



DLA PHILLIPS FOX

EVERYTHING MATTERS

THE AUSTRALIAN IN-HOUSE LEGAL COUNSEL PRO BONO GUIDE

All you need to know about establishing or joining an existing pro bono program.



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INTRODUCTION

Recently in Australia, pro bono projects have experienced a major surge in popularity among in-house legal teams. It's a trend that has emerged from the United States, where the number of in-house pro bono legal projects has substantially increased over the past eight years.

In Australia, the number of pro bono programs are likely to increase even further with the introduction of a new, free professional indemnity insurance scheme, established by DLA Phillips Fox for the National Pro Bono Resource Centre. The scheme has opened the way for in-house lawyers to participate in the delivery of free legal services to the community.

Given the growing interest in pro bono, particularly among younger lawyers, it is likely that in-house legal teams in Australia will be quick to exploit the opportunities that are now available, to ensure they contribute to their organisations' broader corporate social responsibility objectives. It is a known fact that pro bono programs improve engagement and retention and as such assist employers in remaining competitive in the recruitment market.

At DLA Phillips Fox, pro bono is an important aspect of the firm's past and is an increasingly important part of our future. Our culture and policies encourage pro bono service and volunteerism because community involvement is an essential part of who we are. Our goal is to be a leader in the area of pro bono service delivery in the places where we have a presence.

We have gained extensive experience in pro bono partnerships and as an extension of our own commitment to promoting human rights, access to justice and pro bono we have produced this guide to assist in-house lawyers and corporate legal teams in establishing and managing pro bono projects of their own.

It is our hope that this guide will inspire you, and your organisation on your own pro bono journey.



Tony Crawford, Chief Executive
DLA Phillips Fox

WHAT IS PRO BONO?

The Law Council of Australia defines pro bono as:

- Where a lawyer, without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where a client has no other access to the courts and the legal system; and/or the client's case raises a wider issue of public interest.
- The lawyer is involved in free community legal education and/or law reform.
- The lawyer is involved in the giving of free legal advice and/or representation to charitable and community organisations.

WHY SET UP A PRO BONO PROGRAM?

As lawyers we have a privileged position in society. That privilege is the ability to provide legal advice and representation. With that privilege comes important responsibilities to ensure that everyone is able to access legal advice and to contribute to the administration of justice.

There is also a moral imperative for a commitment to pro bono since, as lawyers, we have the capacity to assist people in a meaningful and life-changing way.

The business case for corporate pro bono

In some cases, the establishment of pro bono projects and initiatives will involve both an investment of time and also a financial investment. Some businesses are more sophisticated than others in identifying the business case for investment in corporate social responsibility (CSR) initiatives.

While pro bono work should always be undertaken for the benefit of the client and/or the community, investment in pro bono may deliver business benefits to your organisation. The business case for pro bono includes:

- Improved legal staff recruitment and retention.
- Increased employee engagement.
- Broader professional experience.
- Improved reputation and profile.
- A tangible legal-team contribution to your organisation's broader CSR strategy.
- The practical demonstration of your organisation's values.

AM I COVERED FOR PRO BONO WORK?

Until recently it has not been possible for most lawyers working in-house to provide pro bono services to the community.

Recent changes to professional indemnity insurance and practising certificates now allow most lawyers to perform pro bono work.

NATIONAL PRO BONO PROFESSIONAL INDEMNITY INSURANCE POLICY

Prior to undertaking any pro bono work, lawyers working in-house should ensure they have appropriate professional indemnity cover in place.

Lawyers working in-house or in government roles can now obtain professional indemnity insurance for pro bono work free of charge through a new insurance scheme established by DLA Phillips Fox, Jardine Lloyd Thomson and the National Pro Bono Resource Centre (NPBRC). The National Pro Bono Professional Indemnity Insurance Policy is underwritten by LawCover and is held by the NPBRC.

[Click here](#) for more information on pro bono professional indemnity coverage, the National Pro Bono Professional Indemnity Insurance Policy and how to apply.

IMPORTANT CHANGES TO PRACTISING CERTIFICATES

As with all legal work performed, lawyers holding a restricted practising certificate will be required to be supervised by a lawyer holding an unrestricted practising certificate.

In many Australian jurisdictions it has not been possible for lawyers holding corporate or government practising certificates to participate in pro bono work, due to a lack of professional indemnity insurance and resultant restrictions placed on those classes of practising certificates.

Now that professional indemnity insurance is available free of charge for in-house and government lawyers participating in pro bono, changes to practising certificates are being made by the law societies, but the position still varies from State to State.

For further information regarding the restrictions in place in your jurisdiction, please contact Nicolas Patrick, Pro Bono Director at DLA Phillips Fox. Alternatively, contact your local law society, and request that any applicable restrictions be removed once you have received confirmation of cover under a scheme of insurance.

HOW DO I ESTABLISH A PRO BONO PROGRAM?

Before establishing a pro bono project it is important to consider the following:

Is there institutional support for pro bono within the legal team, and within the organisation generally?

If not, it will be important to address the lack of support before establishing a pro bono project.

At a minimum you will require the support of the lawyers who will be involved in the project. From a client service delivery perspective, it is important that the lawyers participating in the delivery of pro bono services are doing so voluntarily.

What skills exist in the legal team, and can those skills be matched to an identified legal need in the community?

Case study: A multi-national IT/software company based in the Silicon Valley employs a large team of immigration lawyers to move employees between the company's various bases in the United States and India. The legal team has very deep expertise in immigration law and a passion for human rights and social justice. The legal team enters into a partnership with a peak refugee advocacy group which refers unrepresented asylum seekers to the legal team for advice and representation on a pro bono basis.

Case Study: A major chain of fast-food restaurants employs a legal team at its head office to deal mainly with property matters relating to its portfolio of commercial properties. A number of the legal team have previously worked in large commercial firms where they have participated in regular pro bono work through the firms' pro bono program. The lawyers draft a pro bono policy for the corporate legal team which proposes that each lawyer will be permitted to spend up to 3% of their time on pro bono matters. The policy is approved by the General Counsel. The corporate legal team join the Public Interest Law Clearing House and indicate a willingness

to accept the referral of property law matters. Over the first 12 months the legal team are offered 10 referrals from the clearing house. Due to capacity constraints the legal team accepts six of the referrals. The matters referred include repossession matters where children were at risk of homelessness, and lease advices for charities and not-for-profit organisations.

Is there a legal need that could be met by up-skilling the legal team in an area relevant to pro bono practise?

Case Study: The General Counsel at an investment bank is a strong advocate of CSR and wants the legal team to be a role model for the rest of the bank in making a meaningful and positive, skills-based contribution to the community. He speaks to his legal staff and confirms their willingness to participate in pro bono work. He then contacts the Director of Pro Bono Services at a law firm that provides the bank with commercial advice and discusses pro bono partnering opportunities. After consulting with his legal team about the options suggested by the firm, the bank decides to partner with the law firm on a homeless persons' legal clinic, which operates at lunchtime on Fridays from a CBD homeless shelter. As part of the project, the law firm delivers training to the bank's lawyers on various aspects of poverty law, including housing, CentreLink, fines and small debt matters.

Case Study: A telecommunications company has a community program which focuses on supporting animal welfare. The legal team is asked by the company's CSR Director to consider ways that it could contribute to the company's community program. The lawyers believe that their contribution should be through pro bono, since there is a substantial unmet legal need in the community. The legal team meets with the Pro Bono Animal Law Service and indicates a willingness to accept referrals of pro bono matters. As a part of the project, the lawyers attend animal law conferences, join professional organisations, such as

Lawyers for Animals, and are funded to participate in University animal law courses. The legal team develops substantial skills in this emerging area of the law and become recognised as experts in this field.

HOW WILL WE ACCESS PRO BONO CLIENTS?

As is apparent from the case studies above, many successful pro bono projects are partnerships between in-house lawyers and law firms or community based organisations working at the coal-face that have direct access to people in need of legal assistance.

Collaboration is a key ingredient to undertaking successful pro bono work.

WHAT WILL IT COST?

It is often the case that pro bono work requires a small financial investment in addition to an investment of time.

The types of expenses will include travel costs, disbursements on pro bono matters such as travel, copying costs, filing fees, etc. The costs will depend upon the nature of the project or the matters that you undertake.

Even though costs are likely to be minimal, it is important to understand the extent to which your organisation is able to provide funding to facilitate pro bono work. This may impact the types of matters that you are able to take on.

SAMPLE PRO BONO POLICIES

We have prepared a sample pro bono policy which may be used by in-house legal teams when establishing pro bono programs. The policy may be used in its current form or amended to suit your individual needs. See [Appendix 1](#) for the sample policy document.

PARTNERING OPPORTUNITIES WITH DLA PHILLIPS FOX

DLA Phillips Fox and our exclusive alliance partner DLA Piper have a successful track record of partnering with the legal teams of our clients on community projects.

By partnering with us on one of our already established pro bono projects, your legal team can immediately access clients with real, pressing legal problems.

At DLA Phillips Fox we aim to give all our lawyers an opportunity to contribute to the community through pro bono work. We have a number of established pro bono projects including:

- Homeless Persons Legal Clinics.
- Women's Domestic Violence Court Assistance Schemes.
- Legal Services for Charities and Not-for-Profits.
- Secondment programs with highly regarded Community Legal Centres.
- Mental Health Legal Clinics.
- Indigenous legal projects.
- Community Legal Education initiatives.
- Animal protection.
- Prisoners Legal Service.

If you would like to discuss pro bono partnering opportunities, please contact:

Nicolas Patrick, Pro Bono Director
+61 2 9286 8378
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Or contact any partner at DLA Phillips Fox.

Below is a sample of some of the many projects DLA Phillips Fox and DLA Piper run in partnership with other organisations.

Aspen Institute - DLA Piper lawyers have worked with the Aspen Institute to create, manage and fund the Middle East Investment Initiative (MEII), which is a non-profit organisation designed to facilitate economic development and job creation in the West Bank and Gaza. MEII is now collaborating with the Overseas Private Invest Corporation (OPIC) and the Palestinian Investment Fund, CHF International and local banks to create a \$160 million Loan Guarantee Facility to support small and medium-size enterprises in the Palestinian Territories. This public-private partnership, which has the support of the Israeli Government, will leverage an estimated \$210 million in loans to Palestinian businesses, enabling them to expand and hire additional employees.

Accenture – In Sydney, lawyers from Accenture participate with DLA Phillips Fox employees in a student mentoring program, LEAPS, which involves mentoring students. The DLA Piper Chicago office partners with Accenture lawyers to teach Constitutional Law to fifth graders through the Voices program sponsored by the Constitutional Rights Foundation of Chicago. Lessons focus on the Bill of Rights and the court system. At the end of the program, the students stage a mock criminal trial.

Pfizer – DLA Piper lawyers participate in a seminar series, Strategic Legal Thinking for Not-for-Profit Executives, addressing corporate governance issues. Pfizer organises these seminars for leaders of nonprofits to address some of the legal issues they face.

Sears – Real estate lawyers in the DLA Piper Chicago office partnered with Sears lawyers to represent home buyers as part of the Choose to Own Program. The program enables qualified recipients of housing assistance payments to use them to purchase single-family homes.

PRO BONO CONTACTS

For more information contact our Pro Bono Director Nicolas Patrick on +61 2 9286 8378 or at nicolas.patrick@dlaphillipsfox.com or alternatively, any of the following pro bono contacts in your local area.

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Other important contacts

Public Interest Law Clearing House NSW

Public Interest Law Clearing House Vic

Public Interest Law Clearing House Qld

National Pro Bono Resource Centre

CorporateProBono.org

Australian Corporate Lawyers Association

Pro bono updates

Send an email to legal.updates@dlaphillipsfox.com to subscribe to our regular pro bono updates to help you stay informed on pro bono issues and on the pro bono work undertaken by in-house lawyers.

APPENDIX I

SAMPLE PRO BONO POLICY

Note: The following policy document has been produced as a guide for in-house lawyers wishing to develop a pro bono practice within a corporate legal team. The document is generic in its nature. We recommend that you modify this document to reflect the specific needs and intentions of your organisation. Further examples of pro bono policies adopted by in-house legal teams are available at www.corporateprobono.org

I INTRODUCTION

- 1.1 [Company] has an institutional commitment to Corporate Social Responsibility (CSR).
- 1.2 As part of this commitment, and recognising the substantial unmet legal needs in our community, the legal division will encourage and facilitate the participation of corporate lawyers in pro bono work.
- 1.3 This policy has been endorsed by the General Counsel and provides the framework under which pro bono legal work will be undertaken.

2 STATEMENT OF PRINCIPLES

- 2.1 [Company] regards pro bono as an important aspect of a lawyer's professional responsibility and professional development. Lawyers enjoy special privileges by which they participate in, and are a part of the legal system. They have and always should work to improve that system, and the community's access to it.
- 2.2 Undertaking pro bono work is also an ethical duty that all lawyers must accept. Many in our community are unable to afford legal services. By providing pro bono legal assistance, [Company] lawyers will assist in improving access to justice.

- 2.3 [Company] acknowledges that it owes a social responsibility to the community in which it operates. [Company] accepts that, as a business which benefits from our community, we must also contribute to our community. Through the provision of pro bono services, [Company] lawyers will increase community awareness of legal and human rights.
- 2.4 We will seek to provide pro bono services in a manner which emphasises education and empowerment and result in long-term change in our community.
- 2.5 The decision whether to participate in pro bono initiatives will be up to each individual.

3 DEFINITION

- 3.1 [Company] has adopted the Law Council of Australia definition of pro bono.
- 3.2 The Law Council defines pro bono as follows:
 - 3.2.1 A lawyer, without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where:
 - (a) a client has no other access to the courts and the legal system; and/or
 - (b) the client's case raises a wider issue of public interest; or
 - 3.2.2 The lawyer is involved in free community legal education and/or law reform; or
 - 3.2.3 The lawyer is involved in the giving of free legal advice and/or representation to charitable and community organisations.

4 ASPIRATIONAL TARGET

- 4.1 We encourage [Company] lawyers to adopt a personal aspirational target of 50 hours of pro bono per year.

5 COORDINATION

- 5.1 The General Counsel will appoint a pro bono coordinator from within the legal team.
- 5.2 The pro bono coordinator will have the day to day responsibility for managing the pro bono projects undertaken by the legal team. Specific responsibilities include:
 - 5.2.1 Ensuring that all members of the legal team who participate in pro bono activities have been added to the National Pro Bono Professional Indemnity Insurance Policy held by the National Pro Bono Resource Centre.
 - 5.2.2 Coordinating pro bono projects established by the legal team.
 - 5.2.3 Acting as the first point of contact for [identify referrers of work or specific charities for whom the legal team undertakes pro bono legal work, eg The Homeless Persons Legal Clinic, Public Interest Law Clearing House, the Red Cross, the pro bono coordinator at DLA Phillips Fox].
 - 5.2.4 Arranging for the legal team to receive training in areas of law relevant to pro bono practise.
 - 5.2.5 Promoting a pro bono culture within the legal team.
 - 5.2.6 Working with the CSR Director to identify opportunities for the legal team to integrate pro bono assistance into the broader community program of the organisation.
 - 5.2.7 Collating pro bono data for input to the company's annual CSR report.

6 PRO BONO WORK COMPETENCY, SERVICE AND OBLIGATION

- 6.1 Pro bono work is to be carried out in the same way, according to the same procedures, with the same diligence and timeliness, subject to the same supervision and review, and with the same recognition for time spent, as all other legal work undertaken by the legal team.

7 INTERNAL PRO BONO WORK

Note: This section is only relevant for in-house teams proposing to undertake internal matter-based pro bono work, that involves opening files for individuals or charities. Delete if not applicable.

- 7.1 Pro bono matters will come to the legal team by way of referrals. The sources of referrals include:
- 7.1.1 [Select or insert relevant referrers].
 - 7.1.2 Charities with whom [company name] has an existing relationship.
 - 7.1.3 Community legal centres.
 - 7.1.4 The Public Interest Law Clearing House.
 - 7.1.5 The Law Society/Institute and Bar Association referral services.
 - 7.1.6 Courts and tribunals.
- 7.2 Some matters will come from within the organisation or from other sources. These are to be assessed and approved in the same way and according to the same criteria. They should not receive preferential treatment.

Allocation and supervision

- 7.3 Matters are allocated to solicitors by the Pro Bono Coordinator in consultation with the solicitor's relevant supervisor, and on the basis of interest, availability and expertise.
- 7.4 All pro bono matters should be registered and their progress monitored by the Pro Bono Coordinator. Supervisory responsibility remains within [each team/the General Counsel/the relevant supervising lawyer holding an unrestricted practising certificate].
- 7.5 Participation in pro bono work is encouraged but is not mandatory. This is subject to the normal expectation that a solicitor, except in unusual circumstances, will undertake work that is assigned to him or her by a supervisor who considers that a matter is appropriate for them to handle.

First interviews and terms of engagement

- 7.6 Given the lack of sophistication of many potential clients and their inexperience with the law, special care may be needed in communicating expectations and the way a matter is likely to proceed. The Pro Bono Coordinator should sit in on the first interview with pro bono clients in most cases and should ensure that the terms of engagement are clearly articulated and understood.
- 7.7 The Pro Bono Coordinator should provide assistance to the solicitor handling a pro bono matter to ensure that an appropriate retainer is in place in compliance with the relevant Legal Profession Act.
- 7.8 Time should be recorded on all pro bono matters, especially where the matter involves a potential costs recovery.

Disbursements

- 7.9 The legal team's budget will include an allocation for disbursements in pro bono matters, such as medical or other expert reports, court filing fees and the like. Internal costs such as photocopying, faxing etc will not be charged to the client. Where a barrister is needed, the Pro Bono Coordinator will assist in finding appropriate pro bono assistance.
- 7.10 Local Pro Bono Coordinators should be aware of, and make use of the various mechanisms for obtaining funding for disbursements. For instance, the Law Society of NSW administers a Pro Bono Disbursement Fund. Legal Aid is sometimes granted for the payment of disbursements if the matter is taken on a pro bono basis. All courts have special provisions for seeking relief from the payment of court fees. The Pro Bono Coordinator will assist with such applications.

Recovery of costs

- 7.11 Matters where costs are likely to be recovered and a solicitor is likely to take the matter on a 'no win – no fee' basis would generally not be taken under the pro bono program as there are other sources of assistance available.
- 7.12 All costs recovered on a pro bono matter will be donated to charity.

Charging for pro bono work

- 7.13 The legal team will not charge individual pro bono clients except where costs are recoverable from another party. Recoverable costs will be pursued on the most favourable basis. Contingency fees are not charged.

Adverse costs orders

- 7.14 Adverse costs orders are rarely anticipated by pro bono clients and must be properly explained, where applicable, at the outset of a matter.

8 GUIDELINES FOR EXTERNAL PRO BONO WORK

Note: The following section will be relevant for legal teams proposing to undertake external pro bono work, such as advice clinics, legal secondments, court rosters etc.

Delete if not applicable.

Agencies

- 8.1 Eligible agencies should be non profit organisations working for [insert eg disadvantaged or marginalised people].

Attendance at legal clinics

- 8.2 [Company] has established a free weekly legal clinic [for the homeless at [location]].
- 8.3 Lawyers who volunteer for the clinic must ensure their attendance on their rostered dates. It is the responsibility of rostered lawyers to find a replacement if they are unable to attend.
- 8.4 Lawyers are entitled to be reimbursed for their costs of travel between the office and the clinic.

Volunteer lawyers

- 8.5 When and where lawyers volunteer their time is a matter for the individual. However it is in keeping with the spirit and culture of the organisation to encourage and support such initiatives. This support means being prepared to allow lawyers to leave work in sufficient time for them to perform their volunteer duties and to permit them to make phone calls and to perform other minor work on community agency matters in firm time.

ABOUT DLA PHILLIPS FOX

DLA Phillips Fox is one of the largest legal firms in Australasia and a member of DLA Piper Group, an alliance of independent legal practices. It is a separate and distinct legal entity. For more information visit www.dlaphillipsfox.com

DLA Phillips Fox offices are located in Adelaide Auckland Brisbane Canberra Melbourne Perth Sydney and Wellington. A list of DLA Piper offices can be found at www.dlapiper.com

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