variety of examples are summarised below, with further details provided in **Section 8 Examples of successful pro bono projects**.

(1) **Partnering with one or more legal service providers** to work on a provider's existing pro bono project or to establish a new joint project.[16]

- *For example, UNSW's legal team collaborated with King & Wood Mallesons (KWM) to educate young people from Matraville High School, Sydney, about their legal rights and obligations on issues such as employment, fines, contracts, alcohol and social media, through KWM's TalkLaw® program;*
- *Pfizer's lawyers, under the supervision of Refugee Legal and in collaboration with DLA Piper, provided advice to people seeking to bring their families to safety in Australia amidst Afghanistan's humanitarian crisis; and*
- *Westpac's lawyers partnered with MinterEllison to support the Westpac Foundation including leading legal clinics for not-for-profit organisations supported by the Foundation.*

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

For example:

- *Macquarie Group lawyers, with training and supervision from the Immigration Advice and Rights Centre (**IARC**), assisted Afghan refugees to apply for Refugee and Humanitarian visas within a short statutory timeframe;*
- *IP Australia's legal team participated in Arts Law Centre's Document Review Service;*
- *American Express lawyers supported Redfern Legal Centre's Financial Abuse Project; and*
- *Lawyers from ANZ, ASIC and Telstra participated in the Youth Law Australia Cyberlaw Project, supported by KWM.*

If an in-house 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.

[16] Twelve major law firms reported collaborating with in-house counsel clients on pro bono matters in the Centre's Report on the 8th National Law Firm Pro Bono Survey, 2023.

(3) **Partnering with a non-legal community or not-for-profit organisation**.

For example, ABC's lawyers provided advice and training to First Nations Media Australia about media law issues including defamation, contempt, and commercial and intellectual property issues.

(4) **Membership of a pro bono referral organisation** (such as LawRight (Qld), Law Access (WA) or JusticeNet (SA)) through which referrals can be obtained or opportunities to participate in structured pro bono services are created.

For example, AECOM works with LawRight's Court and Tribunal Services in their QCAT and Federal Court rosters, assisting unrepresented litigants.

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

For example, lawyers from AMP took referrals through the Cancer Council Pro Bono Program.

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

For example, encouraging individual lawyers to become volunteers at a CLC or to undertake smaller legal advice projects for not-for-profit organisations with which they have an existing relationship or interest.

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

For example, Australian Government Solicitor has provided lawyers on secondment to work with a number of CLCs. These arrangements range from part-time to full-time and support CLCs all around Australia. For example: Care Consumer Law (ACT); Canberra Community Law; Women's Legal Canberra (ACT); Arts Law Centre; Public Interest Advocacy Centre; Youth Law Australia; Australian Pro Bono Centre; Justice Connect; Consumer Action Law Centre; WA Consumer Credit Legal Services and Tasmanian Pro Bono Referral Services.

(8) Contributing to the development of **legal education resources and precedents**

For example, through The Chancery Lane Project, lawyers around the world contribute to developing and adapting for local jurisdictions, new, practical contractual clauses for commercial agreements to deliver climate solutions.

The Centre's **website** lists current opportunities including referral organisations that provide pro bono opportunities to in-house lawyers and legal teams, including small teams.

Volunteering opportunities for individual early career lawyers are also posted regularly on the Centre's Social Justice Opportunities website (**www.sjopps.net.au**).

4. HOW DO WE START PRO BONO?

While it is ideal to establish a formal pro bono practice to gain the benefits of visibility within and beyond the company, some companies may decide to trial pro bono legal work on an informal basis to gauge the interests of team members before establishing the practice officially.

Taking small steps, such as establishing a roster to attend clinics at a community legal centre or accompanying the company's legal service provider to a meeting with a pro bono client, can be a way of testing the appetite of the team for pro bono work and determining the issues and pattern of work that will suit. If the initial steps are positive, this experience can help inform the structure of the pro bono practice and ensure that the team feels ownership of the practice.

82.6% OF RESPONDENTS TO THE CENTRE'S SURVEY REPORTED THAT PRO BONO INCREASES STAFF SATISFACTION.[17]

This next section of the Guide will set out the key steps to formally establishing an in-house pro bono practice. The time and resources invested in each step will depend in large part on the size and culture of the company and its legal team. For example, it might be a relatively quick process to reach the stage of preparing a proposal for the practice or project if an in-house team is partnering with another organisation, or if a member of the legal team has identified a suitable project upfront. Conversely, there may be a number of internal levels of authorisation that need to be met, which can take some time.

If the company is not yet ready to commit to a pro bono practice, in-house lawyers can still undertake pro bono work independently outside of their employment, subject to compliance with applicable internal controls, such as checking whether the terms of their employment require approval for pro bono as 'secondary employment', checking relevant practising certificate requirements and conducting conflict checks.

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

A. Establish organisational support

B. Scope the proposed practice

C. Prepare a proposal

D. Develop a draft Pro Bono Policy

E. Obtain approval of the proposal and Pro Bono Policy

F. Deliver pro bono legal assistance.

A. Establish organisational support

To ensure there is enthusiasm, encouragement and recognition of pro bono work, first seek to secure organisational support for the initiative from key individuals within the company including the Chief Executive Officer, General Counsel, Head of Legal and Head of Social Impact.

[17] Report of the 8th National Law Firm Pro Bono Survey, 2023, Australian Pro Bono Centre. Section 6.7.5.

If there is a need to build organisational support for the pro bono practice, the proposal could take into account any concerns raised (see Section 6 Frequently asked questions), and identify a senior member of the company to champion the practice.

TIP!

USE ANY OR ALL OF THE FACTORS IN THE 'WHY SHOULD WE START DOING PRO BONO?' SECTION ON PAGE 8 THAT WILL BE PERSUASIVE IN YOUR CONTEXT, E.G. 'PRO BONO WILL HELP THE COMPANY ATTRACT AND RETAIN TALENT'.

B. Scope the proposed pro bono practice

To develop a proposal for a pro bono practice, 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 proposal 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 from the company, only minimal scoping may be required. It is also helpful to consider Section 3 What are some practical ways to deliver pro bono?.

The proposal could be scoped by:

- Surveying the legal team members to find out:
  - whether they already undertake pro bono legal work (on an individual basis or with a previous employer);
  - if they have any suggestions for the practice; and
  - what types of pro bono clients and areas of law they are interested in.

  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 practice.
- Requesting ideas for the program from:
  - other groups within the company, including the Social Impact team (to identify existing community relationships that might be strengthened by the offer of legal assistance) and the team responsible for business innovation; and
  - the General Counsel.
- Identifying the legal skills and areas of expertise that exist within the in-house legal team and consider how they might be used in a pro bono context.

TIP!

IT IS INCREASINGLY COMMON (AND ENCOURAGED BY THE CENTRE) FOR COMPANIES' CONTRACTUAL ARRANGEMENTS WITH LEGAL SERVICE PROVIDERS TO REQUIRE THE PROVIDERS TO:

1. SIGN UP TO THE NATIONAL PRO BONO TARGET AND USE THEIR BEST ENDEAVOURS TO MEET THE TARGET, AND
2. PROVIDE AND SUPPORT PRO BONO OPPORTUNITIES FOR THE COMPANIES' IN-HOUSE TEAMS.

CHECK IF THIS IS THE CASE AND IF NOT, SUGGEST THESE TERMS MIGHT BE INCLUDED IN FUTURE ARRANGEMENTS. SEE APPENDIX D.

- Discussing opportunities for partnering with pro bono managers from the company's legal service providers.
- 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.

C. Prepare a proposal

The next step after the scoping phase is to develop a 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 company's commercial objectives and any social impact policy, Environmental, Social and Governance (**ESG**) targets or commitments to the UN Sustainable Development Goals (**SDGs**);
- outline the benefits of an in-house pro bono practice for the company and the company's lawyers;
- describe the pro bono legal work that will be undertaken as part of the pro bono practice and any processes to be established to prevent conflicts of interest;
- include measurable objectives for the practice, 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 changes to the terms of engagement of legal service providers, e.g. an expectation that providers will undertake pro bono legal work and offer opportunities for in-house legal staff to collaborate on pro bono legal work; and
- confirm that regulatory requirements have been addressed and that a Pro Bono Policy has been drafted to support the practice and ensure any requirements are met.

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

A precedent memorandum to the General Counsel/CEO/Board, which outlines a proposal for a pro bono practice, is included in Appendix A.

TIP! TALK TO OTHER IN-HOUSE LEGAL TEAMS WHICH HAVE ESTABLISHED PRO BONO PRACTICES. THE CENTRE CAN PROVIDE REFERRALS TO "BUDDIES" IN OTHER ORGANISATIONS WILLING TO SHARE THEIR INSIGHTS AND EXPERIENCE.

D. Develop a draft Pro Bono Policy

A draft Pro Bono Policy can be developed in conjunction with the proposal for the pro bono practice. A precedent Pro Bono Policy is included in Appendix B.

An in-house Pro Bono Policy should include:

- an outline of why the company should have a pro bono program, its objectives and how it complements its broader social impact policy and or other commitments to ESG targets or the SDGs;
- a description of the proposed practice, including key projects or focus areas;
- statements that confirm the company's expectations of lawyers participating in the pro bono practice. 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;
- a framework for coordinating the practice;
- the aspirational team member participation rate, (if set);

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- an approval/rejection process for requests for assistance, including identifying potential conflicts;
- protocols for ensuring that any regulatory requirements are met, including practising certificates and insurance;
- record keeping and file management processes;
- any reporting obligations; and
- a mechanism for tracking and measuring the impact (internally and externally) of the company's pro bono work, which may be helpful in demonstrating the strong 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 company's usual processes and made accessible to all team members.

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 practice and the relationships which support the referral of work.

The company may also choose to vary its terms of engagement with the legal service providers it engages to encourage these providers to undertake pro bono work and support the company's efforts. For more information on this, see **Section 7 Encouraging pro bono by legal service providers** and Appendix D – Template pro bono questions for use by corporations in the engagement of law firms.

87.2% OF FIRMS ARE ASKED TO PROVIDE INFORMATION ABOUT THEIR PRO BONO PRACTICE WHEN SEEKING LEGAL WORK FROM COMPANIES.[18]

[18] Report on the 8th National Law Firm Pro Bono Survey, 2023, Australian Pro Bono Centre, section 8.2.

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

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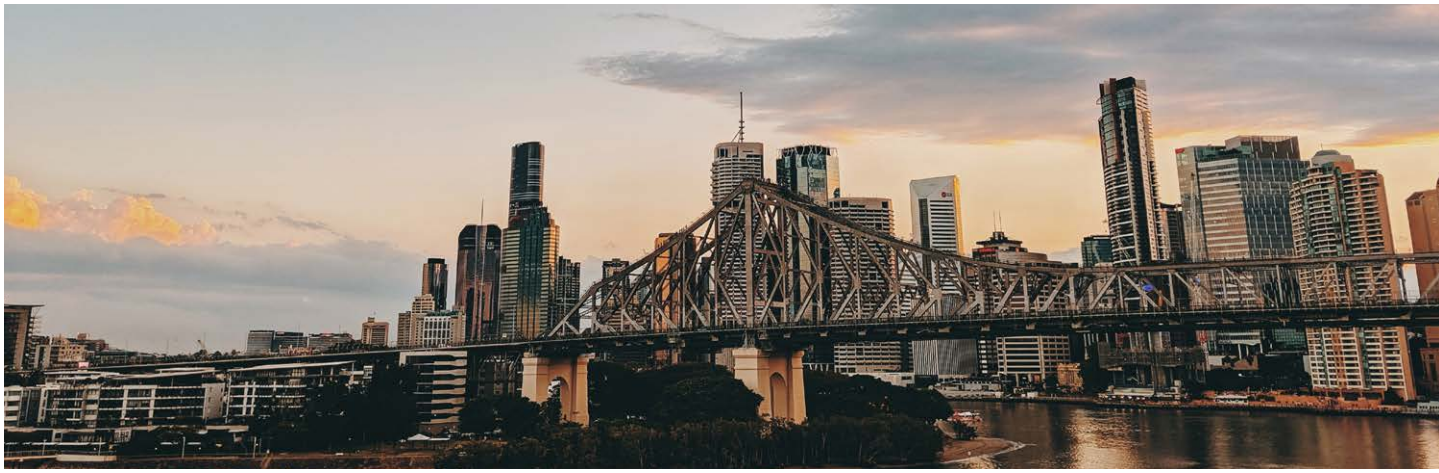

When establishing and developing a pro bono practice, consideration should be given to the regulatory requirements of the local jurisdiction. Over recent years, most of the regulatory barriers have been removed. However, restrictions remain in some jurisdictions. Three key requirements to consider are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

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

See Appendix C for information on the regulatory position in relation to practising certificates and professional indemnity insurance in each state and territory as at February 2023.

There may also be internal issues to be considered such as:

- whether the employment contracts of the legal team members would classify pro bono work as being outside employment and therefore requiring approval; and
- other internal policies, including conflict of interest policies and procedures.

A. Practising certificates

In most jurisdictions, corporate and government practising certificates (or their equivalent) allow in-house lawyers to undertake pro bono legal work. However, 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.

Lawyers who do not need a practising certificate for their day to day work may be eligible for a volunteer practising certificate for pro bono work in some jurisdictions.

Before commencing pro bono legal work, the regulatory position should be confirmed with the local law society or regulatory authority. There is a guide to the practising certificate requirements in each state and territory in Appendix C Practising Certificates and Professional Indemnity Insurance.

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 working in a CLC clinic, the in-house lawyers are likely to 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. However, the National Pro Bono Professional Indemnity Insurance Scheme (**Scheme**) now 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.

TIP!

CURRENTLY, AUSTRALIAN IN-HOUSE LAWYERS IN MOST STATES AND TERRITORIES[20] CAN ACCESS FREE PROFESSIONAL INDEMNITY INSURANCE THROUGH THE SCHEME

Requirements to notify the local law society or regulatory authority 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
   - if relying on the third limb of the definition, for pro bono work assisting an organisation, the '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.[21]

2. Email the completed form to info@probonocentre.org.au.
3. Respond to any follow up queries.
4. If the Centre confirms in writing that your pro bono project 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).

TIP!

THE DEFINITION OF PRO BONO LEGAL WORK FOR THE PURPOSES OF THE CENTRE'S PII SCHEME IS GOVERNED BY THE TERMS OF THE PI POLICY, WHICH DIFFERS FROM THE DEFINITION OF PRO BONO FOR THE NATIONAL PRO BONO TARGET.

[20] Excluding Northern Territory and Tasmania.

[21] http://www.probonocentre.org.au/wp-content/uploads/2016/04/APBC-PI-Scheme-Guidelines-17022016.pdf.

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.

TIP!

IT IS IMPORTANT TO APPROACH THE PREPARATION OF ENGAGEMENT AND COSTS AGREEMENTS IN PRO BONO MATTERS IN THE SAME WAY AS COMMERCIAL MATTERS.

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 costs 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 or memorandum of understanding that sets out the obligations, responsibilities and expectations of the firm and the in-house lawyers about matters such as attendance, privacy and confidentiality.

An example of an agreement between a law firm and company to participate in a community legal centre clinic is contained in **Appendix E – Corporate-Firm Pro Bono Collaboration template**.

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*.[22]

D. Risk management / Conflicts of interest

Corporate legal teams may decide to focus their pro bono legal work on areas in which they have expertise, to ensure the work can be done to the same standard as other legal work. However, acquiring expertise and taking on pro bono work in new areas not covered by the existing commercial practice (such as infringements/ fines or residential tenancy matters) can provide opportunities for skill development - generally lawyers will have greater skills and knowledge than clients with limited resources and limited understanding of the legal system. It is important that work in new areas is well supervised by a senior practitioner with relevant expertise and a solid understanding of risk management principles. Appropriate training for the participating lawyers will also need to be provided.

Corporate legal teams will need to consider whether any conflicts of interest arise before accepting new matters. This will include direct legal conflicts and indirect commercial conflicts. For more information about identifying, and dealing with, conflicts of interest see Chapter 2.2.2 of *The Australian Pro Bono Manual*.[23] Some corporate teams have found that taking on pro bono work in a field that is quite distinct from their day to day work has had benefits in avoiding conflicts of interest, while also allowing team members to gain experience and competency in a new area.

[22] https://www.probonocentre.org.au/aus-pro-bono-manual/.

[23] as above.

6. FREQUENTLY ASKED QUESTIONS

A. Establishing organisational support

(1) We already have a social impact program. How do I make a case for a separate pro bono legal practice?

The pro bono practice will certainly not detract from, and should strengthen and complement, the company's social impact program, even if it is managed separately. Aligning the focus areas of the pro bono practice with those of the social impact program may be helpful — for example, they might both aim to assist children in need, or focus on the same Sustainable Development Goals. One way to develop the initiative is to get the "buy-in" of key influencers in the company, including the social impact team and social impact champions across the business, by involving them in the scoping of the pro bono practice.

91.3% OF RESPONDENTS TO THE CENTRE'S SURVEY REPORTED PRO BONO INCREASES PRIDE IN THE ORGANISATION.[24]

(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 company should confirm whether its team's lawyers are covered.

If no other insurance is available, in-house lawyers can apply to the Australian Pro Bono Centre for coverage 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 the Northern Territory and Tasmania.[25]

It is also important to manage risk in the usual way by ensuring that pro bono work is appropriately supervised by a senior practitioner with relevant expertise and a solid understanding of risk management principles.

Lastly, in certain circumstances, pro bono work can involve vulnerable clients and situations that are challenging for the lawyers involved. The steps you can take to safeguard the mental health and wellbeing of team members are set out in the answer to question (10) below.

(3) Realistically, it's unlikely we'll get approval for a formal pro bono practice. What are the options for our lawyers?

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

[24] See https://www.probonocentre.org.au/provide-pro-bono/pi-insurance-scheme/.

[25] Report of the 8th National Law Firm Pro Bono Survey, 2023, Australian Pro Bono Centre, section 6.7.

Opportunities for individual-based pro bono legal work include:

- participating in a CLC clinic or volunteering at a community organisation;[26]
- starting an individual project (perhaps based on the lawyer's contacts in their community) and seeking PI insurance through the National Pro Bono Professional Indemnity Insurance Scheme; or
- registering to help with a law society pro bono referral scheme.

The National Pro Bono Target is also open to individual signatories, so the lawyers in your team can still sign up and report on the pro bono legal work that they do and be a part of the pro bono community. At a later time, the company may be ready to commit to establishing a pro bono practice and a person with some experience would be well-placed to lead that practice.

B. Scoping the practice

(4) **Our company 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 one of the company's legal service providers, 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 that coordinate or conduct 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?**

The need for pro bono work arises across all areas of law.

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.

One of the company's legal service providers that has an established pro bono practice may be aware of CLCs or other not-for-profits that need support in relation to corporate or commercial issues in their own operations that would appreciate your team's expertise in these areas.

Another option is to offer pro bono assistance directly to a CLC or community organisation as the client, for example, by advising in relation to the CLC's corporate governance or commercial arrangements. The skills of your team may not otherwise be readily available in community legal centres. Alternatively, some CLCs have well developed pro bono practices that cater for in-house legal teams, and will provide training as required.

Community Legal Centres Australia (clcs.org.au) provides a directory of CLCs including regionally-based and specialised CLCs.

[26] See www.clcvolunteers.net.au.

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

The Centre's **website** lists current opportunities including 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.

Volunteering opportunities for individual early career lawyers are also posted regularly on the Centre's Social Justice Opportunities website (**www.sjopps.net.au**).

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 practice's focus areas — the areas of unmet legal need that its practice aims to address — as set out in the company's pro bono policy. Potential sources of clients include:

- A legal service provider (including a firm on your company's panel, if relevant) with an established pro bono practice;
- pro bono referral organisations, established practices in CLCs and community organisations; and
- suitable organisations with which your company has an existing relationship (e.g. through its social impact program).

For example, if the focus of the pro bono practice is addressing the legal needs of refugees, sources of clients might include the Refugee and Advice Casework Service or the Immigration Advice & Rights Centre (both in NSW) Refugee Legal (in Victoria) or Tasmanian Refugee Legal Service (in Tasmania).

(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. The practice should have a manager 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 manager of a legal service provider to draw on their experience. Some large companies have conducted an expression of interest among their preferred legal service providers to fill the role of managing their in-house pro bono practice, but this is not common or necessary in most cases.

It is also important to develop clear processes for crediting and recognising pro bono legal work in accordance with the company's legal time recording policy (if there is one). Pro bono legal work should be recorded, credited and recognised equally with the team's usual legal work for the purposes of workload and performance appraisal.

(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 and linguistic background, their physical and cognitive capabilities, 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, or appropriate training could be developed in-house. For more information on working with clients from diverse backgrounds in the pro bono context, please see Chapter 1.14 of *The Australian Pro Bono Manual*.[27]

TIP!

STAY CONNECTED – THERE ARE VARIOUS WAYS YOU CAN CONNECT WITH OTHERS DOING PRO BONO WORK:

- SUBSCRIBE TO THE CENTRE'S PUBLICATIONS INCLUDING THE FORTNIGHTLY ROUND-UP HERE.
- JOIN PROBO YOFO, A GROUP OF YOUNG FOLK WHO CATCH UP ABOUT THEIR PRO BONO WORK

(10) **How do we ensure we are looking after our team members if they are being asked to support a different client group which may have complex legal and personal issues?**

Undertaking pro bono work can broaden legal staff members' outlook on life and can be positive for wellbeing. But while some clients' stories can move and inspire, their circumstances can also affect those who support them. The person coordinating pro bono work can assist by:

- being aware of the matters allocated to each team member and scheduling regular de-briefs;
- ensuring that if a project involves dealing with clients with complex issues, team members are trained in advance and have information about what to do if urgent issues arise such as threats of suicide, domestic violence;
- referring legal staff members to the resources on the Centre's website including *Client management and self-care — a guide for pro bono lawyers*; a training resource developed by law firm pro bono managers, with input from lawyers in the legal assistance sector. The Guide can be downloaded from the Centre's website[28] at no charge, and adapted for use by in-house teams;
- ensuring team members know how to contact the company's employee assistance program; and
- encouraging team members to discuss and reflect on their pro bono work.

[27] https://www.probonocentre.org.au/aus-pro-bono-manual/.

[28] http://www.probonocentre.org.au/wp-content/uploads/2017/05/Client-management-and-self-care-guide.pdf.

7. ENCOURAGING PRO BONO BY LEGAL SERVICE PROVIDERS

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

Companies can choose to formalise an approach that encourages a commitment from the firms they work with by specifying that firms are expected to be signatories to the National Pro Bono Target and use their best efforts to achieve it. While the questions asked may vary, it is suggested that at least one question enquires about the firm's pro bono performance measured in total hours, and average hours per FTE lawyer per annum and where the firm is not meeting the Target, what steps are being taken to remedy that.[29] Other questions could focus on the nature of the pro bono work the firm (and the particular lawyers to be engaged on the company's work) undertake, how that work is managed and whether there are opportunities for the in-house lawyers to partner with the firm on pro bono matters. The vast majority of firms (87.2% in the Centre's most recent survey), report being asked to respond to questions about their pro bono practices when seeking legal work from companies.[30]

The Centre's recommended questions are set out in **Appendix D – Template pro bono questions for use by corporations in the engagement of law firms.**

These requirements will only be meaningful if both (1) a firm's pro bono performance has some weight in the procurement decision; and (2) there is some follow-up to monitor whether firms are meeting the Target and, if they are not achieving the Target, whether they are adopting measures to improve their performance.

[29] This is the measure upon which the National Pro Bono 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.

[30] Australian Pro Bono Centre Report on the 8th National Law Firm Pro Bono Survey, 2023, section 8.

8. EXAMPLES OF SUCCESSFUL IN-HOUSE PRO BONO PROJECTS

A. Cyberlaw Project – ANZ, ASIC, Telstra, King & Wood Mallesons and Youth Law Australia

A number of companies including ANZ, ASIC and Telstra support the Youth Law Australia (**YLA**) and King & Wood Mallesons (**KWM**)'s Cyberlaw Project. YLA offers online legal information to children and young people, and their advocates, through their website (**www.yla.org.au**). YLA also provides legal information and advice to children and young people, and their advocates, via a Get Help Now portal on their website, email and live chat.

Legal employees from ANZ, ASIC and Telstra participate as cyber volunteers and draft legal information and advice, which is settled and sent to the client by YLA. They volunteer for two hours at a time either from their desk or in the nearest KWM office. Sometimes volunteers may spend more time on a particular matter if needed.

The Cyberlaw Project is administratively managed by KWM in conjunction with YLA, allowing participating companies' lawyers to participate in pro bono legal work with limited administrative impact.

Features that make the Cyberlaw Project effective

- **The time commitment** of around two hours per Cyberlaw Project session **is relatively small** and manageable for all lawyers — particularly those working part-time.
- **The work can be done remotely**. Initially YLA and KWM had their volunteers attend their first five sessions onsite in their training room so they had face-to-face support while they were becoming familiar with the work, but after that, the work could be done remotely. Since 2020, training and attendance has been entirely remote.
- **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. In some instances, it also offers volunteers insights into the challenging and complex societal issues that vulnerable communities face. 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 YLA** which provides introductory training materials for new volunteers, guidance, pro forma advice templates, and further resources that assist the cyber volunteers when they are drafting legal information and advice. YLA does a final review of all the advices and any changes made are shared with the volunteer which is useful and part of the learning experience. There is a quarterly meeting with the project partners to discuss how the project is going. YLA provides excellent feedback, including the results from a children's survey with positive feedback on the impact the advice has had on them. ANZ, ASIC and Telstra have found that the support offered by YLA and KWM is critical in enabling their legal employees to participate in pro bono work
- **The project is national** so employees in every jurisdiction can become involved.

B. Arts Law Centre of Australia's Document Review Service

Lawyers from law firms, small boutique practices, solo practitioners, and in-house legal teams at companies such as IP Australia, Telstra, and the Australian Broadcasting Commission, provide pro bono legal advice through the Arts Law Centre of Australia's (**Arts Law**) Document Review Service (**DRS**).

Arts Law 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, trade marks, business names and structures, defamation, insurance and employment. Legal advice is free or low-cost depending on the nature of the enquiry. Arts Law 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[31] is available to clients who are Arts Law subscribers. Subscribers send any document to Arts Law when they need advice. An Arts Law lawyer (in-house, volunteer lawyer or legal service provider acting on behalf of Arts Law) then reviews the document and holds a telephone 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 the Arts Law service 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.
- **The pro bono legal work is a match with the interests of lawyers.**
- **Arts Law undertakes training for volunteer lawyers.** When a new pro bono relationship with a law firm or corporate is established, Arts Law provides volunteer lawyers with a short training session about how the DRS service works, the types of legal issues Arts Law is likely to refer and the resources Arts Law has available to assist clients, for example, its information sheets, checklists and guides and contract templates.
- **Arts Law provides an easy 'package' for pro bono lawyers** (with a summary of the matter, clear instructions and the relevant documents).
- **Arts Law 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 has an automated message system that sends reminders to the lawyers to provide file notes.
- **Arts Law constantly nurtures its pro bono relationships and seeks to extend its network.**

[31] http://www.artslaw.com.au/services/-

C. Pfizer Australia, DLA Piper and Refugee Legal - Afghanistan clinic

In collaboration with DLA Piper, four Pfizer Australia lawyers partnered with community legal centre Refugee Legal to provide pro bono legal assistance in response to the Afghanistan humanitarian crisis which emerged in August 2021. Under the supervision of the expert legal team from Refugee Legal, lawyers from DLA Piper and Pfizer Australia provided advice to people from Afghanistan living in Australia who were seeking to bring their family members to safety. The clinic – led by Refugee Legal – is supported by pro bono lawyers from a number of organisations. Insurance coverage was provided through Refugee Legal.

DLA Piper and Pfizer Australia lawyers collectively advised more than 230 people from Afghanistan over 12 months, guiding them through the application process and the requirements for reunification visas. During that period, Pfizer Australia lawyers spent over 4 hours per month volunteering for the Afghanistan legal clinic.

"*Assisting with the Afghanistan clinic has been a humbling experience and I am pleased Pfizer Australia is involved in such meaningful work*," said Rebecca Lacey, Pfizer Legal Lead, Developed Asia Cluster & ANZ. "*I hope it inspires more in-house teams to get involved in direct client representation with community legal centres like Refugee Legal, as it is the most important pro bono work we can do*".

D. ABC partnership with First Nations Media Australia (FNMA)

In 2020, the ABC formed a strategic partnership with First Nations Media Australia (FNMA), the national peak body for the First Nations media and communications industry. The objective of the partnership was to support career pathways for Aboriginal and Torres Strait Islander people working in media, increase the visibility of Indigenous stories, and enhance the diversity of First Nations voices and communities represented in the media.

As part of the ABC's partnership with FNMA, ABC lawyers have provided FNMA members with pre-publication advice and training on legal issues including defamation, contempt of court and other statutory restrictions, advice on the commissioning and acquisition of content, and general commercial and intellectual property advice. One of FNMA's members is Ngaarda Media, a not-for-profit organisation in the Pilbara of Western Australia.

Ngaarda Media CEO Tangiora Hinaki said: "*Having access to ABC Lawyers to ask for feedback on our stories has given us the confidence to tell those hard, controversial stories. We do not want to be sued and receiving advice from ABC Legal does not guarantee that we won't. However, if we have done our due diligence with research, balance and getting legal advice, we will be able to face challenges with confidence.*"

ABC Legal Senior Lawyer, Jennifer Arnup said "*The Australian Pro Bono Centre has been very helpful in establishing the ABC's pro bono program. Their Professional Indemnity Insurance Scheme has enabled us to set up our partnership with FNMA and other organisations. As part of the Centre's Buddy Program we were able to seek the advice and support of Geetha Nair, National Pro Bono Manager at the Australian Government Solicitor. Doing pro bono work has given the team exposure to interesting matters that broaden our skills and experience while allowing us to give back to the community.*"

E. UNSW and Matraville Sports High School with King & Wood Mallesons – TalkLaw collaboration

For four years, UNSW's Legal & Compliance Team has been collaborating with King & Wood Mallesons (**KWM**) to deliver the TalkLaw® program to Matraville Sports High School (MSHS) Year 10 students. UNSW has also partnered with MSHS since 2015 through a community engagement program called the UNSW Matraville Education Partnership.

TalkLaw is an Australian community legal education initiative developed by KWM which targets Year 10 students in areas with high migrant backgrounds and/or disadvantage, in order to educate young people about their rights and obligations on topics that will affect them.

The first session delivered by the UNSW Legal and Compliance teams and KWM, covered 'Jobs' and 'Turning 18', and included information on types of employment, terms and conditions of employment, issues at work, drugs and alcohol, sex and consent, contracts, fines and gaining independence. This was followed by a second session on 'Social Media and the Internet", which sparked lots of questions.

For the final session the students attended KWM's offices to participate in a mock trial on discrimination law, to increase the students' ability to identify legal issues early and to know how to find help to respond to a situation. The matter proceeded to conciliation to try to resolve the complaint, with the students defending their client to negotiate a resolution.

The sessions resulted in the students having a greater knowledge of their rights and obligations and an increased interest in enrolling in the Legal Studies elective.

Danny Tran (Year 10 Advisor) said: "*TalkLaw presented the students with the opportunity to engage with legal issues that are relevant to them. The students were so invested in learning and enjoyed the experience of being at the KWM office. This opportunity was received so well, that it empowered some students to become interested in partaking in legal studies in stage 6.*"

Irina (Year 10 student) said: "*I enjoyed being able to go to the KWM office, because it was a great new experience and being able to be a part of a mock trial made it even more cool and relevant!*"

F. American Express with Redfern Legal Centre's Financial Abuse Project

For several years, the American Express legal team has provided pro bono legal support and mentorship to the Redfern Legal Centre (RLC) in Sydney through its Financial Abuse Project. In recognition of its commitment to pro bono work, American Express was invited to become a founding signatory to the National Pro Bono Target for in-house legal teams in 2020, committing 20 hours of pro bono work for each lawyer in the team, every year.

The Financial Abuse Project was set up in 2017 after RLC's Sydney Women's Domestic Violence Advocacy Service identified a significant demand for advice and representation services for women experiencing financial abuse. This issue can have a significant psychological impact on victims and present a substantial barrier for individuals seeking to leave an abusive relationship. Those who have suffered financial abuse are often left with substantial debt or poor credit histories, compounding their financial vulnerability.

American Express's partnership includes a financial contribution and employee pro bono engagement to assist RLC in supporting clients who have experienced financial abuse.

American Express provides two lawyers every 6 months, with each lawyer committing a half-day per fortnight at the Centre's Financial Abuse Legal Service, as well as providing ad-hoc research support on legal and regulatory reform issues. The types of areas the lawyers have advised on include credit, debt and consumer law.

Ryan Rayfield – General Counsel, American Express Australia who has been involved in the Sydney Women's Domestic Violence Advocacy Service, said:

"*Having the opportunity to support the financial abuse clinic at Redfern Legal Centre, has been an incredibly rewarding experience both personally and professionally. Stepping away from the corporate world of leading the American Express legal team in Australia, to listening to the stories of many abuse victims is both grounding and a timely reminder of the fact we should always be looking for ways to utilise our unique skills and experience to give back to the community and to support those less fortunate than us.*"

G. Macquarie Group and Immigration Advice and Rights Centre (IARC) – Afghani Refugee Project

Following the fall of the Afghani government to the Taliban in August 2021, approximately 4,000 Afghani refugees were evacuated to Australia. Upon arrival, those who had fled only held temporary visas (known as subclass 449 Humanitarian Stay (Temporary) visas). To apply for permanent residency, these refugees were required to apply for what's known as a Refugee and Humanitarian (Class XB) visa, within seven days of being approved to do so by the Minister.

As a result of the large number of refugees seeking to apply for permanent residency and the tight timeframes involved, in early 2022, the Immigration Advice and Rights Centre (IARC) (a specialist, not-for-profit community legal centre specialising in migration law and policy) approached Macquarie through a personal connection, seeking assistance from in-house lawyers to complete the Class XB visa application for impacted refugees. IARC provided training sessions to volunteer lawyers and reviewed all completed applications before submission. The work was covered by IARC's professional indemnity insurance.

Over a period of around 12 weeks, 13 volunteer Macquarie lawyers interviewed 20 refugees and filled out the relevant application form on their behalf, often working through an interpreter provided by Multicultural NSW. Volunteers also assisted in the preparation of a statement to accompany the application, explaining why the applicant was unable to return to Afghanistan. Many such applicants were educated women or individuals who had assisted the West during the 20-year period when NATO allies maintained a military presence in Afghanistan – who would face dire conditions if they returned.

Volunteers' assistance in completing the applications contributed towards all 20 refugees assisted by Macquarie being granted permanent residency – a hugely important step in building their lives in Australia after the trauma of having to flee their home country.

Sophie Allchurch, one of the lead Macquarie lawyers said:

'Assisting IARC with the Afghan evacuees project has been tremendously rewarding on both a personal and professional level. The work was incredibly interesting, and I learned a lot about the workings of our immigration system. More importantly, however, the work assisted individuals and families who have fled the horrendous situation in Afghanistan to remain safely in Australia. While it is terrible that these people were forced to flee their homes as a result of the violence and oppression of the Taliban's regime, the security of a new life in Australia, with the knowledge that they are able to remain here for as long as they choose, will hopefully provide a fresh start with new opportunities. Being able to contribute in a small way to that process has been extremely fulfilling and thrown into sharp relief how lucky we are to live in this country. The work that IARC does in this space is incredible – the impact that it has for people who, through no fault of their own, are forced to uproot their lives to protect themselves and their families, cannot be overstated."

H. AMP and the Cancer Council Pro Bono Program

AMP's Legal and Governance team has had an ongoing partnership for pro bono legal work with the Cancer Council NSW since April 2018. As part of the program, the Cancer Council assesses clients as meeting the requirements to receive pro bono legal advice. These clients are then matched with volunteers from the AMP Legal and Governance team who provide legal advice.

AMP's team have assisted on a variety of matters, including travel insurance, life insurance, superannuation and employment law and have also conducted legal reviews on some of the Cancer Council's published booklets such as 'Cancer and Your Finances'.

Through participation in the program, AMP's Legal and Governance team have supported vulnerable cancer patients through various legal matters at a time when clients are experiencing personal and often financial distress. In order to deliver the pro bono assistance, AMP's team obtained insurance through the Centre's National Pro Bono Professional Indemnity Insurance Scheme.

One of the volunteers, Jinan, said that the pro bono program made her feel *"like we're combatting inequities and restoring a sense of justice that access to legal advice isn't always limited to those who can afford it."*

AMP considers that supporting the Cancer Council has been a valuable way for its lawyers and governance professionals to give back and support the community in a meaningful way. It has also helped its lawyers develop an understanding of working with vulnerable customers and dealing with the community directly.

I. Westpac working with MinterEllison to support the Westpac Foundation

Westpac and its legal team, supported by MinterEllison, has partnered with the Westpac Foundation on a number of initiatives including:

- Leading legal clinics for over 100 not-for-profit organisations and social entrepreneurs through the Westpac Foundation's Changemakers Summit,
- Providing legal support to many of the social enterprises supported by Westpac Foundation, including those providing supported employment pathways; and
- Working on governance and other projects relevant to the Westpac Foundation, including rulings relevant to its charitable and tax status.

9. OTHER RESOURCES

The **Australian Pro Bono Centre** has extensive resources that support in-house pro bono legal work:

- ***The Australian Pro Bono Manual*** *– a practice guide and resource kit for law firms*[32]. While directed at law firm pro bono practices, much of the commentary in the *Manual* is also relevant to in-house pro bono practices;
- **Chapters 15** (In-house/corporate lawyers) and **16** (Government lawyers) of *Pro bono partnerships and models – a Practical Guide to What Works*[33]*; and*
- the **in-house lawyer page** on the Centre's website[34] which includes information about the National Pro Bono Professional Indemnity Insurance Scheme and information about sourcing pro bono opportunities; and
- Regular publications including the fortnightly ***Round-Up of Pro Bono in the News*** and the biannual ***Pro Bono Voco***.[35]

The Pro Bono Institute (through Corporate Pro Bono),[36] the American Bar Association,[37] the Association of Corporate Counsel Australia[38] and the Association of Pro Bono Counsel[39] also have in-house resources to assist in-house lawyers establishing and managing a pro bono practice.

[32] http:// www.probonocentre.org.au/aus-pro-bono-manual/.

[33] http://www.probonocentre.org.au/whatworks/.

[34] https:// www.probonocentre.org.au/provide-pro-bono/in-house/.

[35] Subscribe to the Centre's publications here.

[36] http://www.probonoinst.org/projects/corporate-pro-bono/.

[37] https://www.americanbar.org/aba.html.

[38] https://www.acc.com/chapters-networks/chapters/australia/special-interest-groups/pro-bono As at February 2023 some of the links are "Under construction".

[39] https://www.apbco.org.

APPENDIX A

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 practice.

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

Proposal for the establishment of a formal pro bono practice

Executive summary

This memorandum outlines a proposal for the establishment of a formal pro bono practice at [*company name*].

Based on the research undertaken by the legal team, [in consultation with legal service providers, and the legal assistance sector], the most efficient and effective way for [*company name*] to establish a pro bono practice that supports our corporate and social impact objectives is to [*insert practice 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

[*Company 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 impact policy.

A key way in which [*company name*] can contribute to the community is to facilitate greater access to justice through the development of a formal pro bono practice. Many [of our competitors]/[large companies] already have formal practices in place [*insert examples*]. [*Company name*] can also encourage its legal service providers to undertake pro bono work.

[As part of the establishment of a formal pro bono practice, [*company 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 practice each year - *if applicable*.].

Benefits of a structured pro bono practice

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

Lawyers	*[Company]*
• Allows [*company name*]'s lawyers to fulfil their ethical obligations. • Provides opportunities for [*company name*]'s lawyers to develop professional skills and confidence. • Allows [*company name*]'s lawyers to make a tangible contribution to the organisation's social impact strategy. • Assists [*company name*]'s lawyers strengthen their relationships with its legal service providers and internal clients.	• Demonstrates [*company name*]'s commitment to the principles outlined in its social impact policy. • Makes the legal team attractive to high quality legal recruits. • Enhances staff morale, loyalty, and retention of valued employees. • Ensures that [*company name*] is keeping pace with its competitors' social impact contributions.

Proposed practice

Based on the research undertaken by the legal team, in consultation with [*company name*]'s legal service providers and the legal assistance sector, the most efficient and effective way for [*company name*] to establish a pro bono practice that supports our corporate and corporate social impact objectives is to [*insert practice description – see below for some options*].

Option 1 – partner with [insert law firm] and work with them on [insert].

Option 2 – provide legal advice to [insert name of charity or not-for-profit organisation that the organisation already supports].

Option 3 – partner with [insert] Community Legal Centre to support their advice night/clinics/other work.

Option 4 – partner with JusticeNet SA, Law Access (WA), or LawRight (Qld) to provide advice through their Community Health Partnerships or Court and Tribunal Services.

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

Resource commitment

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

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

Prior to any pro bono legal work being undertaken the Pro Bono Manager 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 [*company name*].

Legal service providers' terms of engagement

Most major legal service providers are already signatories to the National Pro Bono Target (**Target**) administered by the Australian Pro Bono Centre. To reinforce this we propose that the terms of engagement for our legal service providers be amended to require firms do so.

[See *Section 7 Encouraging pro bono by legal service providers* and *Appendix D – Template pro bono questions for use by corporations in the engagement of law firms.*]

Request for approval

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

[insert date]

APPENDIX B

Precedent Pro Bono Policy

Guidance Note

This precedent Pro Bono Policy can be adapted by any company seeking to establish an in-house pro bono practice that reflects the company'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 company's commitment to, and support for, pro bono legal work;
- communicate to the company, in particular its lawyers, the purpose of the pro bono practice and how it operates;
- provide a framework for the coordination and organisation of the pro bono practice;
- communicate the company's expectations about the practice to its employees, especially its lawyers; and
- act as a document against which requests for assistance can be assessed and justified.

For other sample pro bono policies please see Corporate Pro Bono on the Pro Bono Institute's website.[40] The Centre acknowledges the Pro Bono Institute's sample documents in informing this precedent policy.

Please also refer to the Australian Pro Bono Manual[41] for other law firm based precedents which can be adapted to the in-house context.

[40] http://www.probonoinst.org/projects/corporate-pro-bono/.
[41] https://www.probonocentre.org.au/aus-pro-bono-manual/.

MELBOURNE By FELIX HAUMANN PEXELS

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 practice will focus on can also be included. See 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 practice share the company's values. This may include particular not-for-profit organisations, CLCs and/or the local pro bono referral organisation. See 1.6 below.

1.1. [*Company name*] operates within the broader community and recognises the importance of supporting the community in a variety of ways, in line with its social impact policy (outlined separately in policy [*insert policy title*]).

1.2. A key way in which [*company name*] can contribute to the community is to facilitate greater access to justice through the development of a practice that in this Pro Bono Policy.

1.3. [*Company name*] regards pro bono as an important aspect of a lawyer's ethical professional responsibility and professional development. They should work to improve the legal system and the community's access to it.

1.4. [*Company name*] strongly encourages members of its legal team to participate in the pro bono practice, 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 [*company 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 practice each year - *if applicable*].

1.6. [*Company name*]'s role in *[industry*] and our commitment to [insert area of need] as part of our broader social impact 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 practice.*]

2. 'Pro bono legal work' defined

2.1. For the purpose of [*company name*]'s pro bono practice 'pro bono legal work' is defined in accordance with the Statement of Principles for the National Pro Bono 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, other non-profit organisations or social enterprises, in each case where their sole or primary purpose is to work in the interests 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 such as a public interest law clearing house.

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 that person can afford to pay for that legal assistance or whether that person's 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 practice – Pro Bono Manager

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. [*Company name*]'s pro bono practice is coordinated and administered by the Pro Bono Manager, appointed by the General Counsel.

3.2. It is the Pro Bono Manager's role to:

A) manage the day to day operation of the pro bono practice, 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 practice; and

v. determining whether there is sufficient capacity at any time to take on the work.

B) promote participation in the pro bono practice, in line with [*company 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 [*company 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 practice;

E) confirm that lawyers participating in the practice hold the 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 practice; and

I) keep the General Counsel informed of the work of the pro bono practice.

4. Assessment of requests for pro bono assistance

4.1. The Pro Bono Manager assesses requests for pro bono assistance, with support from the General Counsel as required.

4.2. The Pro Bono Manager is responsible for:

A) being the contact point for community and/or law firm partners in relation to the [*company's name*]'s pro bono practice;

B) assessing any requests for assistance against the definition of 'pro bono legal work' adopted in this Policy, [together with the company'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 practice, 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.

4.3. The Pro Bono Manager may sit in on the first interview with pro bono clients, particularly with clients that are inexperienced with the law, to ensure that the terms of engagement are clearly articulated and the manner in which the matter is likely to proceed is understood.

5. Pro bono legal work and service standards

5.1 Pro bono legal work undertaken as part of the pro bono practice 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 company's legal time recording policy and performance assessment process.

6. Professional indemnity insurance

6.1 Before a lawyer commences pro bono legal work as part of the company's pro bono practice, 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 legal service provider, community legal centre or pro bono referral organisation), prior to any work being undertaken, it must be confirmed in writing whether the partner's policy will provide coverage to [*company name*]'s lawyers.

6.3 Where the project is being undertaken by [*company name*] independently, or there is no other source of professional indemnity insurance, the Pro Bono Manager 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 (with the client) or memorandum of understanding (with the partner organisation) 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 company resources

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

9.2 For staff whose employment terms require approval of pro bono work as 'secondary employment', [*Company name*] will consider applications for approval from a presumption that the request should be approved, subject to this Policy.

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 practice must report the hours of pro bono legal work they have undertaken per matter to the Pro Bono Manager every six months, or as otherwise required.

10.2 The Pro Bono Manager is to provide the General Counsel with a summary of the hours of pro bono legal work undertaken as part of the pro bono practice every six months, or as otherwise required.

11. Company affiliation

11.1 Although [*company name*] strongly endorses participation in the pro bono practice, lawyers who participate in the practice are not acting in their capacity as a lawyer for the company. They are acting in their personal capacity with support from the company.

11.2 To ensure that this is made clear to pro bono clients assisted through the [*Company name*]'s pro bono practice, 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 Manager.

APPENDIX C

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[42] 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. 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	**Very likely** *The ACT Law Society website states[43]:* *"Any holder of a practising certificate granted by the Council of the Law Society is entitled to engage in legal practice in the ACT as a volunteer providing pro bono legal services through a law practice or under an arrangement approved by the Council."* *The Centre is seeking clarification of some provisions of the Legal Profession Act 2006 (ACT) from the ACT Law Society, but it is clear that lawyers undertaking volunteer legal work through a community legal centre (as defined in section 208) or with the Council's approval do not commit an offence.*	**Yes**
NSW	**Yes** *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 (NSW) 2014) if you hold a current practising certificate as a corporate legal practitioner.*	**Yes**

[42] This assumes that in-house lawyers hold the type of practising certificate normally held by in-house corporate lawyers.

[43] Law Society of the Australian Capital Territory - Practising certificates (actlawsociety.asn.au).

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?
NT	**Possibly** *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 by 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 reg 7(4)), and it is an offence to engage in legal practice when not entitled (Legal Profession Act 2006 s 18(1)), it is a defence if the work was not done for fee, gain or reward (s 18(3)).*	**No**
QLD	**Yes** *In-house corporate lawyers are automatically issued with practising certificates with the following notation:* *"The holder of this **restricted/ unrestricted** practising certificate must not engage in legal practice except to provide in-house legal services as defined in the Act or as a volunteer at a community legal service or a pro bono project approved by the Australian Pro Bono Centre (ACN 102 444 557)."*	**Yes**
SA	**Yes** *You can undertake pro bono legal work if you hold a principal practising certificate (Category A or B) and provide the pro bono legal services as a sole practitioner. Holders of employee practising certificates (Category C) can only provide pro bono legal services through an established community legal centre.*	**Yes**

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?
Tas	**No** *You are restricted to providing legal services to your employer only.*	**No**
Vic	**Yes** *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).*	**Yes**
WA	**Yes** *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).*	**Yes**

[1] http://www.probonocentre.org.au/wp-content/uploads/2016/04/APBC-PI-Scheme-Guidelines-17022016.pdf.

[2] http://www.probonoinst.org/projects/corporate-pro-bono/.

[3] https://www.probonocentre.org.au/aus-pro-bono-manual/.

[4] This assumes that in-house lawyers hold the type of practising certificate normally held by in-house corporate lawyers.

[5] Law Society of the Australian Capital Territory - Practising certificates (actlawsociety.asn.au).

APPENDIX D

Template pro bono questions for use by corporations in the engagement of law firms

The Australian Pro Bono Centre recommends that the following questions be asked by corporations when law firms are tendering to be included on a corporation's 'panel' or 'list' of pre-approved law firms or when tendering to provide services to a corporation for a particular legal matter.[44]

Corporations are encouraged to carefully consider the answers provided by law firms to the following questions when selecting between tendering law firms.[45]

1. **Pro Bono Program:** Please describe the strategy and impact of your firm's pro bono program. For example:
   - *When did your firm become a signatory to the National Pro Bono Target?*
   - *In the last financial year, did your firm meet or exceed the Target?*
   - *Within your firm's pro bono program, what are the key areas of focus and which client groups are you supporting?*
     Please give examples of the impact that your pro bono work is having on your pro bono clients.
2. **Involvement in Pro Bono Program:** Please describe the pro bono work undertaken by the lawyers involved in this tender in the last 12 months.
3. **Collaboration with In-house Team:** Please indicate if your firm has experience collaborating with in-house teams on pro bono work. Would you be interested in discussing opportunities to undertake pro bono work together?

[44] In the Centre's Report on the 8th National Law Firm Pro Bono Survey, 2023, 87.2% of Australia's largest law firms reported being asked questions about their pro bono programs when seeking legal work from corporations.

[45] These questions were formulated by a Working Group comprised of senior leadership of the Australian Pro Bono Centre, the heads of pro bono at Clayton Utz Lawyers and King & Wood Mallesons, senior in-house counsel at Willis Towers Watson and Salesforce, and the President and Immediate Past President of the Association of Corporate Counsel Australia's NSW Chapter.

APPENDIX E

Corporate-Firm Pro Bono Collaboration template[46]

Strictly Private & Confidential

[insert name and address]

Your reference

Our reference

By Email/Mail

[*insert date*]

Dear [*insert name*]

[Law firm] and [Company] pro bono collaboration

We are pleased to confirm the pro bono collaboration ("collaboration") between [Firm] ("***firm's short form name***") and [Company] ("***company's short form name***").

This document sets out the terms of the collaboration in Australia.

1. The collaboration

1.1 The purpose of the collaboration is for [***Company's***] lawyers to work in partnership with [***Firm's***] lawyers in providing legal advice, information and assistance to pro bono clients through a [clinic].

1.2 The [*clinic*] involves lawyers participating in [*name of clinic*].

1.3 Clients will remain at all times clients of [*community legal centre*].

2. Scope of work

2.1 [*Company*] and [*Firm*] lawyers will participate in the Clinic Program by providing advice and assistance to [*community legal centre*] clients as outlined in **Appendix 1.**

3 [Clinic] process overview

3.1 Further information about the process for participating in the [*clinic*] is set out in **Appendix 1**.

4. Charges

4.1 [*Company*] is participating in this collaboration on a pro bono basis. [*Company*] will not be required to contribute to any costs associated with the collaboration.

[46] The Centre acknowledges and thanks DLA Piper for providing this template. Generally the letter would be sent by a firm to the company collaborating on pro bono. This template is designed for a collaboration between a company and a law firm supporting a community legal centre clinic. If the collaboration does not include a community legal centre the template may need to be adapted as different considerations may apply.

5. [Company] roles and responsibilities

5.1 [*Company*] will comply with its own internal pro bono policy to ensure that any conflict issues are identified at the outset.

5.2 [*Company*] will ensure that all lawyers participating in the [*clinic*] do so in accordance with good industry practice and have an appropriate level of skill to advise [*community legal centre*] clients (noting all legal advice is supervised by [*community legal centre*]).

5.3 [*Company*] will:

A) ensure all [*Company*] lawyers participating in the [*clinic*] have completed the mandatory trainings before the first client appointment;

B) ensure all [*Company*] lawyers participating in the [*clinic*] agree to [*community legal centre's*] policies and procedures; and

C) work with the [*Firm*] lawyers in a collaborative manner to complete the tasks within the required timeframe set by the [*community legal centre*] supervising lawyer.

6. [Firm] roles and responsibilities

6.1 [*Firm*] will comply with its own onboarding processes, in accordance with its internal pro bono policy, to ensure that any conflict issues are identified at the outset.

6.2 [*Firm*] will ensure that all lawyers participating in the [*clinic*] do so in accordance with good industry practice and have an appropriate level of skill to advise [*community legal centre*] clients (noting all legal advice is supervised by [*community legal centre*]).

6.3 [*Firm*] will ensure that all lawyers provide the necessary support to the [*Company*] legal team in a timely way and for the entire period of the [*clinic*] to ensure compliance with commitments made to pro bono clients.

6.4 [*Firm*] will:

A) ensure each [*Company*] lawyer is:

I) paired with a qualified [*Firm*] lawyer for each client appointment in the [*clinic*] and

II) connected with the [*community legal centre*] supervising lawyer on the day of attendance at the [clinic];

B) work with the [*Company*] lawyers to participate in each client appointment;

C) provide a prompt response to any queries from a [*Company*] lawyer; and

D) work with the [*Company*] lawyers in a collaborative manner to complete tasks within the timeframe set by the [*community legal centre*] supervising lawyer.

7. Contact

7.1 Your contact point for the collaboration will be [*insert names and titles*] of [*Firm*]. Please direct any queries relating to the collaboration to [*insert name*] in the first instance.

8. Supervision and Insurance

8.1 In the [*clinic*], [*Firm*] and [*Company*] lawyers are required to work as volunteers of [community legal centre] and therefore remain under the supervision of [*community legal centre*] lawyers. For this reason, the [*clinic*] work will be covered by [*community legal centre's*] professional indemnity insurance.

9. Publicity

9.1 On occasion, we may issue press releases or other publications about the firm's pro bono work. External publicity about pro bono work is always subject to [c*ommunity legal centre's*] consent.

9.2 [*Firm*] will seek [*Company's*] approval prior to mentioning [*Company*] in any external publication about the collaboration. Similarly, [*Company*] will also seek [*Firm's*] approval prior to preparing any external publication.

10. Confidentiality

10.1 [*Company*] and [*Firm*] acknowledge that all lawyers participating in this collaboration owe a duty of confidentiality to [*community legal centre*] and their clients. Any information the lawyers become aware of by reason of their participation in this collaboration is to be treated as confidential, is not to be communicated to any other person without the express prior written consent of [*community legal centre*] and this obligation will continue to bind them beyond this collaboration.

11. Termination

11.1 The collaboration will commence on [*date*] and will continue until either party ends the arrangement.

11.2 [*Firm*] and [*Company*] may terminate the collaboration at any time by not less than four weeks' written notice to the other of them.

12. Feedback and complaints

12.1 We pride ourselves in providing high quality service to our clients at all times. If, however, you would like to make any suggestions as to how the collaboration can be improved or, if you are dissatisfied with any aspect of the arrangement, please contact [*insert name, title and email address*].

Please confirm [*Company's*] acceptance of these terms by signing this letter and returning it to us.

We look forward to continuing and further developing our relationship with [*Company*].

Yours sincerely

[*insert signature*]

Date: 2023

.....

Signed by

[*Company*]

Appendix 1[47] – [name of clinic]

General information

[*insert*]

Before client appointment

[*insert*]

Client appointment

[*insert*]

After client appointment

[*insert*]

Follow up client appointment

[*insert*]

[47] This Appendix will generally contain procedures particular to the clinic where the pro bono collaboration is to take place.

PRO BONO LEGAL WORK

A GUIDE FOR IN-HOUSE CORPORATE LAWYERS

This updated second edition of Pro Bono Legal Work - A Guide for In-House Corporate Lawyers is designed to lead corporate teams and individual in-house corporate lawyers step-by-step through the considerations involved in establishing, managing or refining an in-house pro bono legal practice. It also contains case studies that provide interesting insights into the wide range of opportunities for In-House Corporate Lawyers to participate in pro bono legal work.

Topics include:

- the benefits of establishing a pro bono practice
- the National Pro Bono Target
- pro bono and social impact or ESG policies and targets
- practical ways to deliver pro bono
- tips on how to establish a pro bono practice
- the regulatory requirements applying to pro bono legal work by in-house lawyers
- in-house pro bono FAQs
- current examples of successful in-house pro bono partnerships

The Guide draws on the extensive experience of companies with existing pro bono legal practices. It includes proposal and policy precedents to help companies set up and manage their pro bono practices, and gain corporate value through demonstrating the company's purpose to staff and the community.

THE LAW SOCIETY OF NEW SOUTH WALES

ACC Association of Corporate Counsel AUSTRALIA

AUSTRALIAN PRO BONO CENTRE

As in-house lawyers, we are in the privileged position of being able to do legal work – not just for our clients but for those less fortunate than us who cannot afford legal services. The National Pro Bono Target is a voluntary target of at least 20 hours of pro bono legal services per year per lawyer. Just think, with almost 4,000 in-house lawyers being members of the ACC, that would be almost 80,000 pro bono hours per year and what a difference that would make! As Chair of ACC's Pro Bono Committee, I see a willingness and strong desire amongst in-house lawyers to do more pro bono legal work. This Guide is an incredible tool designed to assist those in-house lawyers to either keep doing the amazing pro bono work they've been involved in to-date, or for those who want to get going but don't know how. I commend the Centre, ACC and the NSW Law Society for refreshing and updating the Guide.

Jon Downes,
Chair, Pro Bono Committee,
Association of Corporate Counsel

The Australian Pro Bono Centre's Guide for In-house Corporate Lawyers is a great tool to assist in-house teams on their pro bono journey. It provides support regarding where to start and how to manage pro bono services in an in-house environment. It has been fantastic to see the team engagement that comes from giving back to the community in an area where we can add the most value, using our legal skills and experience.

Rebecca Lacey,
Legal Lead, Developed Asia Cluster and Australia & New Zealand,
Pfizer Australia

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www.probonocentre.org.au