



AUSTRALIAN
PRO BONO CENTRE

PRO BONO LEGAL WORK

A GUIDE FOR
GOVERNMENT LAWYERS

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FOREWORD

The opportunity to work for the benefit of the Australian community is often a primary motivation for government lawyers choosing to work in the public sector. Many government lawyers are inspired to take this interest further by engaging in pro bono legal work.

The value of pro bono legal work in promoting access to justice for the disadvantaged in the community, addressing issues of public interest and supporting charitable organisations is beyond dispute. Pro bono work also provides opportunities for government lawyers, through professional development, enhancing skills and broadening experience.

The case studies described in this guide highlight the high level of professionalism, skill and capability of government lawyers and the importance of the contribution they make to the community through this aspect of their work. These programs and initiatives are making a genuine difference to access to justice in the community.

Some government organisations have recognised this and taken steps to set up programs and policies to support employees in pro bono work. They should be applauded for doing so.

Where such programs and policies are not readily available, government lawyers interested in pro bono work may face questions around issues such as practising certificates, use of government resources and conflicts. This guide is invaluable in addressing these issues and providing real life examples of government lawyers engaging successfully in pro bono work.

The Pro Bono Centre should be congratulated for developing this guide to undertaking pro bono work for government lawyers. It draws upon the extensive experience of key individuals and organisations working in pro bono settings who have dedicated considerable time and effort to ensuring the guide is an essential resource for government lawyers looking to engage in pro bono work. Hopefully with the support in this guide, more government lawyers will be inspired to follow in the footsteps of those already undertaking pro bono work.

Elizabeth Carroll

Chief Legal Counsel, IP Australia

Vice President, ACT Law Society

Chair, Australian Government Legal Network (2015-2019)



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- The government lawyers who responded to the Information and Discussion Paper released by the Centre in 2018 in preparation for this guide, or who otherwise provided valuable input into the contents of the guide.
- The Australian Government Solicitor, which continues to provide invaluable support to the Centre by providing it with government lawyer secondees as part of its pro bono program.
- The Commonwealth Attorney-General's Department and the Victorian Government Solicitor's Office for the Centre's inclusion of their pro bono policies in Appendices A and B. Both policies, as well as the 'Australian Government Solicitor Legal Practice Policy – AGS and Pro Bono Work', are all available on the Centre's website.
- The Centre's former and current staff: Claudia Crause (Former Australian Government Solicitor Secondee Policy & Project Officer), Trent Wallace (Current Australian Government Solicitor Secondee Policy & Project Officer), Gabriela Christian-Hare (Head of Policy & Strategy) and Natasha Rose (Project Officer), with support from other staff and interns at the Australian Pro Bono Centre.

ABBREVIATIONS

| | |
|---------------|--|
| AGD | Commonwealth Attorney-General's Department |
| AGS | Australian Government Solicitor |
| ASIC | Australian Securities and Investments Commission |
| Centre | Australian Pro Bono Centre, formerly the National Pro Bono Resource Centre |
| CLC | Community legal centre |
| DFAT | Department of Foreign Affairs and Trade |
| DPP | Director of Public Prosecutions |
| IMCLC | Inner Melbourne Community Legal Centre |
| KWM | King & Wood Mallesons |
| NCYLC | National Children's and Youth Law Centre |
| VGSO | Victorian Government Solicitor's Office |



1. INTRODUCTION

The Australian Pro Bono Centre is aiming to foster participation by government lawyers in pro bono legal work and provide practical guidance for government legal teams seeking to establish, refine or expand in-house pro bono legal programs.

This guide contains information about the key issues affecting participation by government lawyers in pro bono legal work and draws on the experience of government legal teams with existing pro bono policies and legal programs. It explains why government lawyers should be involved in pro bono legal work, why and how government and its agencies should support and encourage their lawyers to undertake this work and gives examples of the types of pro bono work in which government lawyers can be involved.

'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 legal services for free or at a substantially reduced fee to those who would not otherwise be able to access the legal system, or whose matter raises an issue of public interest. It includes legal assistance provided for free or at a substantially reduced fee for not-for-profit organisations that 'work for the public good'.

While there is no universally accepted definition of what is meant by 'pro bono', the **definition of 'pro bono legal services'**¹ adopted by the Australian Pro Bono Centre is widely accepted in Australia. Pro bono legal work can take many forms, including the provision of community legal education, reviewing documents, advising individuals in clinics, providing legal advice and court representation.

Over the past 20 years, pro bono legal practice has become an important focus of many Australian lawyers. In the 2018 financial year, signatories to the **National Pro Bono Target** represented more than 11,400 lawyers aspiring to do at least 35 hours of pro bono work per year. Forty-seven percent of signatories met or exceeded the Target.² In 2017, the Centre published a pro bono guide for in-house corporate lawyers, '**Pro Bono Legal Work – A Guide for In-house Corporate Lawyers**',³ to encourage and support more in-house corporate lawyers to do pro bono work.

Government lawyers are motivated to undertake pro bono by the same factors that motivate other lawyers, that is, a sense of professional responsibility, and a personal belief in the importance of social justice and access to justice.

Government lawyers comprise approximately 10% of the Australian legal profession,⁴ but only in recent years have government lawyers started to become involved in pro bono legal work in a more structured way. This guide aims to encourage and support more government lawyers to pursue pro bono legal work and to more deeply enmesh pro bono legal work into their activities.

¹ See <https://www.probonocentre.org.au/information-on-pro-bono/definition/>.

² See the Eleventh Annual Performance Report of the National Pro Bono Target, <https://www.probonocentre.org.au/wp-content/uploads/2018/10/11th-Annual-Performance-Report-of-the-National-Pro-Bono-Target-Oct-2018.pdf>.

³ See 'Pro Bono Legal Work – A Guide for In-house Corporate Lawyers', <https://www.probonocentre.org.au/in-house-guide/>, which notes that approximately 150 US-based corporations have adopted the Corporate Pro Bono Challenge® Statement, where signatories agree to use their best efforts to encourage their staff, including their legal staff, to support and participate in pro bono legal service. See <https://www.cpbo.org/cpbo-challenge/>.

⁴ See the Law Society of NSW's 2014 Law Society National Profile Final Report (April 2015), which found that 9.6% of lawyers nationally are government lawyers.



2. WHY GOVERNMENT LAWYERS SHOULD BE INVOLVED IN PRO BONO LEGAL WORK

Professional responsibility of lawyers

A key justification for government lawyers doing more pro bono work comes from the service ideal of the legal profession and the ethical professional responsibilities that are part and parcel of being a lawyer. As the main possessors of legal knowledge and skills, and with a monopoly on exercising these, lawyers have a key role to play in ensuring access to the justice system.⁵ This is often referred to as the 'pro bono ethos' and was eloquently summarised by the Honourable Murray Gleeson, former Chief Justice of the High Court of Australia, in a speech delivered to the National Access to Justice and Pro Bono Conference in Melbourne on 11 August 2006:

“The legal profession is a profession and not only a business; its members have a duty to temper the pursuit of individual self-interest; and 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

Whilst government lawyers already serve the public interest by the very nature of their roles, the professional and ethical responsibility to support access to justice applies to all lawyers, regardless of their place of employment, client focus or area of legal practice. Many government lawyers feel this sense of responsibility profoundly and have a strong desire to help those less fortunate than themselves.

Whether it is supporting an individual who needs legal assistance but can't afford to pay for it, assisting a not-for-profit or community-focused organisation to establish itself or navigate certain legal issues, or working on law reform, pro bono legal assistance contributes to the public good and should be regarded by lawyers as part of their 'territory'. Like their peers in private practice, government lawyers should have opportunities to give back to our community through pro bono legal work, flexibly defined to match their skill-sets and the resources at their disposal.

Professional development of government lawyers

Pro bono legal work not only impacts upon the community, but provides numerous direct benefits to the lawyers who participate. Involvement in pro bono can greatly support professional and personal development and can be highly rewarding and fulfilling for participating lawyers.

⁵ See D Rhode, 'Pro Bono in principle and in practice' (2003) 53 *Journal of Legal Education* 413 at 430.
⁶ <http://probonocentre.org.au/Information-on-pro-bono/conference/na2jpbcc-2006/>.



Through pro bono, government lawyers can apply their existing skills in a new context and develop new technical legal skills as well as different approaches to drafting, research, interviewing, client communication, management, critical thinking and problem solving.

The expanded skill-set and broader perspective that come from dealing with a pro bono client base can also boost confidence and enhance morale. Pro bono legal work enables lawyers to translate their skills and experiences into new contexts, to challenge themselves and recognise their own potential to make a positive contribution, thereby affording lawyers a very deep and immediate sense of purpose.

“ My feedback here is that experience of pro bono volunteering has a positive impact. It helps our lawyers to develop a more rounded approach due to the variety of matters, and provides a sense of making a direct, positive impact...

... It is widely believed that an engaged employee, who is able to make a positive contribution to the community under the auspices of a company pro bono program, is likely to be more highly productive as an employee. ”

Justine Butler
ASIC in the Community Manager, Corporate Affairs

3. WHY GOVERNMENT SHOULD SUPPORT ITS LAWYERS TO DO PRO BONO WORK

Government agencies and departments stand to gain by having their lawyers involved in pro bono as part of the wider profession.

To support their lawyers' professional development

Pro bono legal work is an important component of staff professional development by not only providing opportunities for government lawyers to both develop professional skills but also to better understand the community context in which they undertake their usual work as a public servant. A policy may simply recognise and encourage the government lawyers who already volunteer their legal skills.

Pro bono legal work, which often involves a tension between the use of existing expertise in a new area or in a context where additional skills may be required, can support the development of a variety of skills as well as increased agility and adaptability. The depth of development lawyers can gain from pro bono legal work is not something agencies and departments can often simulate through other forms of training.



Best practice

The myriad benefits that comes from pro bono legal work can result in increased staff loyalty and retention of valued employees and providing these opportunities for lawyers is now considered best practice in the legal profession. Government legal teams that formally encourage pro bono involvement can be even more attractive to high quality recruits. Government lawyers who have come from private practice and have already directly experienced the benefits of pro bono involvement may be particularly keen to continue that involvement.

Ideally, government lawyer involvement in pro bono work should be recognised and formalised by government agencies and departments in a written policy, which provides lawyers with leave, training (if required) and encouragement to both support and facilitate that work.

4. ADDRESSING CONSTRAINTS AND REGULATORY REQUIREMENTS

There are several actual and perceived constraints facing government lawyers who are looking to engage in pro bono legal work. Apart from establishing support from within their agency or department, the most commonly raised issues are conflicts of interest, lack of capacity, practising certificates and professional indemnity insurance.

Conflicts of interest and codes of conduct

Conflicts of interest and reputational risk are important considerations for government lawyers. Section 13(7)(a) of the *Public Service Act 1999 (Cth)* (PS Act) requires all Australian public service (APS) employees to take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment. Similar provisions exist in State, Territory and local government legislation.

Additionally, Codes of Conduct and Values⁷ may apply to government lawyers even when pro bono legal work is undertaken outside of the workplace. The *Public Governance Performance and Accountability Act 2013 (Cth)* (PGPA Act), sections 27 to 29, also places a number of duties on all officials of government entities, including a duty in relation to use of position; a duty in relation to use of information; and a duty to disclose interests which could apply in a pro bono context.⁸

The risk of a real or apparent conflict of interest will vary from case to case and must be evaluated on its own merits by the lawyer considering becoming involved (in consultation with their manager

7 For example, the APS Values and Code of Conduct address the issue of dealing with the public and how to manage conflicts of interest.

8 Ss. 25 and 26 impose a duty on an officer to act with due care and diligence, and to act honestly and in good faith, and for a proper purpose, when "perform[ing] his or her functions and discharg[ing] his or her duties." These provisions are unlikely to apply to situations where an officer is undertaking pro bono work as this is not work done as part of the duties of the officer.



in cases of doubt). A decision may also be made to avoid providing pro bono assistance in a context that may be politically sensitive or ethically controversial. For example:

The *Commonwealth Attorney-General's Department Guidance Note on Pro Bono Legal Work* (September 2012) in **Appendix A** approaches these issues by stating:

You must not engage in pro bono legal work which may potentially conflict with the operations of or damage the reputation of the Department/Government; and

Should a conflict of interest arise in the course of your pro bono legal work you should immediately withdraw from that work and notify your supervisor of the circumstances of the conflict.

The *Victorian Government Solicitor's Office (VGSO) Pro Bono Policy* in **Appendix B** deals with these issues through partnering:

To minimise the risk of actual or perceived conflicts of interest, the VGSO will partner with organisations and provide pro bono services in the name of, and under the auspices of, the partner organisation/s; and

VGSO lawyers working pro bono must immediately notify their manager if an actual or perceived conflict of interest arises ..., or if they are working on a pro bono matter which is controversial or otherwise of particular public interest or notoriety in a legal, policy or political sense.

Legislation varies from State to State in relation to managing conflicts of interest and prescribing codes of conduct for public sector employees. For example, the *Code of Conduct for Victorian Public Sector Employees* provides that public officials may engage in other employment only where the activity does not conflict with their role as a public sector employee, including voluntary work.⁹

The *SA Code of Ethics* does not require employees to obtain written permission to undertake voluntary or unpaid activities unless there is an actual or potential conflict of interest between such activity and their duties and/or role as a public sector employee.¹⁰ Further, the *Public Sector Act 2009 (SA)* allows an employee to privately engage in conduct intended to promote an outcome in relation to an issue of public interest.¹¹ Government employees working for State departments, agencies or authorities are urged to consult relevant legislation, including codes of conduct, before commencing pro bono legal work.

9 Page 13 of the *Code of Conduct for Victorian Public Sector Employees*: https://vpssc.vic.gov.au/wp-content/uploads/2015/03/VPSC_Code_VPSE_WEB.pdf.

10 Page 13 of the *SA Code of Ethics*: <https://publicsector.sa.gov.au/wp-content/uploads/20180411-Code-of-Ethics-for-the-South-Australian-Public-Sector.pdf>.

11 *Public Sector Act 2009 (SA)* s15(2).



To avoid the risk of a conflict of interest arising, government lawyers can choose to undertake pro bono work where conflicts are unlikely, for example in an area of law unrelated to their current employment. These opportunities are likely to arise as part of an existing program run by a community legal centre or other agency which may offer training and will have in place mechanisms to avoid conflicts. Some examples of such work include the provision of community legal education, governance for not-for-profit organisations, mediation services, employment law matters or guardianship, wills, and powers of attorney.

Capacity

A key constraint for a lawyer wishing to undertake pro bono work is their capacity to assist, having regard to the many competing demands for their time and their responsibilities as an employee of government. Whilst lawyers can undertake pro bono legal work in their own time, government is encouraged to explicitly support this professional development by indicating that certain types of leave are available for employees wishing to undertake this work or providing 'time relief'. For example, the AGD Policy indicates that leave available for pro bono work includes Flexitime, Time Off in Lieu, Annual Leave and Leave Without Pay. The VGSO Policy makes available 'time relief' up to 25 hours a year (a lawyer's budget for one week) that applies regardless of whether the pro bono work is performed during or after office hours.

Use of resources

Government resources are to be used for government purposes. A legitimate government purpose is supporting the professional development of its legal staff through encouraging and facilitating its lawyers to undertake pro bono legal work, which in turn assists morale, productivity and retention of staff.

The extent to which government resources can be used to support the pro bono legal work of government lawyers is an issue about which there should be clarity, not only for government accountability, but also for the lawyers.

For example, the AGS Pro Bono Policy¹² provides that:

Lawyers may utilise AGS library and research resources, photocopiers, computers, facsimiles and telephones as required to assist them in their volunteering tasks, provided the expense to AGS is minor.

¹² See the full AGS Pro Bono Policy on the Centre's website: <https://probonocentre.org.au/wp-content/uploads/2015/05/AGS-Pro-Bono-Policy-LPP2-revised-18-October-2012-pdf.pdf>.



Training

One of the issues often raised as a barrier or constraint to undertaking pro bono legal work is a lack of knowledge about the relevant areas of law and practice involved. Those that have volunteered in a community legal centre will know that often basic legal skills and confidence go a long way towards being able to help clients with their problems. Not only are there usually other lawyers on hand who can provide support, in most specialised clinics or in partnership arrangements with a community legal centre, training is an essential element of the program (both cultural and legal issue specific training).

An example of departmental support can be found in the Australian Government Solicitor's Pro Bono Policy that provides:

AGS Lawyers may access study assistance to attend training relevant to their personal pro bono work.

Practising certificates

An Australian legal practitioner may engage in legal practice as a volunteer at a community legal service or otherwise on a pro bono basis on any 'type' of practising certificate under the Uniform Law.¹³ In other jurisdictions the rules vary, however in all jurisdictions a legal practitioner must hold a current practising certificate to be engaged in legal practice, unless exempted by the Act or regulations. Since many government lawyers do not hold practising certificates and are therefore unable to engage in legal practice except in their capacity as government employees, this has been perceived as a barrier to undertaking pro bono legal work.

However, there are many pro bono projects where a senior community lawyer with a practising certificate is the only one on the project 'engaging in legal practice'. Government lawyers who do not hold a practising certificate can perform paralegal or supportive legal work that does not involve providing legal advice or legal representation services. This may involve drafting letters, advice or other documents, however this work is supervised and approved by a team supervising lawyer who does hold a practising certificate and takes responsibility for any legal advice provided to the client. Much of the pro bono legal work that is undertaken by lawyers from private law firms is done on this basis, with the team supervising lawyer employed by a CLC.

For government lawyers who do not hold a practising certificate and need one to undertake pro bono legal work, volunteer practising certificates are now available without charge in most jurisdictions (for associated professional indemnity insurance cover, see below).

13 Uniform Law sub-s 47(5).



Professional indemnity insurance

If a government legal team is partnering with a community legal centre or law firm or working in a clinic, the government 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. To address this, the Centre established the **National Pro Bono Professional Indemnity Insurance Scheme (Scheme)** in 2009, which provides PI insurance to lawyers and paralegals working on pro bono projects that have been approved by the Centre at no charge to the applicant.

Application for insurance coverage can be made through a simple form, and with the aid of guidelines, found on the Centre's website. Coverage is provided to a lawyer supervising a pro bono project who holds an unrestricted practising certificate. Once the project is approved, all lawyers and paralegals working on the project are covered without reference to whether they hold a practising certificate, provided that their names and hours of pro bono legal work are provided to the Centre for each six month period, or as requested. The Scheme is underwritten by Lawcover Pty Ltd, the New South Wales legal PI insurer.

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

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



1. Complete the Application Form available on the Centre's website, www.probonocentre.org.au/provide-pro-bono/pi-insurance-scheme/.¹⁴

When completing the Application Form consider:

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



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



3. Respond to any follow up queries.

¹⁴ <http://www.probonocentre.org.au/wp-content/uploads/2016/04/APBC-PI-Scheme-Guidelines-17022016.pdf>.



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

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



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

n.b. Most applications are processed within 48 hours of receipt.

The risk of a claim arising is very low. The Centre is not aware of any legal work done on a pro bono basis in Australia where a claim has been made for loss as a result of the professional negligence of the lawyers involved.

**1 COMPLETE THE APPLICATION FORM
AVAILABLE ON THE CENTRE'S WEBSITE**



**2 EMAIL THE
COMPLETED FORM**



**3 RESPOND TO ANY
FOLLOW UP QUERIES**



**4 RECEIVE THE CENTRE'S
WRITTEN APPROVAL**



**5 REPORT YOUR PRO BONO
HOURS TO THE CENTRE**





5. WHAT TYPES OF PRO BONO WORK CAN GOVERNMENT LAWYERS DO?

There is a wide range of pro bono opportunities available to government lawyers. The examples below shed some light on the diversity of opportunities, which vary from individual volunteering at a community legal centre, to an online opportunity involving lawyers participating from their desks, to attendance at a local clinic.

The examples also illustrate the diversity of approaches that lawyers and their agencies or departments can take to facilitate their lawyers to undertake pro bono work. Below are some existing examples of the work being done and the approach taken by the department or agency:

A. Department of Foreign Affairs and Trade (DFAT) legal officer volunteering at the ACT Women's Legal Centre

Georgina McKay, Assistant Director (Legal) in DFAT's Transnational Crime Section, regularly provides free legal advice to vulnerable women as a volunteer at the ACT Women's Legal Centre. Georgina has a longstanding commitment to volunteering, including previous roles with Oaktree (a youth run aid and development organisation) and SHINE for Kids, an organisation supporting children with relatives in the criminal justice system. Georgina is currently Vice President of the Women Lawyers Association of the ACT, having been a committee member since arriving in Canberra in 2014.

In August 2018, Georgina was awarded the "ACT Young Lawyer of the Year Award" at the ACT Law Society's Annual Dinner and Awards Night in recognition of her legal expertise and broader contribution to the legal profession, including promoting a culture of pro bono and legal volunteering within the in-house counsel team at DFAT.

B. The ACT Law Society pro bono clearing house

The ACT Law Society has conducted a pro bono clearing house for members of the public since 2004. The scheme assists applicants in two types of matters:

- 'Public interest' law matters that affect a significant number of people or that raise a matter of broad public concern, which should be addressed for the common good; and
- 'Private interest' law matters that have reasonable prospects of success.

Written applications are considered on their merits by a panel of volunteer lawyers who make recommendations to the Law Society on whether a matter should be placed with a law firm in the ACT. Government lawyers from various departments in Canberra sit alongside private law firm lawyers as members of this panel that meets about once a month. The areas of law in which people seek pro bono assistance vary considerably from civil debt to fencing disputes.



C. Lawyers at the Australian Securities and Investments Commission

Since 2012, approximately 44 lawyers from the Australian Securities and Investments Commission (ASIC) have been participating in Youth Law Australia's Cyberlaw Volunteer Project, where legal advice and information is provided by email to youth clients under the age of 25. This project is managed by Youth Law Australia in partnership with King & Wood Mallesons (KWM) and lawyers from Telstra and Microsoft also participate.

Youth Law's online platform allows young people to ask questions about legal issues ranging from family violence to online harassment and employment, with volunteers also being exposed to new areas of law.

ASIC lawyers can engage in this work from Sydney, Melbourne, Perth and Brisbane either from their desk or by attending rostered sessions at KWM offices. Youth Law Australia provides guidance, pro forma advice, and 'Lawstuff' resources that assist volunteers when they are drafting responses. Precedents and final sign off on any legal advice is provided by Youth Law.

In 2015, the Commonwealth Governor General presented 38 ASIC lawyers with an award from the National Association for Prevention of Child Abuse and Neglect for their pro bono work as part of this project.

The work is undertaken as part the 'ASIC in the Community' community program. ASIC in the Community's vision is to provide ASIC's people with opportunities to connect with causes and charities that are important to them. ASIC provides all staff with one day's volunteering leave per year to undertake this work.

D. The Crown Solicitor's Office and Office of the Director of Public Prosecutions in South Australia

The Crown Solicitor's Office (CSO) and the Office of The Director of Public Prosecutions (DPP) in South Australia have both supported their lawyers to take referrals in a variety of matters through the South Australian pro bono clearing house, JusticeNet SA. Both the CSO and DPP have written pro bono policies.

Each lawyer who wishes to do this work is covered by the Centre's **National Pro Bono Professional Indemnity Insurance Scheme**, which is formally recognised as appropriate professional indemnity insurance in South Australia by the Law Society of South Australia.

E. Victorian Government Crown Solicitor's Office (VGSO) pro bono program

In 2012, the VGSO formed an internal committee to develop a pro bono policy and to identify pro bono opportunities for lawyers in its office. A resultant VGSO Pro Bono Policy and Program was created in 2013 endorsed by the then (and subsequent) Victorian Attorney-Generals.

In 2014, VGSO formed a partnership with Brimbank Melton Community Legal Centre (BMCLC)



to assist them with their work. BMCLC provides free legal services through two local offices for disadvantaged people who live, work or study in the Brimbank, Melton and Bacchus Marsh communities. There are a high number of new migrants in their catchment area which make for a culturally and linguistically diverse community.

Staff from BMCLC have provided training to VGSO lawyers on community legal issues with the pro bono program providing orientation, induction and any other necessary training for the staff who choose to be involved. The VGSO graduate lawyers attend the BMCLC St Alban's office once a week for six consecutive weeks and a qualified lawyer is seconded for a three month secondment each year to take part in client interviews, draft documents and to undertake research.

The VGSO also has a relationship with the Inner Melbourne Community Legal Centre (IMCLC) under which the VGSO seconds a lawyer to the IMCLC for a one year term. VGSO lawyers assist clients with issues such as fines and infringements, consumer complaints, debt issues, housing and tenancy matters, intervention orders, family law issues and powers of attorney.

The VGSO actively encourages its lawyers and legal support staff to volunteer.

F. Australian Government Solicitor (AGS) pro bono program

AGS lawyers have a long tradition of serving the public interest and in supporting community interests through pro bono work. AGS established its pro bono program in 2012.¹⁵ This is a natural consequence of its role of supporting the Attorney-General as First Law Officer of the Commonwealth and supporting access to justice measures. AGS became a signatory to the National Pro Bono Target (of 35 hours per lawyer per annum) in 2008. Since then, AGS has worked to increase its targeted pro bono contribution each year and has a dedicated national manager for its pro bono program.

The AGS Pro Bono Policy notes that a successful pro bono program is likely to enhance the attractiveness of AGS as an employer, increase job satisfaction and retention rates, and develop the skills and confidence of AGS lawyers. The AGS Pro Bono Policy serves to encourage and support efforts made by staff in various ways. Under the policy, any employees wanting to engage in pro bono work may approach the national manager, who can suggest opportunities for that employee and discuss any potential risk of conflict. AGS also provides financial assistance for an employee to gain a practising certificate (where required) in order to undertake personal pro bono work and other support, for example, access to library resources.

The Policy also notes that becoming a signatory would be a benefit when tendering for the provision of legal services, as Commonwealth agencies are required to assess a legal firm's pro bono commitment when evaluating legal services tenders to the Commonwealth.

AGS is unique, not only as it is the legal practice representing most Commonwealth departments

15 See AGS's policy on the Centre's website: <https://probonocentre.org.au/wp-content/uploads/2015/05/AGS-Pro-Bono-Policy-LPP2-revised-18-October-2012-pdf.pdf>.



and authorities, but it can only undertake pro bono work that involves acting for a person or body for whom AGS can act in accordance with its functions and powers as provided for under its enabling legislation, the *Judiciary Act (1903)*.

Despite these restrictions, it has provided opportunities for its lawyers to undertake pro bono legal work domestically and internationally. The types of work have involved community legal education, training and support for clinics (where the client is formally acted for by the CLC rather than the AGS lawyer), and assistance to a range of not-for-profit organisations, charities and CLCs, including drafting template agreements or providing general commercial advice. AGS seconds its lawyers to community legal centres and other organisations under its pro bono program. AGS's pro bono program also extends internationally with particular focus on assisting Australia's important partners in the Asia Pacific region primarily through capacity building with the delivery of well-established training courses.

AGS also assisted the Registrar of Indigenous Corporations with the establishment of the LawHelp Pro Bono Referral Scheme, which is a scheme to match up pro bono providers with not-for-profit corporations registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 that require legal help. The idea of the scheme is to support Indigenous Australians by providing pro bono legal advice to Indigenous corporations who have unmet legal needs in the areas of corporate law and governance or other aspects of legal compliance. The scheme offers help to remote and regional corporations which, for a number of reasons and through no fault of their own, cannot access legal assistance. Through LawHelp, AGS has provided pro bono legal advice to a number of Indigenous corporations across Australia.

In September 2018, AGS, working with the Consumer Law Centre of the ACT, launched a new debt-enforcement clinic to assist low-income and vulnerable clients address enforcement action being taken, or at risk of being taken. The clinic is staffed by 9 lawyers seconded from AGS, as part of its pro bono program, supervised by the Consumer Law Centre (CLC) lawyers. The clinic operates from 9.30am to 12.30pm every second Friday. It is designed primarily to assist individuals with consumer-related debt but will not deal with debts owed to the Commonwealth of Australia or business-related debts.

6. WHY AND HOW TO ESTABLISH A PRO BONO POLICY IN YOUR AGENCY OR DEPARTMENT

Ideally, involvement in pro bono work is recognised and formalised by government agencies and departments in a policy, which may be a standalone document or part of an agency or department's wider professional development policy. While it doesn't contemplate that all lawyers will volunteer, entrenching the policy into the everyday operation of the agency or department helps to ensure it becomes a natural part of what working for the agency or department is about.

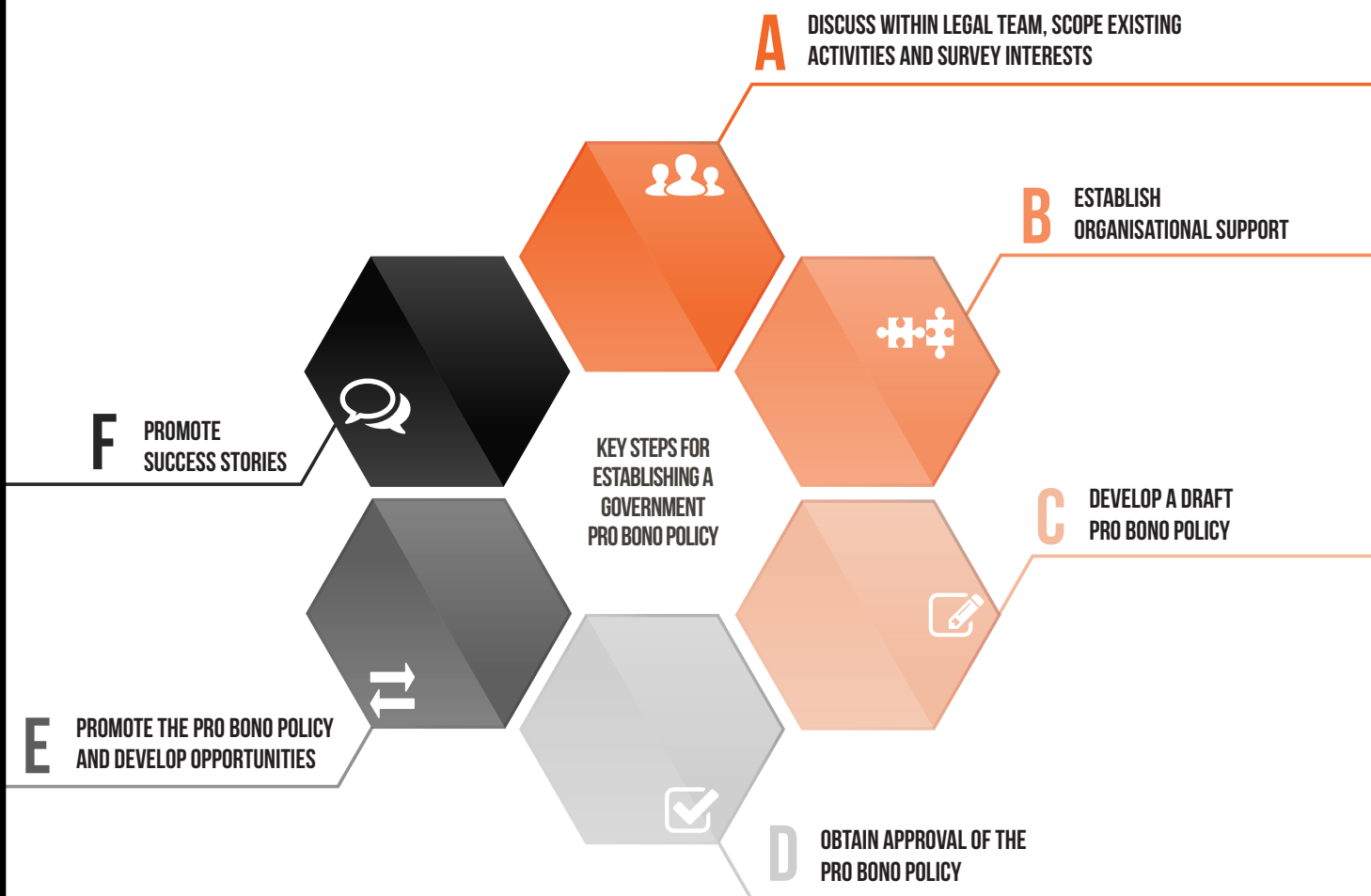
The key steps for establishing an in-house pro bono policy are outlined below.



The time and resources invested in each step will depend in large part on the size and culture of the organisation and its legal team. It is also envisaged that the policy may either:

- (i) support lawyers to undertake pro bono legal work of their choice in their personal capacity and on a voluntary basis, subject to compliance with applicable internal controls and provided that work does not conflict with their normal work activities or their professional responsibilities; and/or
- (ii) involve lawyers in a structured pro bono program through which legal work is directly sourced by the government agency or department and for which involvement by staff is programmed by the agency or department.

Key steps for establishing a government pro bono policy:





A. Discuss within legal team, scope existing pro bono activities and survey interests

Below are suggestions on how a pro bono policy could be scoped. It is not necessary to take all of these steps and, if an idea has already been presented which has general interest, only minimal scoping may be required.

As a first step, it is helpful to appoint a staff member or committee responsible for surveying the interest of lawyers and developing the pro bono policy. 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 to ensure ongoing support for the policy.

That team member or committee should initially survey the legal team on:

- (i) the extent to which staff members already undertake pro bono legal work on an independent basis or have done so in the past. Ask about the nature of the work undertaken and for whom, and for how long they have been involved;
- (ii) staff members' interest in doing pro bono legal work and being on a list of interested lawyers;
- (iii) the type of pro bono work staff are interested in;
- (iv) how the areas of expertise within the legal team might be used in a pro bono context;
- (v) staff members' interest in being trained in a new area of law if opportunities exist; and
- (vi) any concerns about involvement in pro bono work.

The scoping exercise may also consider:

- ideas for the policy from the Head of Legal and other groups within the organisation;
- opportunities for partnering with organisations in the legal assistance sector, such as CLCs, pro bono referral organisations, or working on already established projects; and
- the established pro bono policies of other government legal teams.



B. Establish organisational support

Before a pro bono policy can be established there should be organisational support for the initiative from key senior staff members, such as the Head of Legal/ Head of Agency or Department and with input from human resources personnel. Support at the highest levels of an organisation considerably helps to ensure there is enthusiasm for, and encouragement of, pro bono work.



C. Develop a draft pro bono policy

The next step after the scoping phase is to develop a draft policy to submit to the Head of Legal/Head of Agency or Department or relevant senior management, including human resources personnel, as appropriate. If the existence of organisational support is unclear, or there is no organisational support, the policy could be framed as an interim policy subject to review. This can help build support and interest.

Specifically, the pro bono policy may include:

- **Purpose of Policy:** an outline of the benefits, objectives and purpose of the pro bono policy for the organisation and the agency or department's lawyers, including the role of pro bono legal work in the context of the organisation's objectives.
- **Implementation of Policy:** who will oversee implementation of the pro bono policy, update it when necessary, and be the first point of contact for enquiries about it;
- **How pro bono work will be supported:** whether the pro bono policy will support participating members of the team to seek their own pro bono opportunities and work pro bono in their private capacity and/or whether a structured pro bono program will be established by the government agency or department which will source pro bono work to be rostered to participating staff members;
- **Definition of 'pro bono legal work':** a definition of 'pro bono legal work' ideally consistent with the Centre's definition;
- **Time commitment:** the extent to which time relief or access to various forms of leave for pro bono work will be available to participating staff members, and how pro bono work should be managed alongside normal work commitments;
- **Applicability:** the team members to which the policy applies, including any opportunities for administrative and support staff, trainees who have not yet obtained their practising certificate, and paralegals;
- **Regulatory requirements:** protocols for ensuring that any regulatory requirements are met, including any practising certificate requirements;
- **Register and record keeping:** record keeping and file management processes and the development of a register of staff members interested, and participating, in pro bono work;
- **Raising awareness of policy:** who will, and how they will, raise awareness of the policy.



Additional considerations for a structured pro bono program

There may be an appetite to establish a structured pro bono program within the government agency or department, through which legal work is directly sourced by the agency or department and for which involvement by staff is rostered. This may be so in agencies that have large legal teams, in particular.

There are certain benefits that come from establishing such a program. A program:

- helps to spread the pro bono workload across interested lawyers in a more organised and less piecemeal way;
- enables lawyers to opt in and out according to their availability;
- recognises that an agency and department can provide pro bono support in multiple ways by providing a range of pro bono activities;
- assists support staff to participate; and
- helps to embed pro bono involvement into the very fabric of the agency or department and what it means to be one of its staff members.

The following additional matters should be considered when drafting a policy for government lawyer involvement in such a program:

- **Description of pro bono program:** a description of the program, including the names of the proposed pro bono client(s), key projects or focus areas, the relevant area(s) of law and any particular areas of priority, if known;
- **Resource commitment:** the project duration, and the resource commitment involved, including the level of time commitment from agency or department staff;
- **Management and planning:** how the program will be managed and coordinated, including the nature and cost of any disbursements required for the program;
- **Measurable objectives:** measurable objectives for the policy, such as aspirational team member participation rates, perhaps escalating over a period or subject to regular review;
- **Standard of work:** statements that confirm the organisation's expectations of lawyers participating in the pro bono program. For example, that pro bono legal work should be performed to the same standard, attention and care as government legal work;
- **Protocols for assessing pro bono opportunities:** an approval/rejection process when assessing pro bono opportunities, and the protocols to be followed before entering into pro bono arrangements with a partner organisation, including who needs to approve involvement and how actual or perceived conflicts of interest will be managed;
- **File management processes:** a record of which staff are participating in the pro bono program and other interested staff;



- **Reporting:** any reporting obligations within the agency or department and/or to pro bono partnership organisations;
- **Raising awareness of program:** who will, and the activities around, raising awareness of the structured program.

The pro bono policy should make clear which requirements apply depending on whether a lawyer is working pro bono in their private capacity or through a structured pro bono program.



D. Obtain approval of the pro bono policy

Once the draft pro bono policy has been prepared it should be submitted for approval to the Head of Legal and/or Head of Agency or Department or other senior management, as appropriate.

The pro bono policy should then be formalised in line with the organisation's usual processes.



E/F. Promote the pro bono policy and success stories

Once the proposal and pro bono policy have been approved, any necessary internal systems established, and any regulatory requirements met, the government legal team can begin providing pro bono legal assistance.

It may be that the pro bono policy is approved before opportunities for involvement are sought. If so, at this point seek opportunities that match the interests of participating staff members and support and comply with the terms of the policy. Remember that it takes time to develop the relationships that support the referral of work.

Promotion of pro bono opportunities within government legal teams, and success stories from those who are already involved, can encourage more lawyers to become involved.

See **Appendix A** and **Appendix B**, respectively, for the AGD and VGSO example pro bono policies.



7. FREQUENTLY ASKED QUESTIONS

1. Will pro bono work expose our lawyers or agency/department to risk?

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

If not, government lawyers can apply to the Australian Pro Bono Centre for cover under the **National Pro Bono Professional Indemnity Insurance Scheme**. The Scheme provides free professional indemnity insurance to lawyers and paralegals working on pro bono projects approved by the Centre and is available in every Australian jurisdiction except Western Australia, the Northern Territory and Tasmania.¹⁶

It is important to ensure that protocols and procedures are in place to identify and manage any conflicts of interest and constraints on involvement in pro bono work. Agencies and departments should also ensure all regulatory requirements are understood and met.

2. We're overworked and don't have time to do pro bono work.

Senior management of government legal teams are encouraged to commit to helping their lawyers fulfil their professional responsibility to make the law available to those who cannot otherwise access it, particularly the disadvantaged and marginalised. Without this support it is difficult to find the time.

Involvement in pro bono work is also important for staff professional development by providing opportunities for government lawyers to both develop professional skills and better understand the community context in which they work.

To ensure pro bono legal work is prioritised as a work stream the heads of the government legal team should provide consistent, unambiguous, visible and ongoing support for their team's pro bono work, with a clear pro bono policy. Clear expectations should be set as to how much time legal staff can spend on pro bono work, what types of leave might be accessed to undertake this work, how and when this work can be done, and what level of flexibility is available, to ensure that pro bono work does not interfere with the team's normal workload.

Taking these steps demonstrates the department or agency's commitment to pro bono legal work and conveys a clear message to the legal team and each individual lawyer that pro bono work is regarded as an integral part of a lawyer's practice and that time needs to be allocated within normal workloads to do it.

¹⁶ See the Centre's website for details about the National Professional Indemnity Insurance Scheme: <https://www.probonocentre.org.au/provide-pro-bono/pi-insurance-scheme/>



3. Our areas of legal expertise are specific to our government legal practice areas. What opportunities are there for us to do pro bono work?

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

In some cases, training in the relevant areas of law will be provided by the organisation you work with. Some CLCs, for example, have pro bono programs that cater for government legal teams, and will provide training as required. The National Association of Community Legal Centres provides a directory of regionally-based and specialised CLCs.¹⁷

Basic legal skills and confidence also go a long way towards being able to help clients with their problems.

4. How do we find pro bono opportunities?

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

- pro bono referral organisations, established programs in CLCs and community organisations;
- government panel law firms with established pro bono programs; and
- suitable organisations with which your organisation has an existing relationship (e.g. through any community engagement program).

5. Our organisation wants to establish a pro bono program but has limited capacity. 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. Building a relationship with a CLC may also lead to opportunities for lawyers to volunteer as individuals.

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.

The program should have a coordinator who is responsible for managing the balance and assessing the team's capacity to take on pro bono legal work at any particular time.

17 See <http://www.nacclc.org.au>.



6. Realistically, it's unlikely we'll get approval for a pro bono policy. What are the options for our lawyers?

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

Opportunities for individual-based pro bono legal work include:

- participating in a CLC clinic or volunteering at a community organisation;¹⁸
- starting an individual project (perhaps based on the lawyer's contacts in their community) and seeking professional indemnity insurance through the **National Pro Bono Professional Indemnity Insurance Scheme**; or
- registering to help with a law society pro bono referral scheme.

7. 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.

Client management and self-care — a guide for pro bono lawyers is a training resource developed by law firm pro bono coordinators, with input from lawyers in the legal assistance sector. The Guide can be downloaded from the Centre's website¹⁹ at no charge, and adapted for use by in-house teams.

¹⁸ See <https://www.clcvolunteers.net.au>.

¹⁹ <http://www.probonocentre.org.au/wp-content/uploads/2017/05/Client-management-and-self-care-guide.pdf>



8. USEFUL CONTACTS AND OTHER RESOURCES

Any government department or agency that has an existing pro bono policy will be a useful contact.

Useful contacts

PRO BONO REFERRAL AGENCIES AND ORGANISATIONS:

- Justice Connect: <https://justiceconnect.org.au/>
- JusticeNet SA: <https://www.justicenet.org.au/>
- Law Access (Western Australia): <https://www.lawsocietywa.asn.au/law-access/>
- Law Right (Queensland): <http://www.lawright.org.au/>
- ACT Pro Bono Clearing House: <https://www.actlawsociety.asn.au/public-information/act-pro-bono-clearing-house>
- Pro Bono Clearing House (NT): <https://lawsocietynt.asn.au/for-the-community/pro-bono-clearing-house-2.html>
- Pro Bono Referral Service (Tas): <https://lst.org.au/public-info/pro-bono/>

COMMUNITY LEGAL CENTRES:

- National Association of Community Legal Centres (NACLC): <http://www.nacclc.org.au/>
- Community Legal Centre Volunteers: <https://www.clcvolunteers.net.au/>

Other resources

The Australian Pro Bono Centre has a number of resources that support government pro bono legal work:

- Chapter 16 (Government lawyers) of *Pro bono partnerships and models – a Practical Guide to What Works*;²⁰
- The *Australian Pro Bono Manual – a practice guide and resource kit for law firms*.²¹ Much of the commentary in the Manual is also relevant to government pro bono programs; and
- the in-house lawyer page on the Centre's website²² which includes information about the National Pro Bono Professional Indemnity Insurance Scheme.

²⁰ See <http://www.probonocentre.org.au/whatworks/>

²¹ See <http://www.probonocentre.org.au/aus-pro-bono-manual/>

²² See <https://www.probonocentre.org.au/provide-pro-bono/in-house/>



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

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

Introduction

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



A. What is pro bono legal work?

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

Pro Bono legal work includes:

1. Giving legal assistance for free or at a substantially reduced fee to:-
 - (a) individuals who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or
 - (b) individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
 - (c) charities or other non-profit organisations which work on behalf of low income or disadvantaged members of the community or for the public good;
2. Conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
3. Participating in the provision of free community legal education on issues affecting low income or disadvantaged members of the community or on issues of public interest;

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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



23. In circumstances where an organisation does not provide professional indemnity insurance for pro bono volunteers, the National Pro Bono Resource Centre has established a Professional Indemnity Insurance Scheme to encourage corporate and Government lawyers to undertake pro bono legal work.

24. Cover is available from the National Pro Bono Resource Centre at no charge to applicants from 1 July 2009.

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

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

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

25. As an APS employee you are bound by the *Public Service Act 1999* (Cth) which incorporates the APS Code of Conduct.

26. Section 13 of the *Public Service Act* requires you to take reasonable steps to avoid any real or apparent conflict of interest in connection with your employment. This is your responsibility and applies when undertaking pro bono legal work. Where pro bono legal work involves law reform and/or policy work, particular attention should be paid to the potential for conflict of interest.

27. You must not engage in pro bono legal work which may potentially conflict with the operations of or damage the reputation of the Department. Some examples of conflicts of interest include situations where:

1. the interests of the Department/Government and the host organisation conflict;
2. you may be required to contribute to a policy process in your pro bono role in which you are also involved as a Government employee; or
3. the pro bono legal work requires you to provide advice on potential legal proceedings against the Department or the Government.

28. While approval to undertake pro bono legal work in a personal capacity is not strictly required, it is recommended that you discuss any proposal with your line manager to reduce the potential for a conflict at a broader Departmental or Government level which may not relate to the work you currently do.



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



APPENDIX B VICTORIAN GOVERNMENT SOLICITOR'S OFFICE PRO BONO POLICY

Purpose of the policy

1. VGSO lawyers have a long tradition of using their professional skills to serve the public interest, both through their work for Government and in supporting other community interests, such as the North Melbourne Legal Service. The Pro Bono Policy builds on this tradition.
2. This policy extends only to people undertaking pro bono work on behalf of VGSO through the framework of the Pro Bono Policy. Outside of this framework, VGSO encourages lawyers and non-legal staff to undertake pro bono activities in their personal capacity, provided those activities do not conflict with VGSO activities or their professional responsibilities.
3. VGSO recognises the responsibility of the legal profession, through its members, to provide pro bono legal services. In furtherance of that obligation, VGSO agrees to encourage and support the provision of pro bono legal services by its lawyers and non-legal staff.
4. VGSO recognises that an effective pro bono program will result in improved staff retention (particularly trainee and junior lawyers), increased employee engagement and wellbeing, and will affirm VGSO's commitment to the public good.

Definition

5. VGSO has adopted the Law Council of Australia's definition of pro bono, which provides that pro bono work is where:
 1. A lawyer, without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where:
 - (i) a client has no other access to the courts and the legal system; and/or
 - (ii) the client's case raises a wider issue of public interest; or
 2. The lawyer is involved in free community legal education and/or law reform; or
 3. The lawyer is involved in the giving of free legal advice and/or representation to charitable and community organisations.



Application

6. Lawyers undertaking pro bono work must have a current practicing certificate and must comply with conditions attached to this certificate, including any supervision requirements.
7. This requirement applies regardless of whether a lawyer is working pro bono in their private capacity or through the Pro Bono Policy framework.
8. VGSO will seek to provide pro bono and volunteer opportunities to administrative and support staff, trainees who have not yet obtained their practicing certificate, and paralegals.

Focus

9. VGSO will provide pro bono support through partnering with suitable external organisations.
10. The main areas of VGSO pro bono work will be:
 - 10.1. Volunteers to clinics run by the partner organisation/s;
 - 10.2. Legal training for community legal centres or other non-profit organisations;
 - 10.3. Assistance in preparing law reform submissions; and
 - 10.4. In-kind assistance, including the provision of non-legal resources.
11. VGSO will develop a memorandum of understanding with its partner organisation/s, which will address the types of pro bono work to be undertaken, the level of commitment from VGSO, the frequency of involvement, and any particular areas of priority.
12. Before entering into any pro bono arrangements with a partner organisation, VGSO will obtain approval from the Attorney-General of Victoria (or his or her delegate, as applicable) to enter into the arrangement and to undertake the pro bono work contemplated by the arrangement.
13. When selecting a partner organisation, VGSO will endeavour to minimise potential conflicts and pursue the Pro Bono Priorities.

Implementation of the pro bono program

14. Implementation of the Pro Bono Policy will be overseen by the Pro Bono Committee and will be lead by a Pro Bono Manager. The Pro Bono Committee will be responsible for:
 - 14.1. Ensuring that the pro bono policy is approved and endorsed by the Senior Managers.
 - 14.2. Promoting a pro bono positive workplace culture.
 - 14.3. Raising awareness of VGSO's pro bono program.



- 14.4. Approving the terms of each arrangement with a partner organisation.
- 15. Management of the pro bono program will be lead by the Pro Bono Manager (an existing VGSO lawyer) who will be responsible for:
 - 15.1. Developing and maintaining a register of VGSO lawyers and non-legal staff interested in undertaking pro bono work.
 - 15.2. Being the first point of contact for pro bono queries.
 - 15.3. Liaising with each partner organisation regarding the operation of the arrangement entered into with each partner organisation.

Time relief

- 16. A matter number will be created for pro bono work.
- 17. Time spent on pro bono work (including time spent by members of the Pro Bono Committee and by the Pro Bono Manager) will be recognised and reflected in lawyers' timesheets.
- 18. Unless otherwise stipulated, lawyers performing legal work on a pro bono basis within the scope of this policy will receive time relief for that work, up to 25 hours (a lawyer's budget for one week). Time relief will apply regardless of whether the pro bono work is performed during or after office hours.
- 19. Pro bono involvement must be undertaken and managed alongside VGSO billable work and in the same professional manner that VGSO billable matters are undertaken and managed.
- 20. All lawyers undertaking pro bono work acknowledge that when a lawyer provides pro bono legal services, he or she owes the pro bono client the same professional and ethical obligations that are owed to any paying client and accordingly the lawyer must give that work the same priority, attention and care as would apply to paid work.

Conflict

- 21. To minimise the risk of actual or perceived conflicts of interest, VGSO will partner with organisations and provide pro bono services in the name of, and under the auspices of, the partner organisation/s.
- 22. Notwithstanding the partnering arrangements, it is recognised that conflicts of interest may arise. VGSO lawyers working pro bono must immediately notify their manager if an actual or perceived conflict of interest arises in the course of their pro bono work, or if they are working on a pro bono matter which is controversial or otherwise of particular public interest or notoriety in a legal, policy or political sense.

PRO BONO LEGAL WORK

A GUIDE FOR GOVERNMENT LAWYERS

Pro Bono Legal Work – A Guide for Government Lawyers is an essential guide for individual government lawyers seeking involvement in pro bono legal work and government legal teams looking to establish, refine or expand in-house pro bono legal programs.

Topics include:

- the benefits of pro bono legal work for government lawyers and their agencies or departments
- how government can support its lawyers to do pro bono work
- constraints and regulatory requirements applying to pro bono legal work
- the types of pro bono work that government lawyers can do
- examples of existing government pro bono legal work
- tips on how to establish a pro bono policy
- government pro bono FAQs
- useful contacts and other resources that support government pro bono legal work

The *Guide* draws on the experience of government legal teams with existing pro bono policies and programs, and provides practical guidance to encourage and support government lawyers to pursue pro bono legal work.
