Pro Bono Guide for Law Practices
In 2010, the Law Society published the Pro Bono Guide which highlighted to our members the many pro bono volunteer opportunities available in our legal landscape. The Pro Bono Guide served as a handbook for the new lawyer embarking on pro bono service for the first time or the lawyer seeking to fulfil the recommended minimum number of 25 hours per year of pro bono service.

In 2012, it is my pleasure to introduce to our members the Pro Bono Guide for Law Practices.

The Pro Bono Guide for Law Practices is a welcome reference for law practices seeking to establish, develop or expand their pro bono practices. With detailed practical advice to guide law practices at different stages of their pro bono programmes, it will assist our law practices to chart a steady course in serving the community by facilitating access to justice.

In my 2012 Opening of the Legal Year address, I had mentioned that the Law Society Council is concentrating on making pro bono a pillar activity of the Society and the legal profession. I have no doubt that the Pro Bono Guide for Law Practices will serve as a firm foundation for the building of that pillar.

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President
The Law Society of Singapore
This guide has been compiled for law practices to enhance and encourage the provision of pro bono legal services.

Through a mixture of commentary, advice, precedents and background information, the guide aims to assist law firms wishing to establish, develop or expand their pro bono practices. It will also be of value to individuals who are seeking resources and ideas about pro bono.

The guide is primarily directed to medium and large law practices although some of the resources will also be of use to small practices. Topics have, for the most part, been dealt with as stand-alone modules that will be helpful to law practices at different stages of their programs. Cross-referencing is used to identify other sections of the guide that are relevant to a particular issue.

The first half of the guide (Parts 1 – 2) focuses on policy and procedural issues relevant to practices providing pro bono services. The second half (Parts 3 – 4) contains precedents and pro formas and a resources section.

Part 1 contains a description of current models of pro bono practice, providing a snapshot of the extent, variety and options for pro bono work together with information useful to practices establishing, operating or expanding structured pro bono programmes. Part 2 discusses issues in pro bono practice of particular relevance to practices’ casework practice and procedures. Part 3 contains sample precedents, including sample pro bono policies, procedures and letters of engagement, included to complement the commentary in the earlier sections of the manual. Part 4 contains information and resources for practices, including information about issues and services relevant to pro bono matters and clients, as well as lists of pro bono contacts and schemes and useful websites.

This guide is substantially based on the Australian Pro Bono Manual published by the Australian National Pro Bono Resource Centre and The Victoria Law Foundation. It contains a number of references to the practice in overseas jurisdictions and such references must be read subject to the Singapore legal and ethical rules and regulations and case law.

The Law Society of Singapore Pro Bono Services Office thanks the Australian National Pro Bono Resource Centre and The Victoria Law Foundation for their generosity in allowing us to use information and documents from the Australian Pro Bono Manual.
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1. Planning, Developing & Maintaining a Program

1.1. Planning pro bono for the law practice

“Pro bono”, a short form of the Latin phrase “pro bono publico” means “for the public good”. Although there is no universally accepted definition of what is meant by ‘pro bono’, in the context of the legal profession, it is understood to mean work for an indigent stranger without expectation of reward. The underlying objective is to bring free legal assistance to those in need in our community.

Almost all pro bono programs will benefit from a planned and coordinated approach. The growth of a structured, less ad hoc approach by law practices to pro bono can be linked to the growth in the size of law practices and the need for an approach that embodies a law practice’s institutional commitment to pro bono.

Properly designing, structuring and coordinating a law practice’s pro bono program significantly enhances the ability of the law practice – and particularly mid-sized and large law practices to:

- manage the level of commitment to pro bono work of all kinds;
- track and record pro bono work and consequently measure the benefits and the costs;
- undertake pro bono work on a less reactive basis;
- nurture a law practice-wide culture within a coherent policy;
- provide opportunities for a greater number of lawyers, spread the involvement of lawyers in the law practice (including amongst groups that would not usually be associated with pro bono services), and
provide a greater range of opportunities for pro bono work;

- engage in better supervision and quality control of pro bono work carried out within the law practice;

- provide valuable opportunities for training and experience to lawyers;

- target resources in ways considered most beneficial;

- give a consistent message when communicating the law practice’s activities to the outside world.

A law practice’s pro bono program will have the best chances of success if it:

- has the clear support of the law practice’s leaders;

- is professionally planned (and for larger law practices, managed with a designated pro bono coordinator);

- has a dedicated and significant budget;

- operates according to clear policy and guidelines;

- ensures that, to the maximum extent possible, pro bono work is treated, performed and credited in the same way as other work the law practice undertakes;

- has both in-house and external components;

- is targeted to areas of greatest need where the law practice’s skills and resources can be best utilised; and

- ensures that interested personnel at all levels of the law practice can participate.

**Planning checklist**

It is recommended that Law practices planning their pro bono program consider undertaking the following:

- survey the law practice’s pro bono work, contacts and interest and seek ideas for the program ([see 1.5. Surveying interest](#));

- consider ways to promote a pro bono culture and encourage pro bono in the law practice ([see 1.4. Promoting a pro bono culture](#));

- develop a pro bono policy (this will require decisions to be made about many of the matters noted below) ([see 1.11. Pro bono policy](#));

- identify the nature of the work to be undertaken ([see 1.2. Current models of law practice pro bono](#));

- define pro bono for the purposes of the law practice’s program ([see 1.3. Defining pro bono parameters for the law practice](#));
• determine processes for overseeing and administering the program with clear lines of responsibility (see 1.8, Coordinating pro bono work in the law practice);

• consider unmet legal needs and identify sources of work (see 1.6, Identifying needs and sources of work) and ensure that an individual in the law practice is given responsibility for contacting relevant community service organisations and others (such as pro bono referral schemes) and communicating with them on a regular basis;

• identify possible pro bono work and projects for different teams within the law practice, including ‘transactional’ (non-litigation) work and community legal education;

• identify opportunities for involvement of all levels in the law practice, including new graduates, registered foreign lawyers, trainees and paralegals (where relevant) (see 1.9, Involvement of all levels);

• consider acquiring expertise in particular areas (see 1.14, Training and skills);

• identify how pro bono work will be counted and credited, including for the purposes of assessing performance, remuneration and advancement in the law practice (see 1.10, Counting and crediting time);

• determine procedures for intake, file management and supervision (see 2.1, Casework procedures and 2.2, Supervision);

• create mechanisms to ensure communication within the law practice regarding pro bono work;

• consider record keeping and reporting mechanisms and requirements (see 1.13, Measurement, record keeping and evaluation);

• make arrangements for periodic evaluation of the pro bono program and for making changes to it.

1.2. Current models of law practice pro bono

Pro bono work can take many forms. While much pro bono assistance provided by lawyers involves legal advice and representation in the course of their normal practice, there are many other ways in which lawyers can undertake pro bono work to increase access to justice.

This section discusses various models of pro bono practice, with examples of practices in other jurisdictions. While this is an overview of key models, there may be others, including combinations of those discussed here. The examples cited below do not purport to exhaustively represent law practices’ pro bono practices. A combination of models can be adopted. The models of pro bono practice discussed are:
• in-law practice pro bono;
• outreach services;
• secondments to community legal organisations;
• specialist services;
• volunteering;
• multi-tiered relationships;
• other pro bono opportunities.

In-law practice pro bono

The archetypal form of pro bono is perhaps a lawyer or law practice accepting instructions to advise or represent an individual as part of their ordinary legal practice. The law practice accepts the client’s instructions in the same way it would accept a paying client’s and provides services in the same way, the only difference being that the client pays nothing or pays an agreed, but substantially reduced, amount for the legal services provided.

Advice to and representation of individual clients is, of course, not the only kind of client work that can be done. For e.g. lawyers who specialise in ‘transactional’ work can directly or indirectly improve disadvantaged clients’ access to justice, for example, through the provision of legal assistance to charities, voluntary welfare organisations and non-profit or social enterprises that cater to the community’s needs and concerns.

Law practices can also contribute to community legal education and awareness projects. For example, rather than advising individual community service organisations about the effects of changes in the Mental Capacity Act, a law practice can organise a seminar for representatives of community service organisations working in the eldercare service sector. Similarly a law practice could prepare standard materials to advise particular sectors about the effect of the law in particular areas e.g. the regulatory framework for Charities and IPCs. Indeed, a number of lawyers working for private law practices or elsewhere contribute pro bono to publications such as the Law Society’s Community Legal Clinic manual and content for the Law Society’s Law Awareness Programmes.

Some large law practices employ one or more lawyers to do only pro bono work on behalf of the law practice. While the specialist pro bono lawyer undertakes casework, a significant component of the job may be administrative and involve the screening of pro bono cases and the allocation, coordination and supervision of pro bono work throughout the law practice. The presence and support of a specialist pro bono lawyer may make it easier for other lawyers to do pro bono work as the specialist pro bono lawyer can seek out matters that fit particular lawyers’ interests. The specialist pro bono lawyer can also train others in the law practice and develop
resources relevant to the pro bono practice. They also function as a contact point for external agencies referring work. By employing a specialist pro bono lawyer, the law practice is signalling, within the law practice and externally, that pro bono work is important and warrants specific resource commitment. Care should be taken that other lawyers in the law practice are not quarantined from undertaking pro bono work. Ideally the employment of a specialist pro bono lawyer is accompanied by a policy making it clear that the responsibility for pro bono is shared and fostered more broadly within the law practice.

**Outreach services**

Outreach services involve lawyers providing legal advice, at outreach locations, usually at the premises of a community centre or a community service organisation (e.g. AWARE, Jamiyah, Singapore Association of Women Lawyers and the Singapore Counsel of Women Organization’s Maintenance Support Central). The legal assistance may be part of a discrete project of limited duration, or a partnership arrangement on an ongoing basis.

Outreach programmes conducted by the Law Society include the Community Legal Clinics, the Community Organisation Legal Clinics, the Criminal Legal Clinics in collaboration with the Subordinate Courts Accused in Person Help Centre and the Family Legal Clinics in collaboration with the Family Court Help Centre. Details of these initiatives can be found on the Law Society website.

**Secondments**

While largely unexplored in Singapore, secondments to community service organisations are an effective way for law practices to involve themselves in pro bono activities in the community.

Secondments contribute to the professional development of staff, and also raise awareness of social issues within law practices. Seconded lawyers bring back to the law practice enhanced legal, communication and managerial skills. Law practices also benefit from improved employee morale: secondees often have an increased sense of professional satisfaction. Secondments also increase the visibility of law practice pro bono programs and serve to engender within a law practice an improved sense of community and continuing commitment to pro bono work.

Secondments may be:

- Full-time, part-time or for a fixed period (e.g. three, six, twelve months). A fixed period secondment may be part of a single law practice or multi-law practice rotation that ensures the position is always available to the community service organisation.
- Sessional (for example, a law practice’s lawyer attends a community service organisation to operate an advice clinic one afternoon each
• Short-term locums to cover staff shortage.

Specialist services

Law practices can individually, or in partnership with other law practices or community service organisations, create or contribute to a new specialist legal service (e.g. legal clinics specializing in employment law, criminal or family law).

Besides providing volunteers, the law practice can consider contributing funds, resources and staff to establish and/or maintain a community-based service. In addition to legal advice, the law practice can provide resources such as premises and training to the recipient organisation’s staff.

The Law Society currently runs the following specialist legal clinics with the support of volunteer practices: the Law Society Community Organisation, Criminal and Family Legal Clinics.

A second approach is where a number of law practices work together to establish a new service as a joint project between the two (or more) law practices. Law practices can tie up with corporate in-house legal teams to provide lawyers, as well as non-legal staff, to attend and provide advice and assistance to people in need in a number of community locations each week (e.g. legal clinics at nursing homes for immobile indigent residents). The law practices may also take on matters on an ongoing in-house pro bono basis. Some law practices participate in the project’s organizing committees, some get involved in research and some also contribute other assistance including hosting fundraisers, and making their administrative facilities available for printing publications.

Volunteering for legal aid and assistance programmes

Many lawyers chose to volunteer for legal aid and assistance programmes such as the Law Society’s Criminal Legal Aid Scheme, the Legal Aid Bureau’s panel of volunteer lawyers for civil legal aid and at legal clinics with various organisations throughout Singapore.

Law practices can promote and foster such volunteer activity by:

• recognising the work done by volunteer lawyers as work done for the law practice, for example, by billable hours credit and/or taking the pro bono work into account in performance appraisals;
• offering travel allowance for lawyers undertaking volunteer work after hours;
• actively encouraging staff to undertake volunteer work by promoting the practice in internal newsletters and emails;
• entering into a relationship with a particular legal clinic in which the law practice takes over the responsibility for ‘staffing’ particular advice sessions; generally law practices do this by way of a roster.
arrangement and may also organise training for those on the roster;

• considering the option of establishing a more formal relationship with a legal clinic, for example, seconding a lawyer to the legal clinic on a regular basis either to provide general assistance or to assist in a particular area of law;

• recognising that lawyers may need to leave work early to attend their volunteer session.

Some considerations

It is important that law practices, when encouraging their lawyers to volunteer, be aware of the infrastructure costs that are borne by legal clinics when training, supporting and supervising volunteers. Law practices might consider how they can share in meeting these costs – for example by organising training sessions for new volunteers.

Multi-tiered relationships

Pro bono assistance need not be restricted to the provision of legal advice, assistance and representation of clients. There are a variety of ways in which law practices can offer their expertise and resources to promote access to justice for low-income or disadvantaged people and groups in the community. This may involve forming ‘multi-tiered’ relationships with community service organisations whereby pro bono assistance involves not only direct legal assistance, but other kinds of non-legal assistance that facilitate access to justice.

This might include any of the following:

• providing legal advice and representation to clients referred by the community service organisation, including litigating on their behalf;

• providing legal advice and/or assistance to a community service organization in relation to a particular client matter, including undertaking legal research or drafting documents;

• researching and drafting submissions and representations;

• full-time, part-time or sessional secondments of staff to community service organisations;

• preparing or updating community and other legal education materials, such as fact sheets and training materials;

• advising and/or drafting work in relation to internal management issues of community service organisations (for example, taxation, incorporation and organisational structures, employment law, tenancy law, intellectual property, privacy or occupational health and safety);

• providing training to community service organisations (for example, on changes to charity law) or to staff of community service organisations;
organisations (for example, on changes to personal injury and family law);

- encouraging legal staff to volunteer at community legal centres (for example, by organising rosters of staff volunteers, providing billable hours credit, travel allowance or taking staff members’ volunteer service into account in performance appraisals).

In addition, multi-tiered pro bono relationships might involve forms of non-legal assistance such as:

- administrative services, including word processing and photocopying;
- information technology services, including access to precedents and advice on IT issues, developing databases and intranet systems;
- assistance with design and/or publication and printing of hard copy or on-line resources and materials (for example, reports, newsletters, brochures or business cards);
- mail-outs (for example, mailing out a centre’s annual report);
- human resource management advice and assistance (for example, revising personnel manuals);
- secondment of non-legal staff, including on a part-time or occasional basis;
- training for administrative staff;
- access to law practice facilities (for example, rooms, equipment and catering for meetings, conferences and training seminars);
- donations by the law practice or individual staff including cash donations to support the service or a particular position in it or for specific activities (for example, holding conferences, paying for conference attendance or for the translation of training materials) and donations of equipment (such as computers or furniture);
- access to library resources including the on-line library resources of the law practice and research by librarians;
- assistance with fundraising events and conferences (including providing premises and administrative support, hosting events, organising speakers and designing and printing invitations and brochures); and
- assisting in the management of the service through membership of the service’s board or management committee.

**Other pro bono opportunities**

**Pro bono relationships with corporate clients and their in-house counsel**

While largely unexplored in Singapore, this model has been very
successful in the United States. Under this model, a law practice may provide training to one of their corporate client's in-house legal departments on a particular area of law, for example, domestic violence. The in-house legal team can then participate in a domestic violence advocacy program. Variations on this model could include using the Singapore qualified in house counsel to work in a law practice's pro bono clinic, or both teams working collaboratively on a pro bono matter. The responses to these kinds of joint ventures in the United States have been enthusiastic, and these initiatives are seen to confer benefits on all involved. These kinds of joint projects can assist the law practice foster or cement ties with the corporate client, and give corporate lawyers the opportunity to be involved in community work otherwise not easily accessible to them.

Law practices may be well placed to gauge and assist corporate or private clients with an interest in making philanthropic contributions to causes or organisations. In these cases, law practices can connect the client with appropriate organisations or even assist the client to establish and develop appropriate structures of pro bono assistance.

Joint responses to particular events

Overseas, law practices and community service organisations have joined forces and expertise to provide services to people affected by particular events, for example, in Aceh after the tsunamis, Jabiluka (Australia) and the Olympics. These specific-purpose relationships tend to be of limited duration and can include training and legal education as well as advice to, and representation of, individual clients.

1.3. Defining pro bono parameters for the law practice

An important feature of a coordinated pro bono program is the definition of the type and scope (parameters) of pro bono work a law practice will undertake. Defining the pro bono parameters for the law practice helps to structure the nature of the work and ambit of the program and provides criteria against which requests for assistance can be assessed. Such a definition also enables the law practice to communicate its expectations and priorities to partners and staff and to the community and allows more proactive planning of pro bono projects. A definition is particularly important where law practices have a pro bono budget and/or targets. Law practices need to be able to determine which work and activities get allocated to that budget as opposed to budgets for other programs in the law practice, for example, a donations program. Similarly, a definition is necessary if pro bono work is to be recorded and recognised, for example, as billable hours or as part of total productive hours and considered for the purpose of performance evaluations and compensation or in other ways. Put simply, what kinds of work will 'count' within the law practice for these purposes?

A law practice’s definition of its pro bono parameters is usually
set out in its pro bono policy. Some law practice pro bono policies provide a definition with criteria; others may have a general definition and provide more explicit criteria elsewhere in their policy or in procedures documents or manuals.

**The Law Society’s definition of pro bono contributions**

Pro bono contributions are defined by the Law Society as:

The delivery of legal services or the provision of training without charge or expectation of fee (honoraria excepted*), defined as follows:

(i) legal services rendered to a person of limited means;
(ii) legal services to charitable, religious, civic, community, governmental or educational organisations in matters designed to address the needs of persons of limited means;
(iii) legal services to charitable, religious, civic, or community service organisations in matters in furtherance of their organisational purposes; and
(iv) training intended to benefit legal service organisations or lawyers who provide pro bono services.

( * These include Schemes for which honorarium is received for pro bono services provided such as the Legal Aid Bureau Scheme and the Supreme Court’s Legal Aid Scheme for Capital Offences. In a fee paying case, a lawyer’s billable hours may be deemed pro bono when the client and lawyer agree that further services will be provided voluntarily. Legal services for which payment was expected, but is uncollectible, do not qualify as pro bono legal services. Lawyers providing pro bono legal service need not undertake an investigation to determine client eligibility. Rather, a good-faith determination by the lawyer of client eligibility is sufficient.)

A number of law practices with pro bono programs also do other work that benefits the community – for example, donations programs, sponsorships, community directorships and non-legal volunteering with charities. These sorts of activities are not only beneficial to the community but also give the law practice’s non-lawyers the chance to be involved in community work. There are also synergies that can arise from combining pro bono work with community service work. Nevertheless, law practices may wish to delineate their pro bono programs from their other community service work in order to keep the focus of the law practice’s pro bono work on activities that enhance access to justice. Lawyers and law practices are in a unique and, in most cases, monopolistic position to undertake such activities.

**Specific criteria for the law practice’s pro bono work**

Criteria or guidelines as to what work will be taken on under the
law practice’s program, on what basis and for which clients, enable the law practice to decide in advance on the nature of its program. Criteria allow decisions not only to be fairly made, but also defended. They also enable referring agencies to know when a referral will be appropriate. A law practice may wish to make satisfaction of all criteria mandatory or it might chose to make some criteria merely ‘preferable’ matters to be taken into account in a balancing process.

Law practices should consider developing criteria to deal with the following matters (which are discussed in more detail below):

- the nature of the work;
- the basis on which services will be provided;
- the kinds of clients eligible for assistance (client criteria);
- law practice-related criteria.

**Nature of the work**

Law practices should determine the nature of the pro bono work they are prepared to undertake, for example, legal advice and assistance, policy work, community legal education; work done within the law practice and externally (for example, secondments); non-legal assistance in certain circumstances.

The nature of services provided or supported in a pro bono practice can include:

- representation for civil and criminal pro bono cases;
- legal clinic advice;
- undertaking transactional legal work, for example, incorporating associations, drafting contracts, negotiating leases, property work; and
- negotiation services.

**In-house matters**

Law practices should consider developing criteria for the kinds of in-house legal work they wish to undertake. These ‘case’ criteria might involve matters such as: if the case is litigious, it must have reasonable prospects of success and there must be no other assistance available (for example, legal aid). Some law practices choose to give priority to particular kinds of cases, for example, domestic violence or employment law cases or to particular kinds of clients.

Some law practices accept any meritorious casework in relation to which they have expertise.

**Other work**

A number of law practices have been actively involved in
activities such as research and submission writing and community legal education initiatives such as conducting seminars and writing materials, including facts sheets and guides. In addition to providing valuable outcomes for the community, these kinds of work can also be enormously satisfying for those involved and offer opportunities for a range of people within the law practice to engage in pro bono. In practice law practices tend to undertake these activities in conjunction with community legal centres or other, often peak, community service organisations.

Law practices may also wish to make clear in their definition of their pro bono parameters, or elsewhere in their pro bono policies, whether their program covers assistance in the form of secondments and also in-kind assistance to community service organisations that promote access to justice (see, for example, 3.2. Sample pro bono policies: 1).

The basis on which services are provided

Law practices need to determine the bases upon which services will be provided in their pro bono programs. Pro bono more commonly includes services provided free of charge or for a substantially reduced fee (e.g. an honorarium). Law practices may choose to retain a degree of flexibility, especially in relation to charging fees for pro bono work done for charities and other non-profit organisations (see, for example, 3.2. Sample pro bono policies: 2 and 3.3. Sample pro bono procedure). If services are to be offered for a reduced fee, clients should be made fully aware of the extent to which they will be required to contribute to the costs of the case and referring agencies need to know that clients may be charged.

Client criteria

Most law practices and pro bono referral schemes consider the financial means of the client and usually take into account whether there is any other assistance (such as legal aid) available to the client. Thus a law practice’s assessment criteria for its in house pro bono programme may refer to disadvantaged people and/or to people and non-profit organisations that cannot afford to pay full market rates. It is arguably neither possible nor desirable to have a means test that sets a cut-off for eligibility at a certain dollar level of weekly income or above a certain level of assets. This is problematic enough for legal aid agencies, particularly given the differing expenses that people have and the fact that people can be asset rich but income poor.

In addition, pro bono services arguably extend to the ‘sandwich class’ – people that fall outside the legal aid eligibility guidelines but are unable to afford a private lawyer. The usual means test adopted by law practices is not expressed in terms of dollar amounts, but rather an inquiry into the client’s capacity to pay for legal assistance. In some law practices, capacity to pay might be considered a less
relevant consideration in public interest and test cases for the public benefit.

Some law practices’ criteria give priority to particular client groups, such as people with disabilities, people from non-English-speaking backgrounds or clients with children.

Many law practice pro bono clients are charities and other non-profit organisations working for disadvantaged people. A ‘capacity to pay’ means test may also be applied to these organisational clients. For example, the American Bar Association’s definition of pro bono includes work done for stated kinds of organisations ‘where the payment of standard legal fees would significantly deplete the organisation’s economic resources or would be otherwise inappropriate’.

**Law practice-related criteria**

Other criteria that law practices may wish to add to their parameters for pro bono engagement, or include elsewhere in their pro bono policy, are:

- capacity of the law practice:
  - conflicts of interest (Whether there is an actual or potential conflict of interest);
  - law practice resources (What resources will likely be required? Does the law practice have available resources?);
  - expertise (Are there people within the law practice with sufficient expertise?);
- staff development (Does the matter afford opportunities for training or education?);
- community profile (Does the matter allow the law practice to develop its community profile?).

**1.4. Promoting a pro bono culture**

The motivations for a particular law practice or individual to undertake pro bono will vary. They may be based on a sense of responsibility or obligation and/or on perceived benefits for the law practice or the individual staff members. Strategies to promote pro bono will need to accommodate these diverse motives. This section looks at some of these motivations, outlines strategies for promoting a pro bono culture and addresses some common concerns within law practices about pro bono work.

**Motivations for and benefits of pro bono work**

**Professional responsibility**

A primary motivating factor for pro bono work is recognition of lawyers’ moral and professional responsibility to assist those in the community who are unable to obtain legal aid and are otherwise
unable to afford legal representation. This responsibility arises because of lawyers’ role and privileges as professionals and has been widely recognised.

**Business responsibility**

It has been argued that law practices, as businesses, also have ‘corporate citizenship’ obligations to the community and that these obligations may extend beyond attempting to meet particular needs at a particular time: ‘corporations are also charged with the responsibility for working for change in society, including the long-term good of the communities in which they operate’.

**Increased job satisfaction and retention rates**

Pro bono can increase job satisfaction. Many lawyers enjoy and benefit personally from the opportunity to make a social contribution in this way. Retention rates increase as lawyers get more varied work, more satisfaction from and more control over their work.

**Development of skills and confidence**

Pro bono work allows lawyers and others to develop their legal and managerial skills. The perception that pro bono work will make them more skilled lawyers can be just as significant a motivating factor as their social justice commitment, particularly for young lawyers.

Assisting pro bono clients may broaden lawyers’ communication and inter-personal skills beyond those required to deal with commercial clients. Some pro bono matters also offer opportunities for lawyers to develop their advocacy skills.

Lawyers develop confidence as they recognise their abilities to assist clients and extend their skills. This transfers positively to the way they approach their other work.

Pro bono projects may allow lawyers from different practice groups to work together as a team, in creative and collaborative ways.

**Recruitment**

New graduates and others perceive pro bono as offering interesting work, professional development and the opportunity to contribute something worthwhile to the community. Many law practices report that students being interviewed for post-graduation employment inquire about their law practice’s pro bono programs and opportunities to do pro bono work including, for example, casework. These students perceive that pro bono will, among other things, give them the opportunity to deal with ‘real clients’ and ‘real cases’. Particularly with law practices where starting salaries are essentially the same, a pro bono program is a means for a law practice to differentiate itself from competitors in the employment
Reputation

Pro bono improves the public’s perception of the law practice and of lawyers generally. In the United States in particular, pro bono activities have become an important part of how law practices define and present themselves externally. It can be a key point of differentiation in the market, of interest to potential clients, and it can enable the law practice to strengthen relationships with existing clients.

Some potential clients may look to retain law practices that have also demonstrated a commitment to community involvement. Law practices can discuss pro bono with their corporate clients and explore possibilities for joint projects allowing the law practice to nurture and build relationships with its existing clients as well as providing benefits for the people assisted by the projects. There may be scope for a law practice’s pro bono program to complement a corporate client’s community-relations strategy. For example, the law practice could add a legal component to a particular charity project of the corporation. Some law practices participate in pro bono projects in partnership with in-house counsel employed by their corporate clients. Other law practices arrange for their corporate client’s in-house lawyers to work in the law practice’s pro bono clinic.

Some major corporations in Australia, in tendering out their legal work, are starting to ask bidding law practices to describe their pro bono work. This reflects developments in the United States.

Strategies to promote pro bono

The following are some general strategies to promote a pro bono culture within a law practice. Some are particularly relevant to the start-up phase of a program, others to building, maintaining and developing the program over time.

Information and support

In law practices without an established program or with a small ad hoc one, individuals interested in building the program might consider the following:

- find out what other law practices of a similar size or position are doing;
- gauge the level of interest and support within all levels of the law practice, particularly at the partnership level;
- survey people in the law practice as to their interests, expertise and contacts (see 1.5.. Surveying interest);
- identify key supporters who will assist in promoting pro bono within the law practice.
Support from senior management and other partners

Successful pro bono programs require consistent and unambiguous support from senior management. That support then needs to be communicated to all in the law practice by, for example, a formal partnership resolution. Partners can also demonstrate their support in other ways such as:

- being involved in drafting and/or settling the law practice’s pro bono policy or otherwise actively endorsing that policy;
- participating on the pro bono committee;
- meeting to discuss pro bono activity;
- hands-on involvement in pro bono work;
- encouraging lawyers in their group or department to undertake pro bono work and supporting and supervising them in that work.

Clear commitments, goals and expectations

There are many ways a law practice can make clear its commitment to pro bono. These include:

- creating structures;
- treating pro bono work as billable work or otherwise recognising it;
- circulating memoranda from managing partners about the program;
- developing a pro bono policy;
- integrating pro bono in the normal business activities of the law practice;
- describing their pro bono commitment on their websites and in other external and internal publications.

Law practices might wish to set goals for their programs. These could be numerical goals, for example, numbers of matters or hours, or more general goals, such as being responsive to need or servicing particular geographical areas. Such goals should be communicated internally, explaining why the law practice considers pro bono important. A law practice’s policy could include targets for the law practice and/or for departments or individuals (see 1.7. Setting targets and budgets). It would ideally communicate the law practice’s expectations of its lawyers from paralegals to partners by making it clear that all are encouraged to participate, or should participate or, as is the case in some law practices, that all are required to participate by at least working a stated number of hours, or number of matters, per year. Pro bono could also be specifically included in employee job descriptions.
Structures, policies and procedures

Appointing pro bono committees and creating positions such as pro bono partners and coordinators, sends clear signals to people in the law practice that the law practice’s management is serious about pro bono as well as providing very practical mechanisms for administering the law practice’s program. In addition, committee structures allow a number and range of people to get involved in planning and overseeing the law practice’s program and broaden the sense of ownership of it (see 1.8. Coordinating pro bono work in the law practice).

Developing a pro bono policy and procedures indicates the law practice’s commitment as well as providing a structure for the program. Wide involvement in the development of the policy is desirable and some commentators have stressed the particular importance of ensuring that all partners have the opportunity to become involved in creating the policy. The policy should be widely and regularly circulated and feedback about it encouraged.

Recognition of pro bono work

One of the most effective means of encouraging pro bono work is to recognise it. The seriousness of a law practice’s commitment to pro bono is reflected in its policy on counting pro bono for the purposes of productivity, evaluation, compensation and advancement within the law practice. Volunteers will most readily be forthcoming if their pro bono work is recognised by the law practice for all of these purposes. Increasingly law practices in other jurisdictions are counting and crediting pro bono work as billable hours, and lawyers are being appraised on the work done in pro bono matters, as they would be for other clients; or law practices are using other means of ensuring that lawyers are given both budgetary and performance recognition for their pro bono work (see 1.10. Counting and crediting time). The law practice’s pro bono policy should make clear how the law practice will count and credit time (see, for example, 3.2. Sample pro bono policies and 3.13 Encouraging pro bono).

There are additional and important means of recognising and thus encouraging pro bono work.

These include:

- reporting internally on participation in pro bono, thanking named participants;
- describing matters undertaken and clients assisted;
- holding annual lunches, dinners or other functions to celebrate the law practice’s pro bono work and to thank participants;
- inviting participants in the program to give presentations at law practice seminars;
- producing pro bono annual reports;
• giving priority to pro bono participants when deciding who should attend certain conferences and events;
• formally acknowledging and rewarding pro bono effort.

Integration, publicity and involvement

A pro bono culture will be enhanced by integrating pro bono into the law practice’s business and procedures so that it becomes an expected part of life within the law practice. This will require the law practice to develop opportunities for all in the law practice to participate. These opportunities will then need to be publicised within the law practice. Some lawyers may not be aware of the possibilities for undertaking pro bono work within their practice areas or contributing in other ways.

Particular strategies might, depending upon the size of the law practice, include:

• providing a variety of work to suit the interests and capabilities of lawyers;
• ensuring that appropriate support and supervision is provided;
• integrating pro bono in regular law practice communications and at law practice functions, partners’ retreats and the like;
• including pro bono in orientation programs for new staff, both lawyers and non-lawyers;
• building pro bono into regular department or practice group meetings, so that it becomes a regular part of their reporting;
• organising associates, partners and others to give case presentations on pro bono matters at practice group or departmental meetings and provide information on how others can become involved;
• providing regular opportunities for people in the law practice to express interest in being involved in the program, for example, through emails seeking volunteers for particular cases or projects, surveys of areas of interest and expertise (see 1.5. Surveying interest), pro bono eNewsletters of work being carried out in the law practice, or including this information in the law practice’s regular newsletter or eBulletin;
• appointing a pro bono ‘point’ partner in each department or group as the contact person for the pro bono coordinator or committee to talk about pro bono work in that department;
• approaching individuals and their supervising partners in relation to taking on particular matters or other work;
• advising the law practice’s non-legal staff (including library, reception, secretarial and human resources staff) of the law practice’s program and procedures for taking on pro bono (amongst other things, these people may be approached by others inquiring
how they can become involved in the law practice’s pro bono work);

- organising meetings of people in the law practice with specialist pro bono interests, for example, lawyers rostered on legal clinics, and distributing updates on these topics;

- organising lunchtime seminars on the law practice’s pro bono work or particular areas of interest.

**Responding to concerns about pro bono**

Engaging in pro bono practice can raise concerns about time and recognition, perceived lack of skills, the possibility that pro bono work might create legal and/or commercial conflicts of interest or that it might lead to a reduction in the law practice’s financial productivity. Identifying these and developing responses is likely to lead to a more active and supported pro bono practice.

**Financial productivity**

There may be a concern that pro bono detracts from the law practice’s financial productivity. Whilst pro bono hours do not result in direct financial return to the law practice, pro bono work can result indirectly in positive financial return to the law practice through the positive benefits discussed above including:

- enhancing the attractiveness of the law practice for recent graduates and others;

- improved staff morale and retention of staff;

- attracting paying clients to the law practice;

- skills acquisition for staff;

- enhancing the law practice’s reputation in the community.

Law practices that have developed significant, structured pro bono practices report that they have received these benefits without any detrimental impact on the law practice’s profitability.

Strategies for overcoming concerns about financial productivity include:

- clearly articulating to the law practice the benefits of pro bono;

- structuring and promoting the law practice’s pro bono program in ways most likely to result in accrual of these benefits, including regular internal reporting and recognition of pro bono effort and recording in accounts systems time spent on pro bono work;

- incorporating evaluation strategies for pro bono programs that seek to measure the accrual of benefits to the law practice;

- setting a budget and clear selection criteria for pro bono so that those with concerns can see that the law practice’s contribution is set at a particular level and is not open-ended and is undertaken
according to agreed criteria;

- creating systems to anticipate, monitor and review time and resources spent on pro bono to ensure efficient allocation of resources, compliance with budget (if any) and prevent problems that could have been avoided.

**Time and recognition**

Some lawyers may be concerned that they do not have the time to do pro bono work or that it will not assist them in relation to their reputation, remuneration or advancement in the law practice. Strategies for overcoming these concerns include:

- a clearly articulated and communicated commitment to pro bono including through a law practice pro bono policy which encourages all to be involved in the program (and possibly states expectations or requirements), visible senior partner involvement and support, an active pro bono committee and publicised pro bono opportunities in the law practice;

- treating pro bono hours as billable hours or, failing that, as significant non-billable hours that are expected, or taken into account for the purposes of productivity assessment, bonuses (if any) and compensation (see 1.10. Counting and crediting time);

- ensuring that pro bono work is addressed in performance reviews and evaluations of lawyers (including partner self-assessments or other processes of review) and that all in the law practice are aware of this;

- setting pro bono targets for individuals and/or groups or divisions in the law practice and for the law practice as whole (see 1.7. Setting targets and budgets);

- employing additional means of recognising and rewarding individual’s and/or group’s pro bono efforts, such as through law practice newsletters, emails, reports, seminars, lunches or dinners and awards.

**Skills and experience**

Some lawyers may be concerned that they lack the skills and experience to do pro bono work. Strategies to address this include:

- identifying and sourcing work and publicising pro bono opportunities suitable for different teams or divisions within the law practice;

- surveying lawyers in the law practice about their areas of interest and their skills and organising partnering or mentoring on particular cases or projects (law practices may be surprised at the wealth of experience and ability that already exists);

- encouraging lawyers to bring potential pro bono matters or projects to the attention of the law practice’s pro bono committee (or other
approval mechanism) whether or not they have the expertise to handle the matter themselves, then exploring whether they could acquire the necessary expertise, or work on the matter together with someone in the law practice who has the necessary expertise;

- providing or organising training for lawyers to undertake particular kinds of cases or functions, for example, to assist in mitigation pleas for criminal cases, or to participate in legal clinics;

- larger law practices choosing to actively recruit staff with experience in pro bono who can supervise, train and/or support other lawyers as well as undertake pro bono work and/or also coordinate the law practice’s program.

Legal and/or commercial conflicts

There may be a concern that undertaking pro bono work might create legal and/or commercial conflicts with existing clients or prejudice the law practice in obtaining new work. Strategies to deal with this include:

- avoiding direct legal conflicts of interest by carrying out the usual conflicts checks before accepting any new pro bono matter;

- recognising that conflicts of interest arise on a case-by-case basis and ensuring that systems are in place to identify and deal with them as they arise;

- developing links with other law practices with pro bono practices with a view to referring pro bono matters that one law practice is unable to undertake because of a conflict.

Where a matter is perceived to constitute a commercial conflict, a law practice may decide nonetheless to give some general advice about the issues to the client or referring organisation, or undertake research into particular areas relevant to the issues. Where appropriate, a law practice could contact the relevant client with whom a commercial conflict is being assessed and discuss the perceived conflict with a view to obtaining consent from that client to proceed with the matter.

For further information on conflicts, see 2.4. Risk management.

1.5. Surveying interest

Before looking into pro bono opportunities available to the law practice, it may be helpful to carry out an audit of existing pro bono work being done by partners and staff and to survey areas of interest, where lawyers perceive needs, their skills and experience relevant to pro bono and their community contacts. Law practices may be able to call upon the range of expertise, experience and networks that these people bring.
What to ask

Some law practices ask respondents to describe the pro bono work they are doing (if any) and to indicate the areas of law that interest them. However it may also be useful to ask for further, more detailed information on a broader range of pro bono options. For example, law practices could ask respondents to nominate different kinds of pro bono activities of interest to them, such as litigation and/or non-litigation advice and casework. Lawyers, particularly partners, could be asked whether they would prefer to work on an individual case, head up a team on a major piece of litigation, conduct research, prepare training materials, and/or supervise junior lawyers. Surveys can also seek information about lawyers’ skills and experience, particularly that relevant to pro bono. For example, some of the law practice’s lawyers may have worked for legal aid or at a legal clinic or otherwise have experience in running particular kinds of cases likely to arise in a pro bono practice.

People can also be asked about their relevant community contacts, for example, some may be on boards and committees of non-profit organisations, some may have colleagues involved in legal clinics and/or legal aid. These networks might be useful in developing sources of pro bono work. One way of galvanising law practice-wide support of a pro bono program is to involve the partners and staff in planning it. For example, they might have views about areas that the law practice should target and/or particular agencies in need of assistance. If this participatory approach is to be adopted, a survey document should include space for suggestions and encourage input.

The survey should be accompanied by an explanation of why it is being carried out, that is, because the law practice is wishing to enhance its pro bono efforts through a more coordinated and proactive approach. Clearly, employees in the law practice will be more likely to express interest if they perceive that the law practice is serious in its commitment to pro bono.

Sample survey questions can be found below (see 3.5. Pro bono survey). Some law practices have designed electronic surveys to facilitate collecting and processing survey information. Ideally, surveys would be sent out with the full endorsement of the partnership so that they are seen as having authority.

Using survey data

In addition to using survey data and information to plan their pro bono programs, law practices can use the data to record ongoing interest, availability, contacts and expertise. For example, a law practice can set up databases which enable it to quickly identify any lawyers or other staff who have expressed interest in a particular matter or area, do not currently have a pro bono caseload and are currently available to undertake a new matter. Other law practices use the information on the database to match lawyer and supervisor.
An added benefit of such a database is the capacity to use the information about levels of interest and participation in pro bono in the law practice’s evaluation process (see 1.13. Measurement, record-keeping and evaluation).

1.6. Identifying needs and sources of work

Unmet legal needs

For many members of the community, at least some of their legal needs can generally be met by paying for legal services. For those who cannot afford to pay, there is a range of possible responses which include doing nothing, self-help, and seeking assistance from publicly funded or pro bono legal services.

It is possible to compile a list of the areas of law and specific community groups that are frequently identified as having particular needs that are not fully met by existing services. Such a list, however, will tell us little about the frequency of problems in the area, the degree to which affected people recognise that there may be a legal response available to their problem generally or the relative seriousness of the problem for an affected person or group.

Any list of areas of law where there are frequent client requests for assistance but often no ongoing assistance available would include: consumer financial services; small debts such as those arising from utilities, credit cards, and telephone services; employment law matters (including unfair dismissal and underpayment); and family law property matters. It is equally possible to approach legal need by referring to the particular legal services required by members of particular social groups such as people with disabilities.

Sourcing pro bono work

A law practice interested in taking on pro bono work has a number of options available to source such work. These include:

- volunteering with one of the Law Society pro bono schemes;
- working with community service organisations and other bodies that have regular contact with disadvantaged clients and communities;
- making the law practice’s availability for pro bono matters known to the Law Society, community service organisations and complaint-handling bodies (e.g. CASE);
- encouraging referral of pro bono matters through the formal and informal contacts of law practice staff; and/or
- relying on client self-referral.

Working with community service organisations and legal aid bodies

One of the best ways to ascertain where legal assistance is most needed and to develop an effective response to meeting those needs
within available resources is to develop and maintain strong ties with community service organisations (e.g. Family Service Centres, Community Development Councils) and legal aid bodies (e.g. the Law Society Pro Bono Services Office, the Legal Aid Bureau) that have regular contact with the people that a law practice’s pro bono practice aims to help.

Depending on the nature of the practice that a law practice wishes to develop it might want to:

- target particular client groups and therefore develop ties with particular community service organisations as well as relevant peak organisations;
- provide assistance in a particular area or community and therefore develop its ties to organisations that provide legal assistance and welfare services in that area;
- provide a broad range of pro bono assistance and therefore will need to develop ties with a range of community service organisations able and willing to refer appropriate matters to the law practice;
- investigate opportunities to establish a program that focuses on a particular social issue, for example, domestic violence;
- pursue a community development approach to the legal needs of a particular social group – the law practice would undertake a commitment to the particular issue and over time structure and adapt its pro bono program in light of changing relationships and increasing understanding of the needs of the client community;
- explore options for undertaking joint projects with the Law Society Pro Bono Services Office, the Legal Aid Bureau, other law practices (for example, sharing a roster for court referrals for pro bono assistance), or with corporate clients in relation to charities and non-profit groups.

**Identifying organisations and issues**

Where a law practice prefers to focus on a particular area of law or social issue it will be wise to consult with people and organisations with direct experience and knowledge of the issue. Relevant agencies may include voluntary welfare organisations, financial counselling services, family support services, major social service providers as well as community legal centres. Consultations could explore the need for a legal response, ways in which that need is and isn’t being met and how the law practice could work effectively with the community to deal with the specific issue.

**Developing relationships**

The nature of the relationship between a law practice and a particular organisation will of course depend on the parties’ objectives in pursuing it (Does the law practice seek information
only? Will there be ongoing referrals of matters? Do the parties intend to jointly establish a new legal service? And so on.)

As a law practice identifies organisations it thinks may be able to be involved in developing or operating its pro bono practice it should discuss with the organisations the relationship, the needs of the organisation and its clients and the organisation’s ideas about how those needs could be served with the assistance of pro bono legal services.

Depending on the degree of partnership envisaged this may be by telephone, mail or face-to-face meeting, however, generally, sending a letter on its own, introducing the law practice and the practice, is not an effective way of developing a partnership or encouraging pro bono casework referrals or requests for other kinds of pro bono assistance.

Where the nature of the relationship will include casework referrals it is advisable to establish guidelines for how to refer cases and other work to the practice. For example, the law practice may prefer to discuss a matter on the phone before getting a letter or email about a case. Or the law practice may want a lot of information about the client’s financial situation. From the perspective of the community service organisations, if a law practice has onerous requirements for referrals, this will make it less attractive to refer matters to the law practice. The law practice will also have to decide whether it wants clients to be directly referred to the law practice or whether it wants referrals to come from the organisation. It may be useful to arrange to meet with the organisation in conjunction with some other law practice pro bono practices. In addition to minimising the impact on scarce organisational time and resources, such a meeting would allow law practices to explore jointly with the organisation the types of cases most appropriately handled by each, the most effective referral procedures, and may also lead to ideas for joint projects. The aim when getting referrals is to minimise double handling of clients and their cases (see also 2.1. Casework procedures).

Relationships with community service organisations may usefully be extended beyond establishing good procedures for referral of pro bono matters. It may suit a law practice pro bono program to support the operation of a community service organisation, particularly community legal organisations, in a variety of ways (see the discussion of ‘multi-tiered relationships’ in 1.2. Current models of law practice pro bono).

It is important to have clear guidelines on the sorts of cases or work the law practice wishes to have referred, and how the law practice wants referrals made (see also 2.1. Casework procedures).

Community Service Organisations

Community service organisations are a potentially large source of pro bono referrals. Developing relationships with groups such
as family service centres, community centres, women’s shelters or voluntary welfare organisations, is useful for gaining information that may help a law practice decide whether or not to concentrate on the needs of a particular group and then to implement a program that does so. It can be useful to develop relationships with a range of community service organisations that assist different clients who are in some way disadvantaged in accessing legal services.

Needs of community service organisations themselves

While it is clear that many individuals require pro bono legal assistance to access justice, so do many of the community service organisations who are established to assist them. Often these organisations are not well funded and focus the funding they do have on meeting their core objectives. They rarely have any budget for legal assistance. These organisations can therefore benefit enormously from pro bono assistance on a range of operational issues that they face in carrying out their core objectives. The legal assistance they require can range from advice on leases, employment contracts, legal structure, contracts and funding agreements, intellectual property issues and tax issues to general commercial issues. They are also a potential target for useful community legal education and legal training, whether about their own needs or those of their clients.

Peak community sector organisations

Many parts of the community sector belong to or are supported by ‘peak’ organisations (e.g. Ministry of Community Youth and Sports, National Council of Social Services, The Centre for Enabled Living, the Agency for Integrated Care). Many of these peak bodies will be in a position to coordinate legal assistance on matters relevant to the bodies they service. Links with such peak organisations may prove to be a very effective way to provide targeted pro bono services. They are likely to be aware of potential public interest issues relevant to the ultimate clients of their constituent organisations.

Sources of work within the law practice

Lawyers and non-lawyers working in the law practice are another source of pro bono work. Some may volunteer at community service organisations or know colleagues there. Others may be in some way involved in nonprofit organisations or may have colleagues working in or volunteering for legal aid programmes. The law practice’s pro bono policy would ideally encourage lawyers to bring to the attention of the pro bono committee or coordinator or responsible partner, pro bono matters that may fall within the law practice’s guidelines. Some law practices have developed an application form for this purpose (see 2.1. Casework procedures and 3.8. Application for assistance form and related forms).
Advertising and client self-referral

Of these, advertising pro bono services to potential clients is not usually popular with law practices. For many law practices client self-referral is also not the most effective way to obtain pro bono work. With some exceptions law practices will generally prefer not to take responsibility for the initial screening of clients to assess whether their matter is suitable for pro bono assistance. For larger and mid-sized law practices at least it is generally more efficient for clients to gain access to pro bono services through a community or legal aid organisation or via a pro bono referral scheme (CLAS, LAB, Law Society Ad Hoc Pro Bono Referral Scheme). These services have expertise in the complex network of available support agencies and can assist clients to determine if they have a legal problem and the most suitable agency to provide assistance. They are also able to filter out matters where there is no legal issue and some matters which have no legal merits.

Accepting referrals from local community service organisations is likely to improve the chances that consideration has been given to the client’s non-legal needs and that the availability of alternative legal services has been considered and ruled out. Such community agencies are also likely to be a first point of call for the most disadvantaged members of the local community. Nevertheless, as has often been noted by practitioners from smaller law practices, client self-referral for pro bono assistance is a routine part of operating their practice. For such law practices, developing a good understanding of the legal aid system and the network of community services available in the area will be essential. For many, a clear policy on the kinds of matters where they will offer pro bono assistance may be useful to assist staff to efficiently screen matters (see 2.1. Casework procedures). Law practices might also consider whether the clients who are self-referring are in fact those with the most pressing legal needs in their area.

1.7. Setting targets and budgets

Law practices may choose to set targets and adopt budgets for pro bono for the law practice and/or for individuals or groups within it. The advantages of doing so, where the targets and budgets are sufficiently ambitious and communicated to all in the law practice, include:

- sending a message to all in the law practice about the law practice’s commitment to, and expectations about, pro bono;
- giving individuals and the law practice as a whole, clear goals;
- setting benchmarks against which the law practice’s pro bono program can be evaluated.

In addition, for smaller law practices, a target or budget may assist a law practice in ensuring that it does not inadvertently devote too many of its resources to pro bono work. This section describes
various approaches available to law practices.

**Law practice-wide budgets**

Some law practices choose to adopt a law practice-wide budget for pro bono, in the sense of ‘a specific annual allocation of law practice resources to pro bono activities’. This may be expressed as a total number of lawyer-hours or as a dollar amount calculated on the value of these hours, or as a certain percentage of the law practice’s total billable hours or gross turnover. For example, setting a pro bono budget of 5 per cent of the annual fee budget. A law practice’s pro bono budget for a given year may be based on matters such as the law practice’s past performance, the law practice’s assessment of its current caseload and its capacity to increase its activity level.

In the United States, the Pro Bono Institute’s Law practice Pro Bono Challenge© involves signatory law practices agreeing to set goals of either 3 or 5 per cent of total billable hours as a budget ‘floor’. The goal is deliberately stated as a percentage of total law practice billable hours to underscore that the commitment is an institutional one and to ensure that it is progressive, increasing as the law practice’s revenue-generating work increases. Approximately 150 of the United States’ largest law practices have become Challenge signatories. The Challenge is said to have been very successful in increasing pro bono work being carried out by law practices.

One advantage of setting a law practice-wide pro bono budget, at least at the development stage of a program, is that the partnership may be more willing to commit to an active pro bono program if the financial extent of the program is clearly delineated. Partners can be reassured that pro bono is not a ‘bottomless pit’. Setting a pro bono budget is also consistent with the way that other aspects of the law practice’s business are handled. It may also allow or encourage the law practice to think strategically about planning their pro bono work, especially initiatives that have significant financial implications.

Budgets can give the law practice goals as well as benchmarks. If budgets are under or over-spent, law practices’ pro bono committees can inquire into the reasons and in so doing improve their program. Under-spending on a pro bono budget may mean that the law practice needs to reconsider the kinds of work it is agreeing to take on; the law practice may need to contact their referral sources to find out why more matters are not being referred and/or develop new sources of work or new areas of expertise. Over-spending may indicate that more attention needs to be given to making realistic estimates of matters or that the budget was too conservative.

If a budget is set, the law practice needs to decide what ‘expenditures’ are allocated to it. While the major ‘expense’ will be lawyer-hours, there may also be expenses such as internal and external disbursements on pro bono matters, if these are not being paid by clients. The law practice will need to decide whether the costs of administering the law practice’s program
are allocated to its pro bono budget and if so which ones. For example, will the time of members of the pro bono committee be allocated to the pro bono budget? This may depend, at least in part, upon whether they are being credited for this work.

Setting pro bono budgets is disadvantageous if the budget adopted is too conservative and if the budget is viewed as a ceiling which cannot be exceeded (see “Guidelines, floors or ceilings?” below). In addition, very restrictive budgets send a strong negative message regarding pro bono. Some law practices prefer not to determine in advance any minimum or maximum levels of pro bono work and instead gauge demand and undertake an end-of-year review of their pro bono performance. Some law practices choose not to adopt law practice-wide budgets but set targets of a different kind (see next section).

In the United States the Law practice Pro Bono Project carried out a pro bono staffing survey in 2001–02, asking law practices, amongst other things, to indicate which, if any, of a number of specific tasks were undertaken by the individual(s) assigned to oversee or administer the law practice’s pro bono program. Only 23 per cent of the 90 law practices that responded as having at least one person assigned to administer their program, included ‘preparing an annual pro bono budget’ as one of that person’s tasks. The Project observed that ‘it is difficult to determine whether this means that pro bono is not included in the overall law practice budget at all or whether pro bono budgeting is not yet widely identified as a strategy for strengthening pro bono participation’ and that this is an area where more research and information needs to be conducted and distributed.

Other budgets and targets

Law practices might wish to adopt budgets and/or set targets of other kinds in order to promote and manage their pro bono practices. (This may be so whether or not the law practice has adopted a law practice-wide pro bono budget.) These need to be publicised, including through the law practice’s pro bono policy, so that all are aware of the law practice’s goals as well as the expectations of the law practice with respect to individuals’ and/or departments’ performance. These might include any or some of the following:

- A target for each division or group within the law practice. This might be, for example, a percentage of each group’s billable hours. One advantage of this is that each group is then clear about expectations, and monitoring (and even a degree of competition) can occur at the group level.

- A number of hours per lawyer per year. The Law Society recommends that every lawyer should aspire to render at least 25 hours of pro bono publico legal services per year. The American Bar Association recommends at least 50 hours of pro bono legal services per lawyer per year. Where law practices set targets for individual lawyers, these are often linked to the law practice’s method of recognising or
crediting those hours in terms of lawyer's individual budgets, salary, advancement and/or performance appraisal. If setting targets for individual lawyers, the law practice should make clear whether the same target applies to each level of lawyer within the law practice, or whether partners, for example, have different targets to senior associates and others. The law practice might, in addition, wish to make clear that equity and income partners are not only expected to participate but will not discharge their commitments merely by assigning work to others within the law practice.

- A target percentage of the law practice’s lawyers participating in pro bono – which might be as high as 100 per cent. For example, the pro bono policy of one Australian law practice specifies that:

  The [Law practice] Pro Bono Scheme is the shared responsibility of all legal staff. Pro bono work is not to be undertaken only by a few partners or lawyers. All lawyers are expected to conduct at least one pro bono matter each financial year . . . Pro bono matters which are conducted by lawyers will be included as part of a lawyer’s annual professional review.57

The Pro Bono Institute’s Law practice Pro Bono Challenge© involves signatory law practices agreeing, amongst other things, ‘to use [their] best efforts to ensure that a majority of both partners and associates in the law practice participate annually in pro bono activities’.

- A target number of matters for the law practice per year, particularly having regard to previous performance, or for each division or group each year.

- A budget (estimate) for each new pro bono matter. This tends to be done in law practices that adopt a law practice-wide pro bono budget and give billable credit for pro bono work (see 1.10. Counting and crediting time).

Guidelines, floors or ceilings?

For targets and budgets to operate as aspirational goals, they need to be set sufficiently high. A number of law practices set targets that are used as a guide only, rather than as a ceiling. A law practice may consider their past year’s performance when setting a target for the number of matters in the following year, but nevertheless regard this as a guideline rather than as a ceiling. The law practice will not stop taking on matters when that level is reached. Targets and budgets may deliberately be set as ‘floors’ rather than ceilings – for example, a target that each lawyer is required to do at least one matter per year. Whether or not targets are set as minimum or maximum levels, they should ideally be periodically reviewed, particularly in the early stages of development of a law practice’s pro bono program. They should be capable of upwards adjustment as the law practice’s willingness and capacity increases.

1.8. Coordinating pro bono work in the law practice
Introduction

A well-coordinated pro bono program provides benefits and opportunities for the law practice as well as for the disadvantaged people and non-profit organisations receiving the pro bono services. Creating structures to organise pro bono efforts recognises that pro bono is an important law practice activity, involving resources that should be efficiently allocated, managed and monitored and linked to the overall management structures of the law practice. In addition it recognises the practical imperatives of mid-tier and larger law practices. This section describes various approaches to coordinating pro bono programs, including the role of pro bono committees, pro bono partners and pro bono coordinators. (See also 2.5. Troubleshooting, which addresses some of the problems that can arise in coordinating and administering a program.)

Approaches to coordination

There are a number of options for organising and coordinating a law practice’s pro bono work. The most suitable arrangements for each law practice will depend on factors such as the law practice’s management and reporting structures generally, the size of the law practice, and the size and nature of the law practice’s pro bono practice. For example, a policy within the law practice that every lawyer should do a certain amount of pro bono per year carries with it the need to have arrangements in place to develop sources of pro bono work, to allocate the work within the law practice, to record the work and to monitor compliance with any pro bono budget or targets. Law practices with offices in more than one location will need to consider local as well as law practice-wide coordination and responsibility.

Common features of coordinated law practice pro bono practices in mid-sized and large law practices are:

- pro bono committees;
- pro bono coordinators or directors;
- pro bono partners.

A number of law practices use a combination and there is, quite appropriately, some overlap of functions. The combined model appears to work well in mid-sized and large law practices. If one of the elements is not present, obviously the responsibilities and workload falling upon the others is greater.

Whatever mechanisms are adopted, it is clear that designing and operating a pro bono program of any size requires policy, planning and oversight as well as day-to-day operational activities. Frequently the policy and oversight functions are allocated to pro bono committees and partners, with operational activities falling more within the purview of pro bono coordinators. Law practices without pro bono coordinators tend to utilise a designated pro bono
partner or other lawyer (for example, the chair of the pro bono committee) to perform many of the functions that a coordinator would otherwise perform.

It is also important that one individual have a significant coordinating role. In the United States, a survey carried out by the Law practice Pro Bono Project revealed that of the 92 law practices that responded to the survey, 90 (98 per cent) had assigned at least one individual to administer or oversee the law practice’s pro bono program. That individual was sometimes an associate (with or without a full or near-full commercial caseload), a counsel attorney, a partner who also maintained a full or near-full commercial caseload, a paralegal or other staff member. Eighteen law practices (20 per cent) had appointed more than one person to administer or oversee their program.

Allocating time

In deciding how to coordinate their pro bono program and where to allocate responsibilities, law practices should keep in mind the amount of time that will be involved in undertaking key activities. For example, dealing with the intake of pro bono matters in larger law practices is a crucial activity that can be time-consuming. It is likely to involve tasks such as: carrying out a conflicts check; considering the client’s financial position and the merits of the action; considering the likely resources required by the matter (including costs and disbursements) and the capacity in the relevant practice group; and liaising with the relevant lawyers in the law practice and with the source of the referral (for example, a pro bono referral scheme or community organisation).

Crediting time

Law practices will also need to decide how they will account for and recognise time spent on oversight and coordination and how it will be acknowledged as a significant contribution to the law practice. For example, will time spent planning and coordinating the law practice’s pro bono work be treated in the same way as hours spent working on pro bono files? (see 1.10. Counting and crediting time). Will workloads and expectations be adjusted to cater for it? Will work done as a member of the law practice’s pro bono committee be taken into account in salary and promotion decisions?

Smaller law practices

Small law practices are obviously in a different position in relation to coordinating pro bono work. Except for very small law practices, however, it would still be desirable to have a person with designated responsibility for oversight of the law practice’s pro bono work. If the law practice wishes to have a proactive pro bono practice, that person will need to undertake at least some of the coordination activities listed below.
Approval of pro bono work

Law practices need to decide who will approve (and decline) requests for pro bono assistance. A range of options is available. Many law practices assign this function to their pro bono committee (see, for example, 3.2. Sample pro bono policies: 2 and 4 and see 3.3. Sample procedure), including some law practices who have pro bono coordinators. Some law practices allocate it to the pro bono coordinator (see, for example, 3.2. Sample pro bono policies: 1 and 5), perhaps with a financial ceiling set for matters that can be approved by that person or with additional approval required from a partner. Alternatives include giving case approval functions to team or department leaders, or to other partners or other committees, such as the management committee. Different or additional approvals might be required for controversial or difficult matters (see, for example, 3.2. Sample pro bono policies: 2 and 2.4. Risk management).

The advantages of allocating this role to a single person, as opposed to a committee, are timeliness and consistency of decision-making. However, the qualifications and skills of the individual and the appropriate level of authority will be very important. Alternative arrangements will need to be made when he or she is on leave. Some law practices consider that committee decision-making provides more checks and balances and also protects their coordinator in the event that people in the law practice or clients do not like particular decisions. Regardless of which model is adopted, the law practice should ensure that decisions are made promptly and that there is a facility for making decisions in urgent matters. Many pro bono committees meet monthly but determine acceptance or refusal of matters by email.

Pro bono partners

A law practice may nominate one or more partners to be pro bono partners. Such a partner may also be the chair or a member of the pro bono committee. Law practices with offices in more than one country typically appoint one or more pro bono partners in each country office. One law practice has appointed a ‘Pro Bono Point Partner’ in each practice group in the law practice, in part to ensure that someone senior in each group has an overview of how much work is going on in the group and who is doing it. These partners are the first point of contact for the pro bono coordinator when allocating pro bono matters.

In law practices that have pro bono coordinators, the roles of pro bono partners might include:

- strategic oversight of the scheme;
- resolving issues of conflict of interest;
- monitoring the pro bono policy and the program’s performance against goals and budget;
signing off memoranda, file allocations and the like;
undertaking and/or supervising pro bono casework;
periodic reporting to the partnership;
promoting pro bono to the partnership and the law practice generally.

In law practices that do not have a pro bono coordinator, the pro bono partners, sometimes with the assistance of the pro bono committee, will frequently also undertake at least some of the day-to-day activities such as processing pro bono applications, approving disbursements, monitoring the time and cost of pro bono work, monitoring staff performance in undertaking pro bono work and liaising with external agencies. In some law practices, these functions are performed by the pro bono committee.

Pro bono committees

These are a common feature of structured law practice pro bono programs in the United Kingdom, United States and Australia. Pro bono committees allow the work of planning and managing a program to be shared by a number of people and also provide an opportunity for a broad range of people within the law practice to be involved. This involvement in turn enhances wide-ranging ownership of and support for the law practice’s pro bono program. A committee structure also means that the absence or departure of one person will not mean the delay or demise of the program. In addition, a pro bono committee can act as a buffer for lawyers who may work for less supportive partners.

Composition

It is generally considered important to have broad-based membership from across different divisions and from different levels within the law practice, from senior partnership and senior lawyers to junior lawyers. It is important that the committee include influential people, particularly from the partnership level, who can attract support for the program. It has been suggested that, ‘the most successful pro bono committees have a highly visible, active and respected chair, usually someone at a senior level’.

Some law practices include a certain number of team/division/practice group leaders in an effort to ensure wide participation in the program by all divisions of the law practice, including commercial, property, and other non-litigation divisions. It is also desirable to involve the law practice’s non-lawyers, including (where relevant) human resources (for example, the human resources manager), marketing, professional development and support staff. Community sector experience on the committee is desirable, however, some law practices might prefer to seek this internally.

The size of committees varies from law practice to law practice. The committee will not be workable if it is too large. If there are a lot
of people who wish to be involved, it might be possible to harness that interest by creating project-specific working groups.

The law practice might choose to call for expressions of interest for committee membership but should make it clear that the committee’s roles are policy and administration and not actually doing the pro bono work. Committee members will need to be willing to make decisions, sometimes very hard ones, about accepting and rejecting pro bono matters based on the law practice’s policy and be prepared to justify these to the law practice.

Roles and responsibilities

At the initial stages of creating a pro bono program, the committee would be responsible for generating support within the law practice, exploring interest and expertise and contacts within the law practice, making contact with external agencies and ascertaining needs and sources of work. They would also devise a pro bono policy and procedures for undertaking pro bono work both externally and within the law practice. As the program develops, the committee might have an administrative role (such as approving pro bono matters, disbursements and the like) and would monitor and review the program and report to management and others.

Crediting time

It is desirable that committee members’ time in coordinating, planning and related tasks is recorded, ideally by giving such work a matter number and crediting that work in the usual way. In addition, the work should be taken into account in performance appraisal, advancement and salary review. The work of committee members may be significant in terms of time, especially at the development stage of a pro bono program. It should be recognised as a contribution to the law practice.

Pro bono coordinators or directors

A significant number of Australian law practices appoint a member of staff to be the pro bono coordinator (sometimes called a director). At least 16 of Australia’s larger law practices now have pro bono coordinators, half of whom are senior lawyers working full-time on pro bono related activities. A small number of Australian law practices appoint non-lawyers as coordinators.

The law practice will need to decide at the outset how many hours it wishes to allocate to pro bono administrative functions. ‘Part-time’ coordinators are generally lawyers who are given partial fee relief in order to carry out activities related to pro bono. The appropriate level of fee relief will depend upon the size of the program the law practice wants. In some law practices this translates to 20–50 per cent fee relief. A law practice could set an initial rate and then adjust as necessary.

Rather than fee relief, a coordinator’s time can be credited in
the same way as with billable work, by giving pro bono activities a matter number and entering time against it. The law practice can then monitor the amount of time that the job requires and, at the same time, the coordinator’s work is being properly recognised. In any event, law practices should be aware that part-time coordinators might experience tension between the demands of their pro bono work and their commercial practice. There might be particular occasions when the balance needs to be considered by the pro bono committee and possibly adjusted.

In a number of law practices the role of pro bono coordinator is performed by the pro bono partner. Given their other responsibilities, some partners may find it difficult to balance pro bono work with their other work and functions. Some partners tend to delegate the work to others on the committee or in the law practice. Where this occurs, it would be preferable to formalise the delegation by appointing a coordinator and giving appropriate fee relief or otherwise crediting the work, leaving the partner with more of a supervising and sign-off role.

Obviously the best option for a particular law practice will depend on the size of the law practice and its pro bono practice, the extent to which functions are performed by the committee or its chair and the extent to which the person concerned undertakes pro bono casework in addition to acting as a contact for external agencies and distributing work in the law practice. Also relevant is the stage of development of the law practice’s pro bono practice and whether, for example, the law practice has already developed links with the community sector and sources of pro bono work and whether there are developed procedures for undertaking and reporting work and the like.

Whichever model is adopted, it is crucial that there is a designated person in the law practice for external agencies and others to contact.

Pro bono coordinators are the primary intake point for pro bono matters. In law practices where approval requires a decision of the committee or a partner, the coordinator generally carries out an initial assessment against the law practice’s pro bono criteria, conducts a conflicts check and considers the law practice’s capacity to undertake the matter before referring the matter to the committee or partner for decision. As noted above, some pro bono coordinators are given the responsibility of approving or declining matters.

Coordinators will generally be responsible for allocating pro bono work in the law practice using a range of approaches. These include emails to all staff or to lawyers who have expressed interest, personally approaching lawyers in relevant practice groups or contacting a partner in the relevant area to see who in the group might be able to take on the matter.

Some coordinators have significant pro bono casework practices
while others, particularly part-time coordinators, may do little of the law practice’s pro bono casework themselves. Some coordinators have supervision and mentoring roles in cases where they have particular expertise.

In some law practices pro bono coordinators also have responsibility for the law practice’s broader corporate social responsibility or similar programs, for example, non-legal volunteering, charitable donations and the like. Other law practices prefer to keep the administration of these programs separate from their pro bono program.

Roles and functions

Following is a list of functions that may form part of a successful pro bono program. A law practice will need to decide how to allocate functions between their committee and pro bono partners, coordinators or others responsible for oversight and administration of the program. Smaller pro bono programs will not necessarily need to undertake all these tasks.

Development phase pro bono tasks include:

- surveying current law practice activity, areas of interest, expertise and contacts;
- developing a pro bono policy and procedures;
- integrating systems for file management, time recording and accounting on pro bono matters with the law practice’s existing systems;
- developing an annual pro bono budget or target (if any);
- developing contacts with pro bono referral agencies, legal and community groups and non-profit associations to ascertain needs, develop priorities and sources of pro bono matters;
- exploring and developing pro bono opportunities for different practice groups in the law practice and for different levels of the law practice, for example, litigation support staff and paralegals;
- publicising and promoting pro bono within the law practice.

Tasks for ongoing programs may include:

- receiving, screening and processing pro bono applications from within the law practice and from external sources (this may include decisions about costs, disbursements, conflicts checks, extent of the work to be done and other matters) and allocating work within the law practice;
- liaising and developing relationships with external agencies (such as community legal clinic, community service organisations and legal aid bodies) to maintain sources of work and investigate new sources;
• publicising opportunities and matching volunteers;
• developing pro bono projects and opportunities, including:
  • developing opportunities for participation by all at the law practice;
  • exploring and organising opportunities for 'external' pro bono (for example, secondments, support of legal aid schemes such as the Criminal Legal Aid Scheme CLAS and Civil Legal Aid administered by the Legal Aid Bureau (LAB));
  • liaising with other pro bono service providers to investigate scope for joint projects and training;
  • seeing that the law practice’s pro bono policy and procedures are implemented and periodically reviewed, revised and improved;
• monitoring and evaluating the program, including:
  • maintaining a record of all pro bono work being handled in the law practice;
  • monitoring resources being allocated to matters (in some law practices, this would include monitoring regular billing of pro bono matters);
  • monitoring levels of participation within the law practice;
  • monitoring performance against the pro bono budget or targets (if any);
• collecting and maintaining data about requests, refusals, approvals, time and other resources allocated to pro bono;
• periodic evaluation of the program;
• reporting to the law practice (as appropriate, having regard to law practice management structures) on a periodic basis on specific matters which might include:
  • resources allocated to or ‘spent’ on pro bono (time, disbursements, etc.) over the reporting period;
  • the kinds of services provided and to whom they were provided;
  • the number of lawyers and non-lawyers participating in the program;
  • whether the law practice’s goals for the delivery of pro bono services have been fulfilled;
  • a description of projects and tasks completed by the coordinator or committee or partner to promote and encourage pro bono and anticipated projects and tasks;
  • recommendations about future budgets or targets (if any) and other changes to the pro bono program;
  • undertaking pro bono matters for clients, and/or supervising and/or
assisting others in the law practice handling pro bono matters;

- maintaining a register of interest and expertise within the law practice;

- publicising and promoting pro bono within the law practice (for example, through material in law practice newsletters or bulletins; organising seminars and/or presentations by organisations and others in need of pro bono services; email reports advertising pro bono opportunities; meeting with partners, team/division heads);

- preparing information and marketing material for the law practice’s website and other publications;

- developing projects for staff;

- developing the law practice’s library and IT resources in specific areas of pro bono law;

- organising training for particular pro bono activities and encouraging individuals to attend training programs;

- liaising with, providing support to and receiving feedback from secondees (if any) and/or from participants in other projects;

- participating in promoting pro bono to the legal community and more generally.

1.9. Involvement of all levels

Creating opportunities for involvement by all in the law practice can be an effective way to develop an active pro bono practice. This section brings together approaches developed by some law practices.

Anecdotally it is said that those most keen to do pro bono work tend to be the younger, more junior lawyers in the law practice – although of course there are interested and active participants at other levels. Some law practices report that it can be more difficult to get people at more senior levels in the law practice to be actively involved and that, for example, senior associates and junior partners can sometimes be reluctant to undertake pro bono work because of the fee-earning imperatives of their positions. This experience is not shared by all law practices. Nevertheless, given other imperatives within the law practice such as the need to meet individual and group budgets and individuals’ desires for advancement within the law practice, some thought needs to be given to particular disincentives to pro bono that may operate at different levels of employment within the law practice and how these might best be overcome.

The extent of involvement of lawyers at different levels within the law practice appears to depend on the extent to which pro bono is considered an integral part of the law practice’s business and the sorts of strategies adopted to promote it. Participation levels will be maximised where law practices give specific attention to creating opportunities appropriate to different levels, having regard to skills,
experience and interests and to any obstacles to participation that might be operating at the relevant level. In one law practice, for example, the pro bono coordinator met with partners specifically to discuss and explore the kinds of pro bono work that would appeal to them. Particular projects have been developed as a result. Some law practices survey people in the law practice about the kinds of pro bono work they are interested in doing (see 1.5. Surveying interest).

As noted above, people at the lawyer/associate level in law practices are often keen to participate (particularly if their work is appropriately counted and credited) and do much of a law practice’s pro bono work. This section looks at participation by other levels in the law practice.

**Partners**

All pro bono work undertaken in a law practice should be supervised by a partner, as is the case with fee-earning work. Many partners also undertake significant amounts of pro bono casework themselves, although this varies between law practices and particularly between law practices of different sizes.

The perception that pro bono participation necessarily involves only casework and litigation may unnecessarily inhibit some non-litigating partners from active involvement. Law practices may facilitate involvement of partners by:

- sending strong messages from senior partners and management in the law practice that pro bono work is valued and important and that partners should set the example by undertaking this work;
- developing opportunities that utilise the range of skills (transactional and other) and the networks of these partners such as becoming legal advisors and mentors to not-for-profit organisations, including, in particular, newly formed organisations;
- encouraging participation in projects and activities, in ways that utilise their experience in the law and in case management;
- developing pro bono projects which allow partners to pass on their skills (for example, a project where a senior partner will train lawyers in drafting wills);
- setting up specialist or ‘signature’ projects supported by the law practice in which partners can participate in a range of ways, such as designing and building support for the project, providing mentoring, advice and supervision as well as providing advice and assistance directly to clients;
- providing training and support for non-litigation partners to undertake pro bono litigation.

**Junior partners and senior associates**

Law practices could seek to identify work and projects that recognise the expertise of junior partners and senior associates.
and could consider specifically asking them about the kinds of work that would appeal to them. The allocation of pro bono work should recognise their capacity to supervise such work, assist in more complex matters (including by case management) and to mentor younger, less experienced lawyers. Law practices engage junior partners and senior associates in supervisory roles in relation to pro bono work. For example, the law practice can assign to each file a senior associate who then supervises and provides support and mentoring to the junior lawyer responsible for the file. In some law practices, some senior associates and junior partners have quite significant pro bono practices.

Several law practices designate a junior partner and/or senior associate as the person responsible for relationships with particular community agencies (for example, community legal centres). That person is then the first contact point for the agency and is able to be involved in managing the relationship as well as undertaking hands-on casework.

New employees

New employees should be given a copy of the law practice’s pro bono policy and advised of pro bono opportunities within the law practice and how they can become involved. It should be made clear to junior lawyers that they will be appropriately supported and supervised in their pro bono work and they should be advised of any training opportunities. The law practice’s pro bono coordinator (if any) could participate in any formal induction program undertaken by new employees.

Paralegals

Paralegals are another valuable source of pro bono assistance within a law practice and are generally keen to engage in this kind of work.

Internship students

Students undertaking internships are a valuable resource for the law practice, including in relation to the law practice’s pro bono program. They are keen, trained in legal research and anxious to perform their best. Law practices are reporting an increasing level of interest in pro bono by internship students and students participating in graduate employment interviewing programs. Law practices will attract students by providing meaningful opportunities for pro bono work during internship programs and by demonstrating that such opportunities will continue should the student be offered, and accept, employment after graduation.

Key considerations in successfully engaging students in pro bono work include:

- Explaining to students, clearly and unambiguously, that their participation in pro bono work will be valued by the law practice. This
requires more than merely advising students that they may chose to
do some pro bono work during their internship. Anecdotally, some
students have reported that while they were given such a choice,
they were not sure whether it would be in their interests to elect
to do some pro bono work, or whether their prospects of securing
graduate employment would better be served by undertaking other
work.

- Recognising their efforts. Obviously a student’s pro bono experience
with the law practice will be most positive if steps are taken by the
law practice to give recognition to their efforts.

- Taking steps so that clerks can see the usefulness of their work and
appreciate its context. For example, if research or writing work is
being done for a community legal centre or clinic, the student might
visit the centre so as to understand the general nature of its work
and clients.

- Identifying specific tasks and projects that are practicable given
the limited period of the internship. Are there specific projects that
can be started and completed within the period? Are there cases
being handled by the law practice to which the student can usefully
contribute, for example, by undertaking research or helping in some
other way? The law practice’s pro bono coordinator might wish to
contact lawyers within the law practice who are working on pro bono
files to inquire about involvement of internship students on those
matters. The coordinator might contact community legal centres or
other organisations with which the law practice has a relationship
to see whether there are particular research projects suitable for
internship students. This contact should be made well in advance of
the internship starting. Some law practices find that team projects,
involving two or three students (as well as other lawyers in the law
practice), work particularly well.

- Ensuring that internship students are able to allocate sufficient time
to pro bono work. Smaller projects may be appropriately dealt with
in the ‘spare time’ of a student, however, this will not work for larger
projects.

- Ensuring that there are clear lines of responsibility for and supervision
of pro bono work. It may be that the student is undertaking a project
for and liaising with an external agency, however, there should
still be a person within the law practice who is supervising and
supporting the student in relation to the project.

Examples of pro bono work that can be done by internship
students (“interns”) include:

- Participation in the law practice’s pro bono casework. Lawyers
handling pro bono matters could be encouraged to involve interns
in key activities such as conferences with counsel, research work
and attending court.

- Undertaking legal project work for a community legal clinic (“CLC”)

with which the law practice has a relationship, for example, writing or updating community legal education materials on particular topics (such as ‘fact sheets’, plain English brochures), carrying out legal research for a law reform project, updating contacts lists (some of these types of smaller projects may be particularly attractive to clerks because they can be accommodated within their other work responsibilities).

- Undertaking legal research on specific practice-related legal issues identified by a CLC as important to their client groups.

- If a law practice sends lawyers to provide legal advice and assistance at a community location, students could accompany those lawyers to observe and assist where possible. For example, attend as observers at the advice clinics and to undertake research for casework in connection with the Clinic.

**1.10. Counting and crediting time**

This section outlines several ‘good practice’ models for counting and crediting time spent on pro bono work. It is intended to assist law practices in deciding how hours spent on pro bono should be regarded for accounting, budgeting and record keeping purposes. It is also relevant to how pro bono is taken into account in assessing the performance of lawyers for the purpose of advancement within the law practice and determining their remuneration.

It should be recognised that pro bono work in the law practice may take a number of forms. Client casework is the most common form, however, people may be involved in other pro bono activities such as working on community legal education projects, undertaking secondments or participating in legal clinics. (Of course, this might be done by individual lawyers without any involvement by the law practice or use of its resources, but if this participation is considered to be part of the law practice’s pro bono work, it should be counted and recognised as such). In addition, various people in the law practice will contribute their time and skills to overseeing and administering the law practice’s pro bono work. They might be members of the law practice’s pro bono committee, and/or the law practice’s pro bono coordinator or partner or some other person having a role in, for example, screening and approving pro bono work. Ideally, law practices will develop means of counting and crediting all of these contributions to the law practice’s pro bono work.

The models in this section are not the only ways in which law practices count and credit pro bono work but are examples of good practice amongst mid-size and large law practices. Different practical considerations apply in small law practices or sole practices. However, even in small law practices good practice would require that records be kept of time spent on pro bono work and that there be a policy that such work should be recognised and valued.
A characteristic of effective pro bono programs is that time spent on pro bono work is recorded and lawyers working on pro bono matters or otherwise engaging in pro bono work are credited for this time both financially and in their professional development. Some of the benefits of this are that:

- lawyers are more willing to do pro bono work if they are credited for it;
- pro bono work can be fully integrated into the lawyer’s regular practice ensuring the work is properly supervised;
- it demonstrates the law practice’s commitment to pro bono work and sends the message that pro bono work is important and expected to be a part of the lawyer’s practice.

Recording pro bono time also provides the law practice and the pro bono committee with an accurate record of the amount of pro bono work being done, which is particularly relevant if the law practice has set a budget for pro bono work.

There are various models for taking into account time spent on pro bono work, each with different strengths and weaknesses. In some law practices, lawyers’ pro bono efforts are counted as billable hours with a view to encouraging lawyers to do pro bono work – although this model also has variations. For example, some law practices count a certain number of pro bono hours per week or year as billable hours. In other law practices although pro bono work is not treated as billable work, it is nevertheless expected as part of the work to be done by each lawyer in the law practice and time spent on it is recorded. Other law practices encourage and recognise pro bono work in other ways, including in periodic performance appraisals.

Any system for recording pro bono work must of course fit in with the way a particular law practice does their accounting and time recording. Whatever system is adopted, the key to an active, successful pro bono program will be that pro bono work is considered valuable work and rewarded as such. This issue is particularly important for professional staff who are likely to be deterred from doing pro bono work if they perceive it will damage their remuneration, standing and progress to partnership. Law practices should ensure that their mechanisms for counting and crediting pro bono are communicated clearly to all in the law practice and are described in the law practice’s pro bono policy (see 3.2. Sample pro bono policies and 3.13. Encouraging pro bono).

**Model 1 — Pro bono hours = billable hours**

The hour-for-hour and dollar-for-dollar credit model may be used. Under this model, when a pro bono matter is approved, a file is opened and a matter number allocated as it would be for a paying client. Time spent by lawyers working on pro bono matters is recorded in the usual way. For reporting and accounting purposes,
there is no difference between a pro bono and a commercial file. In financial reports on the work of individual lawyers, pro bono work is indistinguishable from commercial work.

Bills are generated on pro bono files. In one example of this model, the bill goes to the law practice’s pro bono coordinator and at the end of each month there is an accounting adjustment to reflect the fact that fees will not be paid. These monies are not ‘written off’ as such. Rather, at the end of each month an accounting adjustment is made whereby the pro bono billings are deducted as an expense from the partners’ account and are paid into the operating account. In another example, a bill is generated against the matter number, but then discounted up to 100 per cent depending on the basis on which the work was done. Lawyers are given fee credit for their pro bono work; that is, it is taken into account in meeting budget targets in the same way as fee-paying work. The law practice’s accounting system is structured so that at law practice level, fee-generating work in progress (WIP) and pro bono WIP can be distinguished, but it cannot be distinguished for each individual lawyer.

In some law practices, an annual cap is set in terms of a dollar amount for the total program (a ‘pro bono budget’) and a total dollar amount is estimated for each matter (although there is no ‘cap’ or maximum amount of pro bono work set for each lawyer). These estimates are then tracked allowing the law practice to know the maximum value of the approved pro bono work at any given time. The law practice will be able to calculate on the basis of the matter estimates or revised estimates the remaining pro bono budget for the year. This system also encourages lawyers to treat pro bono work in a commercial way, that is, to allocate such time to a matter as is reasonable in order to professionally complete the matter. In some law practices, if the estimate set for the matter is exceeded, work done after that time is treated as non-billable time. Procedures are also put into place so that where a matter starts to approach the estimate, people responsible for that matter are encouraged to go back to the pro bono committee or coordinator for approval of further pro bono work on the matter (where justified).

In one Australian law practice using the billable hours pro bono model, a draft bill is sent to the pro bono partner who then allocates to the particular practitioner an appropriate equivalent in costs based upon the reasonable time spent on the matter. Thus the partner might write-down the time recorded on the bill if he or she considers it to be excessive. The hours credited to the lawyer would be adjusted accordingly. The law practice monitors the time spent on pro bono work and the equivalent financial commitment being made on an annual basis to pro bono matters. In another Australian law practice, a 10 per cent discount is usually applied to the bill so that the fees ultimately invoiced properly reflect a lawyer’s average realised rate – that is, the actual rate at which a lawyer’s time is likely to be billed to a fee-paying client bearing in mind clients’ usual requirements for discounts, fee capping, special (lower) rates and
In one Australian law practice this model is utilised by having a separate client called, '[Law practice name] pro bono' with a client code, and each client file is given a matter number. Bills are rendered on these files and sent to the pro bono partner who reviews them (and who also approves all file openings on pro bono matters). To work out the effect of the pro bono work on the law practice's financial position, the partner is able to access information through the financial management system for each matter number, concerning work in progress, billings to date, disbursements and when time was last recorded on the matter. For the purposes of each lawyer in the law practice, pro bono work thus counts in meeting budgets in the same way as fee-paying work.

Some law practices employ the concept of utilisation rates as a performance management tool in addition to assessing performance by way of fees generated. That is, the law practice looks at the number of hours spent on billable work by the lawyer. In the context of pro bono within the model described above, hours spent on pro bono work are billable hours for the purposes of determining utilisation rates.

Comments

This model clearly shows that pro bono work is considered of equal value by the law practice and gives tangible recognition to the principle that pro bono work should be treated in the same way as fee-earning work. There is an incentive to lawyers to be involved in pro bono work and to give it the time it needs. The law practice’s commitment to pro bono work can be readily tracked and identified by existing financial management systems.

However, this model requires sophisticated and sometimes time-consuming accounting. In addition, as with fee-paying work, if lawyers are going to be receiving fee credit, appropriate control mechanisms should be in place to ensure reasonable allocation of time to pro bono matters, for example, review of monthly bills by partners and write-offs where it is felt that an unreasonable amount of time has been spent on a matter.

**Model 2 — Pro bono hours = billable hours**

The hour-for-hour credit model has been adopted in a law practice where each lawyer has both a billable hours budget and a money budget. Hours spent on pro bono are counted as billable hours for the purposes of a lawyer meeting their billable hours budget. Pro bono hours, however, are costed at the rate of $1 per hour. Thus spending time on pro bono may cause a deficit in the lawyer’s dollar budget. However this may be offset, at least to some extent, by the fact that pro bono work is taken into account in lawyers’ performance reviews. There is a large section in these performance reviews that
deals with non-financial contributions to the law practice and pro bono is expressly referred to in this section.

In this model, each pro bono file is given a new matter number under the group client name ‘pro bono’. The accounting system automatically records all work done for the ‘pro bono’ client at $1 per hour. Each lawyer’s monthly production report reveals all matters being dealt with by the lawyer and the work in progress (WIP) on each matter. Given its costing, the WIP on pro bono matters will be small. When matters are closed, all pro bono monies are written off.

Comments

This model involves writing off monies notionally billed by the law practice on pro bono and may be attractive to a law practice because the $1 hourly rate for pro bono minimises the size of dollar write-offs and does not falsely record an asset while the file is open. However, the fact that pro bono work does not count in meeting individual lawyers’ dollar budgets may deter some lawyers from doing this work. If this model is employed, it is important for the law practice to make its commitment to pro bono very clear. This could include advising lawyers that pro bono work is expected or encouraged. The law practice’s commitment to pro bono could also be made apparent in performance appraisals and consequent decision-making about remuneration and advancement. Another disadvantage of this model is that all hours spent on pro bono are recorded at the same rate, regardless of whether the work was done by a partner, senior associate, lawyer, etc. This means that calculations of the real opportunity cost or value of the work can only ever be an estimate.

Model 3 — Pro bono work = significant non-billable work

Under this model, time spent on pro bono work is recorded not as billable time, but as some other category or within a broader category of non-billable time. Pro bono work is also considered in performance appraisals. There are several versions of this model.

In one version, the law practice’s accounting system assigns different codes to pro bono files and fee-paying files. Lawyers record relevant file numbers on time sheets and monthly reports provide details of work billed and work in progress on fee-paying files as well as time spent on other matters (such as pro bono, marketing, professional development). These numbers are added to calculate the number of hours worked by each lawyer.

In one Australian law practice employing this model, lawyers are not given billable hours credit for pro bono work, however, it is one of the items taken into account in six-monthly performance appraisals, which in turn affect remuneration and especially the calculation of bonuses. Also taken into account is other significant work, for example, in publishing and in generating precedents. There is an express section in the performance review form where the lawyer
and reviewing partner are asked to describe the lawyer’s pro bono work. Pro bono work can also be taken into account in other ways, for example, participants in the law practice’s pro bono work may be given priority to attend special conferences and other events.

Another Australian law practice divides work done by lawyers into billable time and investment time. ‘Investment time’ includes pro bono, marketing, recruitment and other activities not billed to clients. Team budgets are set, as opposed to individual budgets for each lawyer. Individuals and teams are expected to perform well both in terms of their billable and non-billable time. Performance in both kinds of work is assessed formally twice a year. In one law practice, this model is accompanied by a pro bono policy that expects every lawyer within the law practice to do one pro bono matter per year. In addition, pro bono is specifically addressed in annual performance appraisals. The law practice sets an annual target for pro bono each year, both in terms of a dollar value and number of hours for the law practice as a whole.

Comments

This system has the advantage of clarity in that only billed matters are in fact called billable. However, under this model there may be concern among some lawyers that pro bono work will not in practice be given equal weight with billable work. If so, those lawyers may be less inclined to allocate time and effort to pro bono work. As with Model 2 above, a law practice would need to make its commitment to pro bono very clear to all in the law practice and this commitment would need to be overtly reflected in the law practice’s decision-making about remuneration and advancement.

Model 4 — Specified pro bono hours = billable hours

Under this model, each lawyer within the law practice receives a credit against her or his expected weekly/monthly/annual billable hours for hours billed to pro bono matters as if such work were billed and collected. For example, up to one and a half hours per week or up to 50 hours per year. Pro bono work is also considered in performance appraisals.

This appears to be a popular model in the United States, perhaps in part because of the American Bar Association’s Model Rule of Professional Conduct (Rule 6.1) which provides that a lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. A number of American law practices exceed this aspirational target. One law practice, for example, recognises 100 pro bono hours per year per associate (and more with prior approval) as equivalent to billable hours, for all purposes including compensation and bonuses. That law practice’s policy also gives credit for every hour above 2100 per year (at least 2000 of which are billable) in the total for production bonus purposes.

One Australian law practice using this model sets a pro bono
budget of 5 per cent of budgeted fees. It employs a time code for pro bono work that is different from codes for billable and non-billable time in order to monitor how much time is spent on pro bono. The weekly chargeable hours budget for lawyers includes an amount for pro bono that correlates to the 5 per cent figure for the law practice as a whole. Thus the expectation is that each full-time lawyer will do one and a half hours pro bono per week. Pro bono work is also taken into account in performance appraisal. In practice, some lawyers in the law practice do more than an average of one and a half hours pro bono per week and others do less or none. However the figure is included in all budgets so that lawyers will not consider that they are being penalised for doing pro bono work by having to do it in addition to budgeted billable hours.

Another option is to recognise a different number of hours for different levels within the law practice. For example, one overseas law practice provides:

- For partners: up to 50 hours of pro bono service (or higher with management committee approval) will be treated for compensation setting purposes as if fees were received therefore.
- For assistant lawyers: up to 100 hours of pro bono service (or higher with management committee approval) will apply towards the assistant standard hours requirement.
- For trainee lawyers: all hours of assigned pro bono service will apply towards the trainee hours requirement.

**Comments**

The extent to which this model encourages pro bono depends upon where the specified levels are set and whether they are absolute or capable of variation after an approval process. If hours per employee are set at a high level, this model can promote pro bono by giving lawyers a target for which they can aim, especially if it is accompanied by recognition of pro bono work in performance evaluations.

**Evaluation, advancement and remuneration**

A law practice will maximise participation in pro bono by ensuring that an individual’s pro bono work counts in compensation, evaluation and advancement decisions at all levels of the law practice and by communicating this clearly. This may involve considering more than merely the number of hours performed.

For example, one American law practice’s pro bono policy provides that all lawyers in the law practice should do at least 35 hours per year pro bono and that to encourage pro bono the law practice will recognise pro bono work in evaluating and compensating both partners and associates who provide more than 50 hours. The policy goes on:
We also believe that each lawyer’s contribution to the law practice and community cannot be measured based merely upon the number of hours of pro bono legal services that person has provided. . . . The quality and level of an associate’s pro bono work will also be considered in evaluating that associate’s advancement and compensation, as they are with respect to fee-generating work. Each partner’s pro bono contributions should be evaluated by his or her partners with the same care that each partner’s fee-generating and other contributions to the law practice are evaluated in determining partnership compensation each year.

Law practices adopt a variety of processes for making decisions about performance, compensation and advancement, including ‘360° reviews’, partner compensation meetings and/or self-assessments, performance appraisals and others. Ideally pro bono should be addressed in all such processes.

**Performance appraisal and pro bono**

Performance appraisals provide a practical way of recognising the pro bono contributions of people within the law practice. By specifically focusing on pro bono in the appraisal process, and taking it into account in decision-making, law practices are sending a message that this work is valued and rewarded. This kind of recognition is particularly important in law practices where pro bono hours are not treated as ‘billable’.

Issues to consider in relation to performance appraisals include:

- The best way to include pro bono as an express item on relevant documentation, for example, forms completed by the relevant employee and her or his supervisor/s. What matters should people be encouraged to address? Possibilities include numbers and kinds of matters and hours worked, nature of activities undertaken, skills acquired by reason of doing pro bono work and how work has contributed to the law practice and the community.

- Should the law practice’s pro bono committee/partner/coordinator have a role to play? This might depend upon the size of the law practice and the size of the pro bono practice. For example, in one United Kingdom law practice, just prior to annual evaluations, the pro bono committee requests that lawyers provide a short memorandum describing their pro bono activities during the past year. These are forwarded, along with any additional comments from the committee, to the relevant evaluation committee.

- If evaluation forms and procedures are being developed by human resources personnel, they should liaise with the pro bono committee/coordinator/partners. There may need to be training provided in how to use the forms.

- How should pro bono be considered at the review? For example, pro bono can be considered in the context of employees contributing to the values of the law practice. On a much more specific level, lawyers
can be encouraged to identify the skills they have acquired by doing pro bono and how these can be transferred to their ordinary practice. This might be particularly important in relation to lawyers who have undertaken secondments. Lawyers and evaluation committees could be encouraged to look to pro bono work to meet any identified gaps in skills and as a component of personal development plans.

1.11. Pro bono policy

Developing and circulating a clear and comprehensive written pro bono policy is generally regarded as an important activity for large and medium-sized law practices. It demonstrates the law practice’s support of and commitment to pro bono and allows individuals in the law practice to know how they can become involved. It also acts as a document against which requests for assistance can be assessed and decisions justified. Smaller law practices may find it useful to develop a policy to assist in making decisions about what kind of pro bono work to accept. Sample pro bono policies are provided at 3.2, of this manual.

Law practices might wish to encourage broad involvement in the development of the policy, so as to heighten awareness of pro bono, generate innovative ideas and projects and maximise ownership of and participation in the program. Some commentators have stressed the particular importance of ensuring that all partners have the opportunity to become involved in creating the policy. The policy should be approved at the highest level in the law practice (for example, by the board). Once approved, it should be widely and regularly (for example, annually) circulated within the law practice. It should also be included in recruitment materials and in any materials prepared for orientation programs for new employees. Law practices can encourage staff to provide ongoing feedback about the policy to, for example, the pro bono committee (see, for example, 3.2. Sample pro bono policies: 3). Some law practices engage in periodic review of their policies – which can serve as an opportunity to evaluate and possibly restructure their programs and to create new opportunities and directions.

Contents

Pro bono policies differ considerably, particularly in the level of detail included. Some law practice pro bono policies are quite detailed and include guidance on procedures as well as matters of principle and structure. Other law practices choose to develop separate procedures documents, such as intranet manuals, and have fairly brief policy documents. The following are three factors that have been identified as common to successful law practice pro bono programs:

1. The policy makes it clear that the law practice encourages all lawyers as well as other staff to get involved. Many US law practices make it clear in their policies that the law practice recognises it has a professional obligation (shared by its staff) to undertake pro bono work. Some go further by including an aspirational pro bono target
for all lawyers in the law practice (for example, 50 hours per year, based on the American Bar Association’s professional conduct rule, or a percentage of the law practice’s total billable hours) . . .

2. The policy makes it clear that pro bono work is not treated in any way differently to paying work – both in theory and practice.

3. The policy includes a clear definition of what the law practice will recognize internally as pro bono work.

In practice, policies tend to include:

- Policy statement – this is generally a statement of commitment by the law practice to the effect that pro bono is important, the law practice is committed to it and why and that lawyers and non-lawyers are expected or encouraged to participate;

- The principle of equal treatment of pro bono work – that it must be done to the same standard and given the same priority as the rest of the law practice’s work;

- A definition of pro bono for the purposes of the law practice’s program, including criteria.

- Responsibility for oversight and administration of the program – for example, pro bono committees, partners, coordinators (policies often state the names of the people on the committee, etc, and also spell out the responsibilities of the committee, pro bono partners or others involved);

- Intake, approval and assignment procedures and supervision, including conflicts checks, opening and closing files and the like (some law practices put the detail of these procedures in a separate document);

- How pro bono time is recorded and credited.

- How costs and disbursements are to be dealt with.

Some law practices also include information about:

- the goals of the program and/or evaluation criteria (see, for example, 3.2. Sample pro bono policies: 4);

- referrals and the referral process;

- budgets and/or targets.

1.12. Costs and disbursements

This section discusses policy questions in relation to costs awards in litigious pro bono matters undertaken through the law practices in-house pro bono programs (i.e. not for cases referred through formal legal aid schemes such as LAB and CLAS where the schemes’ respective policies would apply) and options for meeting internal and external disbursements.
Costs

Most law practices include within their in-house pro bono programs work done at reduced fees or significantly reduced fees, as well as work done without fees for indigent clients.

Law practices acting pro bono in litigation matters need to decide whether their recovery will be limited to the costs ordered by the court or agreed to in a settlement. This is essentially a policy question – whether the law practice’s definition of pro bono contemplates any fees being paid personally by the client.

In relation to the threshold policy issue of cost recovery in pro bono matters, some might suggest that it is not appropriate for lawyers acting pro bono to be paid costs – even by the opponent pursuant to a court order – on the basis that the work is done out of a sense of professional responsibility rather than to earn fees. On the other hand, why should an opponent benefit from the fact of pro bono assistance to the other side?

In practice, many overseas law practices have conditional costs agreements allowing for recovery of costs in pro bono matters pursuant to a court order (or out of a settlement including costs), but limiting recovery to the extent of the order. Such matters arguably retain their pro bono character because the client is not required to pay for the legal services provided.

Whatever arrangements are adopted by a law practice, they must be communicated clearly to the client (see 2.3. Letters of engagement).

Note that in some jurisdictions, the rules of court establishing court-based referral schemes explicitly entitle a practitioner to recover costs and disbursements if a costs order is made in favour of the pro bono client. These provisions apply only if a referral is made under the relevant court’s scheme.

What to do with recovered costs

In the spirit of pro bono, law practices could consider the benefits of allocating moneys received from successful pro bono litigation to their law practice’s pro bono budgets, and/or specifically towards meeting disbursements in other pro bono cases. For example, the pro bono policy of one law practice provides:

The law practice has a strict policy whereby any costs recovered are added to the existing pro bono budget with the law practice’s financial contribution to the pro bono program remaining the same (see 3.2. Sample pro bono policies: 1).

Similarly, the following appears in the pro bono policy of one American law practice:

Where pro bono matters are taken on a no win – no fee basis, and are successful, any contingent or court-awarded fees received
in connection with the successful resolution of the matter are used to defray the law practice’s out-of-pocket costs for pro bono matters.

Another option is to donate the monies recovered to a charity. One American law practice acted pro bono in a class action of 25,000 pre-school children in a claim against the New York City and State Boards of Education to comply with state law requiring them to provide certain educational services. The law practice donated the substantial legal fees received from the Defendants in a settlement to various children’s charitable organisations. Another American law practice providing legal assistance in an outreach service donates any proceeds of cases run on a contingency fee basis to local and national charities.

**Disbursements**

Law practices should decide on a policy position for charging internal and external disbursements in pro bono matters, and include this in the law practice’s pro bono policy and procedure documents. Even if the law practice’s policy is that decisions on disbursements are to be made on a case-by-case basis by the supervising partners, this should be reflected in the law practice’s policy and procedures documents so that all are aware of this position.

Law practices may decide on a number of ways of handling disbursements. In some law practices this may change from matter to matter, depending on the ability of the client to bear those costs. The ways in which disbursements in pro bono matters are handled by law practices include:

- charging no disbursements (meeting the cost of both internal and external disbursements); or
- not charging for internal disbursements and charging only for external disbursements; or
- charging for internal disbursements and/or external disbursements only above a certain cap – for example, the law practice may adopt a policy whereby they will not charge the client for disbursements in respect of photocopying, postage, -telephone and fax charges unless they exceed, for example, $500 (see 3.2. Sample pro bono policies: 2) or that the law practice will cover the first $200 of internal -disbursements and $150 of external disbursements on each matter (see 3.2. Sample pro bono policies: 6); or
- charging both internal and external disbursements.

As with costs, the arrangements for disbursements should be communicated clearly to the client, and set out in the letter of engagement (see 2.3. Letters of engagement). Law practices should explain to the client what kind of costs are disbursements, and whether the pro bono client will be responsible for these. It is important that the pro bono client be consulted, and agree to, any liability for disbursements as they arise. The client should be
informed whether the law practice considers such expenses are necessary for the continuation of the matter.

Law practices also need to be aware of any disbursement assistance that might be available (for example, court fee waiver arrangements, disbursement funds etc). Costs such as filing fees for courts may be waived for certain classes of litigants — law practices should check the relevant court/tribunal rules. Limited grants of legal aid may also be available in some jurisdictions for disbursements.

Ideally law practices should consider maintaining a degree of flexibility in relation to the payment of disbursements. Law practices undertaking a pro bono matter could consider budgeting some funds to cover the necessary expenses, despite any disbursement cap, if the client is clearly not in a position to pay for them, and disbursement funding is not available. As mentioned above, some law practices allocate fees recovered from other pro bono matters towards meeting disbursements in these kinds of cases. Many law practices, including these, choose to confer discretion upon their approval authority, or supervising partners, to exceed caps or pay disbursements in cases of need (see, for example, 3.2. Sample pro bono policies: 2).

1.13. Measurement, record keeping and evaluation

This section discusses why, and how law practices should measure, maintain records and evaluate their pro bono work.

Why measure and keep records of pro bono efforts?

Measuring and keeping records of pro bono efforts allows a law practice to assess whether its resources are being used effectively and efficiently, and whether the pro bono program is meeting its goals, complying with its policy and operating within budget (if any). It may also be a requirement to provide evidence of the type, range and quantity of pro bono work undertaken for certain legal service contracts and funding streams.

Other practical reasons for a law practice wanting readily accessible information on its pro bono efforts are to:

- demonstrate the law practice’s contributions and commitment to the community;
- use it in the law practice’s public relations, marketing and communication activities;
- use it in recruitment and training of employees, and in retaining employees;
- provide insights on how the program can contribute to meeting strategic business goals of the law practice;
- allow the law practice to respond accurately to surveys on pro bono;
facilitate the provision of accurate statistical information to the Law Society of Singapore;

What to measure and record?

A law practice may wish to measure and record both quantitative and qualitative information about its pro bono activities.

Quantitative information

Reliable data on the cost to the law practice of pro bono work is important in enabling the law practice to assess its program and the contributions of program participants. For example, law practices can, and should, collect information on the pro bono participation and performance of their lawyers and staff to enable law practices to accurately quantify and track the costs of its allocation of resources. (This would include lawyer and other staff time contributions, and costs to the law practice of secondees or pro bono coordinators, if any, and any other costs such as disbursements.)

Information that a law practice might wish to measure and record could include:

- the number of pro bono clients assisted/number of cases handled;
- sources of referral (this will assist the law practice to evaluate whether the sources of referrals are working to their optimum: law practices may need to better develop their relationships with referring agencies);
- the types of pro bono matters and areas of law (this will assist the law practice to evaluate the areas where pro bono need is evident as well as areas in which the law practice is not receiving referrals);
- client profiles – this could include demographic information, such as gender, ethnicity, location of client. Information of this kind will enable the law practice to identify the kinds of clients receiving (and by implication, those not receiving) assistance, which in turn can inform decisions about targeting resources and/or developing referral sources;
- the number of hours worked, and pro bono hours as a percentage of total billable hours;
  ◦ value of hours worked;
- the number of people in the law practice participating in pro bono work (lawyers and non-lawyers) and participation levels for different divisions and levels (for example, senior associates, salaried partners); the law practice may want to achieve a more even distribution of pro bono work, and non-participation by people from particular levels or divisions may indicate an obstacle that needs to be addressed (see 1.9. Involvement of all levels);
- any other pro bono activities undertaken, for example, contributions
to inquiries and other law-reform initiatives.

It is also useful to keep records of:

- the number/percentage of referrals that fall within and outside the law practice's targeted areas, if any; and of those, the number/percentage of matters that are taken on or declined;

- why referrals were declined (for example, conflict of interest, outside target area, other source more appropriate for assistance, client had means, no current expertise in area, no lawyers available); and where they were referred to.

The above information will assist the law practice assess whether it is effectively identifying and targeting areas of pro bono need, and whether it needs to adjust or restructure its program or better coordinate its contacts and sources of pro bono work to facilitate more appropriate referrals (see 1.6. Identifying needs and sources of work and 2.1. Casework procedures).

Qualitative information

Contributions to, and outcomes and benefits of, pro bono work cannot always be measured by reference alone to quantitative data or financial criteria. Methods of measuring should also accommodate the less tangible benefits, contributions and outcomes.

Measurement, recording and evaluation of pro bono outcomes may include -quantifying results, for example, where a pro bono matter results in a client receiving compensation from an unfair dismissal action the amount can easily be quantified and recorded. Other matters resulting in a non-financial benefit can also be identified and recorded. Some matters have significant benefits to the larger community. Some less tangible outcomes can be analysed (and quantified to some extent) by client satisfaction surveys, or interviews with key community representatives or focus groups.

Furthermore, law practices should gauge the impact of pro bono work on those undertaking the work, and on the law practice itself. For example, the law practice could ask whether pro bono work has enhanced staff job satisfaction and morale. Has the work brought new skills? If so, what skills? The law practice could seek to assess whether the pro bono work has positively promoted the law practice and extended its image as a good corporate citizen.

Examples of the qualitative information which a law practice might record include the -following:

- Information about case outcomes and community benefits. For example, one large in-house corporate pro bono program in the United States prepared wills and advance directives for over 100 low-income and elderly clients in Atlanta. While the direct benefits to the clients themselves could be easily quantified, the benefits to extended families (who would thereby avoid the costs and difficulties
of intestacy) and others (such as medical providers who would hopefully avoid some uncertainty involving medical treatment) are also worthy of recording in terms of positive outcomes.

- Benefits to the law practice, including measuring the impact on staff attitudes, morale and loyalty, and satisfaction with the work, including the effect on team building and skills acquisition (see, for example, 3.10. Evaluation form which seeks to elicit this kind of information).

- Whether the work has enhanced the reputation or standing of the law practice with particular clients or in the general community.

- Feedback from referring agencies and communities served by the law practice’s pro bono work.

**How to measure and record?**

Law practices may already have some of the quantitative information referred to above on their file-management or billing systems. Some law practices with established pro bono practices set up customised databases for pro bono matters to capture a range of information, including client profiles (gender, ethnicity, income source, location), area of law and referral source. Either the database and/or the billing system should record the type of work being performed so that the law practice can see how pro bono time is being allocated (for example, casework and advice, law reform, pro bono administration, CLE, training). The law practice’s billing system should also capture who is doing the work, for example, partners, senior associates, and how much work is being done.

One of the advantages of setting up databases for recording information about pro bono work is that they can be used as both measurement and supervisory tools. (See, for example, 3.6. Pro bono database and sample monthly report.) This kind of database is also useful for recording information such as court or limitation dates. See also discussion at 2.2. Supervision.) Information in the database can be regularly updated by staff involved in the matter. Relevant segments of information can then be extracted for different purposes such as financial reporting, current status reports and for measuring demographic information about clients or to ascertain where referrals are, or are not, coming from. Pro bono coordinators, committees or others can periodically access the information to compile reports, supervise work and evaluate the program.

Some of the ways qualitative information referred to above may be recorded include:

- recording comments in a register when a paying client makes favourable mention of pro bono work done by the law practice;
- tracking and recording media references to the law practice’s pro bono work;
- obtaining testimonials from beneficiaries and/or participants in pro
bono -programs;

- incorporating questions (and recording information) about the law practice’s pro bono practice into staff appraisals, intake interviews and orientations;

- devising surveys and/or evaluation forms for staff (see discussion below and 3.10. Evaluation form and 3.11. Matter closure report).

**Evaluation**

Measuring pro bono can provide information on whether, and to what extent, pro bono has created ‘added value’ for the individual pro bono providers, the individuals and communities served and the strategic business goals of the law practice.

An accessible and well-maintained database will assist a law practice to assess and evaluate its pro bono efforts both internally and externally. The information that can be extracted from pro bono databases will guide the law practice in determining the kinds of matters it takes on, and better enable it to identify trends that will in turn assist with evaluation of the work done and with the planning, development and extension of its program. Clearly, the more detailed the information recorded, the better placed the law practice is to properly evaluate its pro bono program.

Having records of pro bono work provides information and feedback to improve the program: Do additional referral sources need to be identified? Which agencies are not making referrals? Are the types of clients being assisted consistent with the targets set for the program (if any)? Are there some departments who are not participating in the program? Why not? How could they? Are intake procedures working well? What kinds of cases are being refused? Can and should the program be adjusted to cater for those cases?

One law practice uses a ‘matter closure report’ to record information and assist in evaluating its pro bono matters and program (see see 3.11. Matter closure report). Another law practice asks participating lawyers to complete an evaluation form at the end of each pro bono matter (see see 3.10. Evaluation form) and has specific procedures for evaluating secondments. These include the secondee providing reports to the pro bono coordinator after three months and at the conclusion of the secondment.

Some law practices, as part of their pro bono policy, will set criteria by which they assess the effectiveness of their policy and program generally (see, for example, 3.2. Sample pro bono policies: 4). This might involve the pro bono partner and pro bono committee asking:

- Does the scheme deliver results to clients?
- Has the scheme operated within budget?
- Have referrals been made to appropriate related services? (See
2.1. Casework procedures

Another law practice undertakes an annual ‘audit’ of its pro bono program using guidelines which include measuring costs and benefits, and assessing the extent to which awareness and interest in pro bono has spread among clients and employees, extent of staff involvement, obtaining feedback from pro bono clients and views of those involved in the work on a day-to-day basis and considering the amount of media coverage.

Quality assessment

Finally, any evaluation process should involve assessing the quality of the pro bono work undertaken by the law practice (see 1.15. Standards). Clearly, all pro bono work must be performed to the same high standard as all other work in the law practice. Ideally, compliance with this standard should be monitored and evaluated, and would include having systems in place to ensure that pro bono work is properly supervised.”

1.14. Training and skills

One commonly identified barrier to the provision of pro bono legal services is the mismatch that can arise between the skills and knowledge of lawyers willing to undertake pro bono work and the skills necessary to provide the legal and related services typically required by pro bono clients.

This section notes a number of possible responses to this dilemma. First, the mismatch is less serious than sometimes supposed – lawyers have a range of generic and specialist skills that can be adapted and built upon. Moreover there are opportunities for law practices to start from their existing skill base to identify ways in which those particular skills may be of use to disadvantaged communities. Second, there are some areas where it is relatively easy to acquire the necessary skills and knowledge through research, training or supervised practice. Third, it is possible to explore models of pro bono practice that involve complementary partnerships between pro bono lawyers with particular skills and community legal sector or legal aid staff with different skills.

Adapting the current skill base

Most lawyers will have a range of skills that can be put to use in the interests of disadvantaged clients. The generic skills of a typical lawyer, namely legal research and writing, fact-gathering, the ability to marshal persuasive arguments, advocacy and negotiation skills and particular specialist skills can all be used to assist disadvantaged clients or to meet the needs of community service organisations created to provide services to those clients. Lawyers are asked on a regular basis to do things they have not done before. They are able to do this because they know the framework of a particular area, where to look for detail and where to obtain support including conceptual and strategic advice. The law required
to advise disadvantaged clients is not always so complex that a competent lawyer with adequate time and access to appropriate support cannot readily provide useful assistance.

In a similar vein, in developing a pro bono program the law practice could work from its existing skill base to identify ways in which it can use the skills it does have to meet important community needs. One obvious area relates to the needs of community service organisations themselves, which may include advice, drafting, negotiation or representation needs in areas such as tax, contract, incorporation and governance, employment, intellectual property and government tendering. An emerging potential area for increased pro bono work is the possibility of providing legal support to ‘social entrepreneurship’ and community building activities.

**Training for pro bono**

There are areas of law of particular relevance to the legal needs of disadvantaged clients where it is relatively easy for potential pro bono lawyers to build on their generalist skills with a modest amount of training. There are, of course, other areas where adequate advice or representation will require an in-depth knowledge of technical law and/or considerable experience in the relevant jurisdiction. This is not likely to be readily obtained in, say, commercial practice and not practicable to impart in a few hours’ or days’ training.

Some law practices organise training for their lawyers to participate in particular pro bono services, for example, to provide advice and assistance at a community legal clinic (CLC) or at some other community advice clinic, or to provide assistance in a particular area of law, for example, employment law or criminal proceedings. Law practices may make their pro bono training available to lawyers in other law practices, as well as to their own lawyers. Law practices can also conduct training sessions for pro bono lawyers in preparing financial statements for maintenance and other ancillary matters and drafting affidavits in family law matters. Other areas in which training could assist pro bono practice include:

- an overview of the social service agency ecosystem including eligibility for legal aid, key referral agencies and social assistance and support services;
- client interaction, including interviewing and communication, challenging behaviour and divergent expectations.

Training activities are a good way of forging relationships with key community agencies, such as welfare rights, consumer credit and other legal centres and tenancy advice services. The training programs referred to above frequently use staff from CLCs, legal aid commissions and other agencies to act as trainers. Given the limited resources of these community agencies, cooperative inter-law practice training programs are highly desirable.
**Partnership models**

Pro bono lawyers can work in partnership with legal aid organisations by providing research support or case mentoring to other volunteer lawyers having conduct of a legal aid matter, or entering into a co-counsel arrangement.

1.15. **Standards**

Pro bono work should, of course, always be done to the same standards of attention, priority and professional performance as fee-paying work. All professional codes binding on lawyers apply equally in respect of pro bono work.

**United Kingdom protocol for pro bono legal work**

In the United Kingdom a Protocol for Pro Bono Legal Work developed by the Lawyers Pro Bono Group and the Bar Pro Bono Unit sets out the following key standards for pro bono legal work:

How should Pro Bono Legal Work be done?

Pro Bono Legal Work should always be done to a high standard. That means in particular that:

a) The availability of appropriate publicly funded legal advice or representation should always be considered before a lawyer undertakes Pro Bono Legal Work.

b) When a lawyer is requested to agree to undertake a piece of Pro Bono Legal Work the lawyer should give his/her decision within a reasonable time.

c) The terms on which the Pro Bono Legal Work is undertaken including the circumstances in which the relationship may be terminated should be made clear at the outset.

d) The Pro Bono Legal Work should only be undertaken by a lawyer who is adequately trained, has appropriate skills and experience and, where necessary, is adequately supervised for the work in question.

e) The lawyer undertaking a piece of Pro Bono Legal Work (and where appropriate his or her supervisor) should have no less than the minimum level of legal expertise and experience as would be required if the particular work in question was paid work.

f) In no case should the client be misled as to the lawyer’s skill or ability to undertake the Pro Bono Legal Work.


g) Once a lawyer has agreed to undertake a piece of Pro Bono Legal Work the lawyer (and if appropriate his or her law practice) must give that work the same priority, attention and care as would apply
to paid work.

h) Pro Bono Legal Work must not be undertaken without appropriate insurance.

i) A lawyer in doubt or difficulty in relation to a piece of Pro Bono Legal Work should seek advice from a Pro Bono organisation or from the Bar Council, the Law Society or the Institute of Legal Executives.

‘Ancillary provisions’ in the United Kingdom Protocol include:

a) Non-lawyer staff within a set of chambers or a law practice should be enabled to make the same contribution to the undertaking of a piece of Pro Bono Legal Work as they would for a piece of paid work.

b) Law students, pupil barristers and trainee lawyers have an important contribution to make to Pro Bono Legal Work. However that contribution must be properly supervised and must to preceded by proper training.

Law practices might consider using the above standards as a guide in developing their pro bono practices.

1.16. Reflections of a pro bono coordinator

_The following reflections have been contributed by the experienced pro bono coordinator of a large Australian law practice._

Conducting a pro bono scheme can be extremely rewarding for law practices, but it is important to appreciate that its success requires more than simply the allocation of a certain number of hours to pro bono work. In short, a pro bono scheme requires a significant cultural commitment by the law practice.

Pro bono matters cannot be conducted ‘on the cheap’. Pro bono clients are owed the same professional responsibilities as all other clients, and if a law practice is to take its pro bono responsibility seriously, then it must ensure that pro bono matters are given an appropriate level of resources. Pro bono work is not an excuse for cutting corners or simply a training ground for junior lawyers.

A law practice should recognise that conducting a pro bono practice may require skills and training additional to those needed when acting for commercial clients. It will be unfair to both your lawyers and your pro bono clients to simply assume that lawyers who ordinarily conduct commercial practices for corporate clients will automatically pick up the necessary community legal skills as they go along.

**What type of pro bono work?**

The law practice should decide in advance the type of pro bono work that it is prepared to conduct. It may be that acting for charities
or community service organisations will involve the type of work and legal issues much closer to a law practice’s regular commercial practice, and a pro bono practice directed entirely at charities or community service organisations may involve less obvious changes to the way in which you conduct your practice.

If the law practice chooses to conduct matters for individual clients, then serious consideration must be given to the areas of law in which assistance will be offered. Matters should not be conducted unless the partnership of the law practice has the capacity and expertise to supervise the files. It is inappropriate to use pro bono clients as an opportunity to train lawyers in new areas of law.

**Issues to consider**

Acting for individual clients can often bring a number of challenges. If your law practice does not ordinarily act for individuals, and is more comfortable with corporations, then it will be necessary for you to prepare your lawyers honestly for the challenges that lie ahead.

A commitment to pro bono work must come with a commitment to deal sensitively with the requirements of pro bono clients. Many pro bono clients are unfamiliar with the legal process. Some may feel uncomfortable speaking with lawyers. It is important to ensure that your lawyers are confident and capable of creating a professional relationship with clients which allows them to obtain appropriate instructions, and to give clear advice in a way which the client can understand.

Lawyers should also be prepared for the fact that individual pro bono clients may require more time than commercial clients. Some may ring frequently and may prefer to receive advice face to face, as well as in writing.

Some issues which you should consider include:

- Individuals can sometimes be emotional and, occasionally, demanding. Some may be so distressed by what is confronting them that they may cry. Your lawyers need to be aware of these possibilities and be prepared to respond appropriately.

- Many clients will never have needed a lawyer before, and may not understand too much about the legal system. They will need to have carefully explained to them their rights under the law practice’s terms of engagement, and the law practice’s responsibility to act only on the client’s instructions. You must not simply assume that if someone does not ask a question, that they understand or agree with what you are suggesting.

- Lawyers should be properly trained to be patient, and modify their ‘legalese’, in order to communicate at an appropriate level of language. It is essential to ensure that your lawyers are able to do so in a manner that is not seen as patronising.

- If your pro bono practice is going to involve new areas of law,
then you should consider what training of staff will be necessary. A community legal centre or other community service organisation may be able to provide your staff with training in areas of law with which those community service organisations are more familiar.

- If your clients will require interpreters, it is important that your staff be familiarised with how to use an interpreter. The law practice should also develop a policy as to who will pay for those interpreter costs.

- Some clients may find it difficult to travel to your office, and the law practice needs to consider whether it will arrange for its lawyers to visit clients at a more suitable venue.

- The law practice needs to be prepared to have pro bono clients sitting in reception. They should be made to feel as comfortable and as welcome as all other clients of the law practice.

Some pro bono clients will have unrealistic expectations about the prospects of their matter. A significant part of a lawyer’s task is to advise the client of the reality of their prospects. An important part of our pro bono role is often to do no more than to advise a client that they should not continue with a matter, that they should settle or withdraw. Many clients need to hear that advice, and often for a new lawyer, the idea of providing disappointing advice to clients can seem difficult. It is therefore important that law practices also provide some training for lawyers as to the appropriate manner in which to provide advice that a client does not necessarily wish to hear.
2. Procedure & Practice Issues

2.1. Casework procedures

This section discusses some issues relating to casework procedure.

Law practice procedures could usefully cover the following topics:

- intake criteria;
- assessment and approval;
- allocation, monitoring and supervision;
- file opening and matter management;
- conflicts check;
- letter of engagement;
- file closure;
- client access and referrals.

Some law practices also develop specific instructions for support staff, for example, file-opening instructions for secretaries. Smaller law practices may have more simplified procedures than the ones described below.

**Intake criteria**

Intake criteria assist the law practice to decide what work to take on. Some law practices include criteria in their definition of pro bono (see 1.3, Defining pro bono parameters for the law practice), others specify them elsewhere in their policy or in their procedures. Criteria might include consideration of the source of referral, the client, the nature of the case, whether there is any conflict of
interest, the amount of time the matter is likely to involve, and the level of expertise and the availability and willingness of a lawyer to undertake the case. Law practices might wish to develop a checklist assessment form to be used by the person/committee approving pro bono matters which reflect the criteria (see, for example, 3.8. Application for assistance form and related forms). For an example of criteria adopted by one law practice, see 3.3. Sample pro bono procedure.

Criteria relevant to intake, assessment and approval processes should be communicated to pro bono referral schemes and other referring agencies to minimise inappropriate referrals.

Assessment and approval

Appropriate written procedures will help ensure that the assessment and approval of proposed pro bono matters is carried out smoothly and in a timely manner. There are various models for approving pro bono work. Some law practices allocate this function to their pro bono committee, some to pro bono partners and some to pro bono coordinators (see 1.8. Coordinating pro bono work in the law practice). In other law practices, general partners, team/division leaders or other particular committees might be responsible for approving pro bono work.

Regardless of the option employed, the law practice’s pro bono policy or standard operating procedures should clearly spell out whose approval is necessary, and how the approval process operates. Law practices will also need to consider various procedural issues, for example, will a client interview be necessary before approval is given? If so, who will attend the interview, and where will the interview take place? This is an important consideration: some pro bono clients may not have the same degree of legal sophistication as the law practice’s usual clients and/or may be intimidated by an interview in the law practice’s offices. It may be more appropriate for interviews to take place at the offices of the referring agency.

As well as considering how the matter fits in with the law practice’s intake criteria, the assessment process will involve consideration of the estimated costs and disbursements in the case. Some law practices place fee or hours caps on each pro bono matter. Systems need to be implemented so that these can be entered into the law practice’s file opening and matter management system.

Referrals from within the law practice

A law practice should also have internally publicised procedures in place to facilitate staff-initiated referrals. Such matters would be assessed for approval according to the same criteria as other matters. Some law practices use an application form which is completed by a staff member and forwarded to the law practice’s pro bono committee (or other overseeing committee, partner or designated person) for assessment and approval (see, for example,
3.8. Application for assistance form and related forms. In other law practices, email or telephone contact or meeting with the law practice’s pro bono partner, pro bono coordinator or other designated person may be sufficient, at least as a starting point. Such a procedure would ideally include a designated time-frame for reply to the application (for example, notification within 48 hours of application).

Declining a matter

In some cases, for example, where the law practice has reviewed documents provided by a client, it might be appropriate to formally decline a matter. Any such letter advising that the law practice is unable to assist should give general reasons for the refusal. For example, the letter could state that the matter does not fall within the law practice’s guidelines, or creates a conflict with another of the law practice’s clients, or there is no lawyer with the relevant skills and experience available to take on the matter. All documents forwarded by or on behalf of the applicant should be returned to ensure confidentiality.

The refusal and reason for refusal should be recorded. Such records will assist the law practice to evaluate its pro bono program (see 1.13. Measurement, record keeping and evaluation).

Allocation, monitoring and supervision

Law practices generally assign the task of allocating matters within the law practice to an individual. In law practices with pro bono coordinators, this will be the coordinator. In some law practices, pro bono partners or others (for example, team leaders) may allocate matters. A range of approaches is adopted in determining allocation of matters, including emails to all staff or to lawyers who have expressed interest in doing work (usually identifying the nature of the matter, although not the client, the kind of work required and any deadlines); personally approaching lawyers in relevant practice groups; or contacting a partner in the relevant area to see who in the group might be able to take on the matter. A lawyer’s expertise, availability and interest in the matter should be considered when allocating matters.

In some cases lawyers self-select for pro bono work by ‘referring in’ a matter (which is then subject to the law practice’s approval process) and indicating a desire to work on it. In these cases, provided the lawyer is appropriately skilled to undertake the matter, allocation might simply involve approaching and designating a partner to supervise them. If the lawyer is not working in the practice group with expertise relevant to that matter, the law practice could approach a partner in the relevant group and, in this way, facilitate opportunities for lawyers to work on cases they are particularly interested in.

There are various procedures adopted for formally allocating matters once particular lawyers have agreed to work on or supervise
them. Good practice would involve some written communication of the allocation, both to the lawyer and supervising partner. See, for example, **3.9. Sample new pro bono matter memorandum** and **3.7. Sample referral and assessment form** to which the memorandum refers. Law practices with structured pro bono programs tend to maintain some kind of register or database of all pro bono matters in the law practice which is then used for a number of purposes, including supervision of work (see **2.2. Supervision**), internal and external reporting and evaluation (see **1.13. Measurement, record keeping and evaluation**).

**File opening and matter management**

Clearly there is no single way to open a pro bono file: law practices use different file-management or computer programs to record and manage their matters. File opening procedures may vary according to whether the law practice is going to count pro bono hours as billable or as something else (see **1.10. Counting and crediting time**) and whether a fees or hours cap is to be placed on the matter. One law practice requires the dated signature of the pro bono coordinator or partner on the first page of the matter opening to indicate that it is approved under the law practice’s pro bono scheme and the fee cap (if any) is authorised.

Law practices need to create and implement appropriate systems to facilitate pro bono matter management and may need to consider some variations to the normal file-management procedure. For example, in determining in advance how it intends to account for a lawyer’s time on a pro bono matter, a law practice may consider whether the lawyer will enter their time as chargeable as per any other matter, or whether it will be entered under a different code, or as a different kind of work (see **1.10. Counting and crediting time**). Any file-management system or software will need to reflect the relevant arrangements for charging in the matter, for example, no fees, reduced fees or other arrangements. Procedures should also deal with disbursements in accordance with the law practice’s policy. For example, this may require the law practice’s payment of disbursements to be approved on a case-by-case basis or beyond a certain limit.

Ideally, the procedures document should give clear instructions for each step involved. For example, are there specific pro bono codes or prefixes for pro bono matters? How is the client to be described? Is a partner’s signature necessary? What information needs to be entered about chargeable basis and disbursements? How is a fees or hours cap (if any) recorded? How should other parties be recorded?

Efficient file-management procedures also have particular collateral benefits in terms of evaluating and promoting a law practice’s pro bono program. This is discussed in further detail in **1.13. Measurement, record keeping and evaluation**.
Conflicts check

A conflicts check will be an essential procedure in determining whether to approve a pro bono matter for intake, just as with any other matter. A law practice’s pro bono procedures document should refer to the need to carry out such a check, and could also specify procedures for dealing with matters where there is any question as to conflict. For example, some matters may need to be referred to a person or committee for consideration and decision (see 2.4. Risk management for a discussion of some of the issues in relation to conflicts of interest).

Letter of engagement

Once a matter has been approved for intake, a conflicts check has been undertaken and a file opened, the client should be sent a letter of engagement. If the matter is undertaken by the law practice through its in-hour pro bono programme, then Pro bono clients would need to be made aware of the same issues as any fee-paying client, including the terms, scope and limitations of the pro bono assistance being provided and the costs implications to them (if any) of their matter.

The letter of engagement will often serve as a costs agreement. In the event that the matter is litigious, costs and disbursements will need to be addressed in any costs disclosure or agreement in the letter of engagement. In general, the letter of engagement should include:

- the scope of the assistance to be provided with reasonable particularity; and
- disclosure of the basis of any costs (including fees and disbursements) to the client;

Letters of engagement and costs are discussed in detail below (see 2.3. Letters of engagement and examples can be found at 3.4. Sample letters of engagement).

File closure

Pro bono matters should be closed upon completion, as other matters are, ensuring bills have been paid, relevant documents returned to the client, and the client notified in writing of the outcome of the matter and that their file has been closed.

In the interests of recording time and costs expended on pro bono matters and to assist with evaluation of their pro bono programs, some law practices include matter closure reports or evaluation forms as part of their pro bono matter management procedure (see 3.10. Sample evaluation form and 3.11. Pro bono matter closure report). The report may include information such as referral source, number of hours spent on a matter, reason for closing the matter, outcome of matter, feedback received from client and/or within the law practice, media attention received (if any), public relations (for
example, media releases) and benefits to the client, lawyer, the law practice and others from the matter. Evaluation of a law practice’s pro bono program is discussed in more detail in Part 1 (see 1.13 Measurement, record keeping and evaluation).

Client access and referrals

Sources of referrals are discussed in detail above (see 1.6 Identifying needs and sources of work). Law practices wishing to have active pro bono practices should consider assigning particular people the task of liaising with and developing and maintaining relationships with external referral agencies, such as the Law Society Pro Bono Services Office, legal clinic centres and the Legal Aid Bureau to source appropriate pro bono matters. Establishing productive relationships with referring agencies is a key factor in facilitating effective pro bono referrals.

Law practices need to make known to referring agencies the nature and criteria of their pro bono program, as well as the preferred procedure for receiving applications for pro bono assistance. To facilitate effective and timely referrals law practices could, for example, prepare written information about their program and/or referral guidelines. The aim of this kind of information would be to make clear to referring agencies and clients what they can expect of the law practice, and to preclude inappropriate applications and double-handling. Any information or guidelines would ideally include information about the following issues:

- What kinds of matters the law practice is prepared to consider for pro bono referrals. This will include what kinds of casework as well as other pro bono assistance a law practice will consider. Law practices should endeavour to be precise.

- What kinds of matters are specifically excluded from the law practice’s pro bono program. Law practices might also wish to specify if they will not take on pro bono matters involving litigation against a particular (named) client. Being precise means neither the law practice nor referring agency wastes time and resources with applications clearly outside the law practice’s program.

- Who within the law practice is the appropriate person to communicate with in relation to proposed pro bono referrals.

- Whether the law practice prefers to liaise with the referring agency at first instance, rather than a prospective pro bono client.

- The information the law practice expects from the referring agency. Is a brief outline of the matter communicated by telephone or email sufficient? Will the law practice need detailed documents or financial information about the client? (Law practices should not make these requirements too onerous on the referring agency, especially if the matter is urgent.)

- Whether the law practice expects that the client’s eligibility for legal
assistance from other sources has been checked (for example, legal aid, a professional association or trade union in the case of some industrial law matters).

- **Time frames within which the law practice will assess and approve (or decline) applications for pro bono assistance (ideally, within 48 hours).**

  Law practices should be as clear (and sensitive) as possible in describing their processes to clients and referring agencies. Even if a client is successfully referred, the law practice may undertake a merits assessment and decline to take the matter further. It is important that the client or referring agency is not given false hope.

  If law practices accept direct client referrals, then they will need to ensure they communicate their procedures clearly with those clients, bearing in mind any particular barriers the client may experience in accessing justice, for example, through disability or being from a non-English-speaking background.

**Referrals to other organisations**

Clients rarely have only a legal problem. They are frequently dealing with multiple issues at the same time such as domestic violence and housing needs. The kinds of services a client may need include those provided by health and medical services, mental health services, short-term and long-term housing providers (including homelessness support services), migrant resource centres, disability support services, financial counsellors, emergency assistance providers, community and family service centres, social work and counselling services and local transport services. Law practices and clients may also need the assistance of interpreter services (see 4.1. Interpreter services).

Anyone working with pro bono clients will need good referral skills: clients will often need referrals to an appropriate service or agency and law practices should be conscious of not consigning clients to the ‘referral roundabout’. People working in pro bono should familiarise themselves with the kinds of services available, and liaise with social service agencies to maintain up-to-date lists of these services and/or to obtain assistance in making appropriate referrals.

**2.2. Supervision**

This section considers direct and indirect means of supervising the conduct of pro bono files. The starting point is the principle that pro bono work should be subject to the same standards of attention, priority and professional performance as any other work undertaken by the law practice. Supervision arrangements adopted by the law practice should ensure this outcome is achieved and that the law practice’s resources are used efficiently and effectively.

Law practices generally provide that pro bono matters should be
subject to the same supervision as matters for fee-paying clients. Pro bono matters may also benefit from additional supervision as discussed below. Law practices allocate supervising partners to pro bono files and the usual rules apply in relation to sign-off of letters and advices. In addition, established practices for periodic file review are followed for pro bono matters. One Australian law practice’s pro bono policy provides:

In all instances where a lawyer is primarily responsible for handling a particular pro bono matter the work must be supervised by a partner in that lawyer’s department in the same manner and with the same diligence as work performed by the lawyer for a fee-paying client.

Good pro bono practice in medium and large law practices generally involves some kinds of additional and different supervision arrangements. These might be because:

- the nature of work or practice sometimes differs from the law practice’s other casework, for example, criminal or matrimonial matters;
- pro bono clients may not be as familiar with legal processes and lawyers as commercial clients and may not themselves be in a good position to monitor or query the quality or timeliness of service provided;
- in relation to pro bono matters, the client may not be engaging in the kind of supervision or scrutiny that arises from paying for a service.

Some pro bono work entails matters or projects that cut across different practice areas in the law practice. Indeed, for some law practices, part of the attraction of pro bono lies in the opportunities it can provide for lawyers in different divisions of the law practice to work together in a team. Appropriate supervision arrangements are needed for these kinds of matters and projects, which may well involve particular partners or associates supervising lawyers working in other practice groups. Similarly, where a lawyer in the law practice has a particular interest in a pro bono cause or organisation but does not work within the practice group with relevant expertise, the law practice could accommodate that lawyer by ensuring that they work with a person at supervisory level from the practice group with the expertise.

**Supervision of time**

Requiring records to be kept of time spent on pro bono work facilitates supervision. The law practice can allocate the function of reviewing those records to a supervising partner and/or pro bono partners/committees/coordinators or someone else to see that work is being done and that reasonable amounts of time have been worked on particular matters.
Supervision through billing arrangements and financial reporting

Law practices that treat pro bono work as billable hours require bills or ‘billing guides’ to be prepared on pro bono matters (see 1.10. Counting and crediting time). As with other matters, these can be adjusted to reflect and give credit for time reasonably spent on a matter. Some of these law practices also require at the outset of pro bono matters that estimates are made of likely work and disbursements and caps are set for each matter. This sets a boundary for the matter that can be adjusted if necessary. Processes of setting estimates, approving and revising capped expenditure all result in accountability and supervision of pro bono matters.

In one Australian law practice, as part of the monthly ‘billing’ of the law practice’s pro bono files, a monthly financial report is produced for every pro bono file, showing the lawyer(s) working on the matter, the supervising partner and the hours of work recorded in that month. This report gives the pro bono coordinator and the committee an indication of what is or is not happening on each file. If, for example, the report shows that no work has been recorded for a matter for some time, the coordinator or pro bono partner can follow this up by liaising with the partner responsible.

Supervision by pro bono partners, coordinators and/or committees

In part to ensure that pro bono matters are given the same priority as fee-paying work, some law practices have given supervision and monitoring functions to their pro bono partners, coordinators and/or committees who exercise these functions in a variety of ways. In one Australian law practice the pro bono policy provides that pro bono files are supervised in the usual manner by the responsible partner and all correspondence is to be signed by the lawyer’s supervising partner. In addition, the policy requires lawyers to provide three-monthly email reports for each pro bono file to the pro bono committee.

Policies that treat pro bono hours as billable hours also provide supervision in relation to ‘billings’ on pro bono files. In one Australian law practice, a draft bill is prepared on each file and sent to the pro bono partner who then allocates to the practitioner an appropriate equivalent in costs, based upon the reasonable time spent on the matter (see 3.2. Sample pro bono policies: 3). Another law practice’s policy provides that there will be minimum six-monthly reviews of all pro bono work undertaken in the law practice and that, ‘The pro bono partner should obtain information from clients regarding their satisfaction with [the law practice’s] pro bono program and the lawyers who provide services under it’.

In another Australian law practice, pro bono matters are supervised by the use of a ‘pro bono database’. (See 1.13. Measurement, record keeping and evaluation and 3.6. Pro bono)
database and sample monthly report.) Information on every pro bono matter being conducted by the law practice is entered on the database. It includes the type of matter, source of referral, the names of the lawyer(s) working on the matter and the supervising partner. Lawyers are required to make monthly updates to the database concerning the 'status of the matter' and the pro bono coordinator sends a monthly email to lawyers reminding them of this requirement. The pro bono coordinator can then print out from the database a simple summary of current pro bono activity (a 'monthly report') showing the responsible lawyers and partners and status of the matter (see 3.6. Pro bono database and sample monthly report). Each partner supervising a pro bono matter is sent an email advising them of their particular pro bono matters and the current status of each. The coordinator reviews the monthly report to make sure that pro bono matters are progressing appropriately and takes whatever steps are necessary to progress matters. The coordinator meets monthly with a partner from the pro bono committee and any unresolved supervision issues can be raised with that partner.

Additional supervision in this law practice also occurs through a productivity summary sent by the accounts department to the pro bono coordinator each month. This summary shows the number of hours spent on pro bono each month by each lawyer. The coordinator looks at these recorded hours to check that people are not under-recording or mistakenly recording their pro bono time. In addition, the coordinator uses this information to work out how many pro bono hours are being worked in each group in the law practice (each group has a target number of hours). The coordinator then sends an email to each group’s ‘Pro Bono Point Partner’ advising them how many hours their group has done as a percentage of the group’s total budget.

Another law practice utilises a system where the coordinator oversees the opening of all pro bono files and the delivery of each file to the appropriate lawyer in the office with the fee and hour estimates highlighted. The coordinator retains a ‘dummy file’ in relation to each file opened under the program. Each month the coordinator, with reference to the ‘dummy file’, follows up with the relevant staff member to ascertain progress on the matter. The coordinator also monitors general progress on pro bono matters through a monthly billing process that generates a set of financial reports similar to those discussed above.

Pro bono partners and coordinators in some law practices are also responsible for carrying out day-to-day supervision of particular pro bono matters in areas where they have expertise.

2.3. Letters of engagement

This section discusses issues that are particularly relevant to letters of engagement in pro bono matters. Law practices’ general obligations to clients in relation to other matters customarily included in letters of engagement (for example, how to deal with trust money
and disclosures) are not discussed. Included in 3.4 of this manual are sample letters of engagement for pro bono matters used by some law practices. Law practices should ensure that any letters of engagement and costs agreements they use comply with the relevant statutes and legal profession regulations.

There is no statutory obligation for legal practitioners to use letters of engagement, however, there are obligations for lawyers to disclose to their clients information about their costs or charges, which generally include that such disclosure be in writing, and up front. Most law practices include costs agreements within or attached to their engagement letters. Practitioners should refer to the Legal Profession Act (Professional Conduct Rules) and other relevant requirements of the legal profession.

Although legal profession requirements generally do not require a letter of engagement if legal costs are likely to be under a certain amount or if no fees are being charged, good practice dictates that pro bono clients should be sent a letter of engagement and execute a warrant to act at the outset which outlines the scope of the work agreed to be undertaken, and the nature and limitations of the relationship between the client and the law practice, including any issues relating to costs.

Some law practices may use different letters of engagement for pro bono clients according to whether and how costs and disbursements will be charged (if at all) or recovered (if at all). For example, a law practice might use one form of engagement letter for non-litigious matters where there is no expectation of recovery of professional costs and expenses, but use another letter of engagement for litigious matters where the law practice wants to provide for recovery of their costs and expenses from any costs award or settlement made in favour of their client. For an example of a general engagement letter which can be adapted as appropriate for a pro bono client please see 3.4. General letter of engagement.

Law practices will therefore need to draft their engagement letters taking account considerations such as the basis of calculating the bill and the right to have the bill assessed. Issues relating to costs and, costs recovery are discussed in further detail below.

Pro bono clients

Pro bono clients may not have the same level of business sophistication as a law practice’s commercial clients. This does not mean that pro bono clients necessarily need be treated with any less or more care, but lawyers need to be sensitive to their particular needs (see 4.2. for information about clients with disabilities). A few general points should be noted. A pro bono client should be carefully taken through the engagement letter, rather than the letter only being sent by post. Furthermore, lawyers should be aware that some pro bono clients might feel intimidated by and suspicious
of the legal system and lawyers (see 1.16. Reflections of a pro bono coordinator). Plain English should be used in the letter of engagement and costs agreement, and when explaining the terms of these agreements.

No matter how carefully the letter of engagement is worded, there may be instances where a client holds a mistaken belief that the agreement may render them liable for unspecified costs. In such cases it may be necessary or advisable for the client to obtain independent advice (for example, from a community legal centre) to reassure them about costs.

**Description of the work**

It is essential that both the client and lawyer understand and agree upon the nature and extent of the work to be provided on a pro bono basis. This will assist in dispelling any unrealistic or misconceived expectations the client may have about the scope of the lawyer’s assistance. The assistance provided may be limited to part of a matter only (for example, assistance in negotiations, or settling court documents), giving advice only (for example, advising on a strategy). It may or may not include representation in court or tribunal hearings, and it may be subject to review at certain stages. For example, a lawyer may agree to give a client an advice on the prospects of their claim, but only agree to act for the client if the prospects of success are reasonable. Or a lawyer may agree to represent a client at settlement negotiations, but not at a hearing and may or may not agree to act for the client in an appeal. Letters of engagement should describe with care and reasonable particularity the assistance that is to be provided. If a lawyer subsequently decides to provide additional pro bono assistance beyond the scope of work outlined in the original agreement, and the client is agreeable, a new agreement may be necessary.

The letter should also clearly set out contact details for the lawyer within the law practice who will have carriage of the pro bono matter, and include the contact details of the supervising partner.

**Termination**

Letters of engagement should make provision for the termination of the retainer in certain stated circumstances so that the client is clear on his or her position and the law practice is able to terminate the relationship if need be. The law practice may wish to terminate if, for example, the client refuses to accept the legal advice in respect of an issue which the lawyer considers essential to the conduct or satisfactory settlement of their matter, or if the client’s financial circumstances change in a material way.

Some examples of how some law practices provide for termination of a retainer include:

(i) We may end this agreement if any of the following occurs:
• your financial circumstances change such that we no longer consider you fall within our pro bono scheme
• you do not follow our professional advice
• we consider your chance of winning your case is weak
• you do not keep in contact with us
• you fail to provide us with adequate instructions
• you show you have lost confidence in us
• you retain another lawyer to act in the case
• you lose legal capacity
• a conflict of interest arises or becomes apparent or
• you do not pay your disbursements within 30 days.

We will advise you in writing of our intention to end this agreement and of the reasons for ending this agreement.

(ii) We reserve the right to cease acting in the matter and to withdraw as your lawyers if:

• a request for funds to cover disbursements, other essential expenditure or fees on account is not complied with within the time nominated in the request
• adequate instructions or replies to correspondence are not forthcoming within a reasonable time
• we perceive that the necessary mutual relationship of trust and confidence required for a workable lawyer/client relationship no longer exists.

Sample letters of engagement are set out below (see 3.4. Sample letters of engagement).

**Client and lawyer protocols**

Some letters of engagement describe in broader terms the lawyer’s and client’s respective responsibilities in relation to how they will conduct their relationship under the agreement. These are sometimes known as lawyer and client ‘protocols’, or they may be referred to as lawyer and client ‘obligations’.

The protocols may include matters such as the client agreeing that they will:

• provide the lawyer with clear and timely instructions;
• pay disbursements when advised and requested;
• keep the lawyer fully informed of any change in their personal circumstances or details.
The lawyer might acknowledge that he or she will, amongst other things:

- treat the client the same as any fee-paying client;
- communicate with the client in a clear manner;
- give the client the time the client needs to understand the advice they are giving.

Further examples of these responsibilities are set out in Part 3 (see the annexures to 3.3. Sample pro bono procedure).

**Costs**

This section discusses how law practices can consider addressing costs in engagement letters. Depending upon the arrangements made by a client and law practice in a particular case, costs for which a client may be liable include professional costs and disbursements, the costs of an adverse costs order by a court or tribunal in a litigious matter, or costs agreed in a settlement.

**Professional costs**

Law practices need to consider in advance whether professional costs will be waived or, charged on a reduced fee basis when undertaking pro bono work which has not been referred through formal legal aid schemes. Before opening a pro bono file, a law practice should discuss with the client the appropriate arrangements in relation to professional costs (and disbursements), and these arrangements should be set out clearly in the engagement letter. As mentioned above, law practices may use different letters of engagement which include costs agreements according to whether the matter is litigious or not, and if the matter is litigious, whether the law practice intends to recover their costs and/or disbursements.

As also noted above, professional legislation in each jurisdiction prescribes the information that lawyers are required to give their clients about their costs or charges, and the rights of clients in relation to costs. Costs recovery is discussed in further detail below. *(See also 1.12. Costs and disbursements.)*

**Disbursements**

The need for law practices to determine, as a matter of policy, how disbursements are to be handled was discussed above (see 1.12. Costs and disbursements). Any costs agreement should clearly set out the anticipated disbursements including likely amounts, who will be responsible for paying them and when such payment (if any) is due.

Law practices should always check to see whether fee waiver or exemptions or disbursement assistance is available for their clients.

It is important that the pro bono client be consulted about, and
agree to, any liability for disbursements as they arise. The client should be informed whether the law practice considers such expenses are essential for the continuation of the matter.

The following are examples of ways by which some law practices explain the client’s liability to pay disbursements. The explanation appropriate to a particular law practice will depend on the law practice’s policy in relation to the payment of disbursements.

“We will not charge you for the work of the lawyers in the case. We may, however, incur expenses (called ‘disbursements’) in acting on your behalf which we will ask you to pay. Those expenses may include:

- Court filing fees
- Expert reports
- Fees for conducting Searches (ACRA, Land Titles Registry, Bankruptcy and Litigation proceedings etc)

If you would like to see the current detailed rates of disbursements, please ask us.”

The example below makes explicit the distinction between internal and external disbursements and charges only for the latter:

“We will not charge for in house expenses for telephone calls, sending or receiving facsimile transmissions or incidental photocopying. Other expenses incurred by us in acting for you for services provided to us by third parties on your behalf will be charged to you. We will consult you before incurring any fees or expenses for which funding is unavailable.”

In some cases, the letter of engagement may include a term that if the client does not agree to pay disbursements which the law practice considers necessary to continue with the matter, the law practice may cease to act for the pro bono client. Such a statement could be included in the termination section of the letter of engagement, and in the section of the letter describing how disbursements are to be dealt with.

Costs orders

It may not be clear to a pro bono client that when a lawyer acts pro bono in a litigious matter there may nevertheless be a risk of the client becoming liable to pay the other party’s costs. The risk of an adverse costs order must be very clearly explained to the pro bono client. Similarly, if the matter settles, and a term of the settlement is that the client pay the whole, or part of the other side’s costs, it must be made clear to the client that they will be responsible for those costs themselves.

Some clients who are able to access pro bono representation
may be deterred from pursuing their claims because of the risk of an adverse costs order.

The following are examples of how some law practices explain the client's liability for costs in the event of an adverse costs order:

(i) If you are unsuccessful in your case, the court may order you to pay the fees and expenses of the other party. We do not pay these for you. You will be liable for these fees and expenses yourself. Likewise, if you agree in settlement to pay the whole, or part of another party's fees and expenses, you will be responsible for paying those fees and expenses.

(ii) Costs are at the discretion of the court. If you are successful in litigation, it is possible that the court will make an order that requires the unsuccessful party to pay some of your costs. Conversely, if you are unsuccessful in the litigation, it is possible that the court will make an order that requires you to pay the other party some of their costs. This law practice is not liable for any costs awarded by the court against you. Those costs are your responsibility. It is difficult to provide you with an estimated figure. As a general rule in the range of one-half to two-thirds of a successful party's costs are paid by the unsuccessful party.

(iii) If you are unsuccessful in the proceedings to which the work relates you could be ordered to pay the costs incurred by the other party to the proceedings.

Legal aid indemnities

Some jurisdictions have costs indemnity provisions that apply, with certain exceptions, to people granted legal aid. There may be circumstances where a potential pro bono client may be able to benefit from this indemnity.

Costs recovery in litigious pro bono matters

As noted above, legislation generally prescribes the information that lawyers are required to disclose to their clients about the way lawyers charge their costs or charges, and the timing and manner of the disclosure, as well as the rights clients have in relation to those costs.

Costs agreements in litigious pro bono matters should be drafted to reflect the parties' agreement that:

- neither professional costs nor expenses will be charged or recovered; and

- only expenses will be charged and recovered;

There are clearly other forms of costs agreements, for example, agreements which provide for delayed, but full fee recovery. However, this would generally not be regarded as pro bono assistance.
The policy issues informing the decision to recover costs and disbursements, including whether a client may be liable for costs beyond costs awarded or agreed to in settlement, are discussed briefly in 1.12. Costs and disbursements.

Under costs agreements, law practices generally disclose the rates of their professional costs and disbursements, as well as an estimate of the total costs based on those rates (some law practices annex a schedule of their charges rather than list each cost item in the letter of engagement, which then forms part of the costs agreement). Where an estimate is not presently possible, some letters of engagement may state that an estimate will be provided after the matter has been investigated further and the law practice is clear about the work to be provided.

A law practice wishing to benefit from a favourable costs order, or settlement with a costs component, in a pro bono matter should ensure that it complies with relevant legislation regulating the legal profession, in particular in relation to the disclosure of costs to the client and the prohibition against working contingency fee arrangements.

How much to recover?

Conditional pro bono costs agreements are commonly drafted to allow the lawyer acting for the client to reduce their costs on a discretionary basis. This is to ensure that the client is not charged any amount above that recovered through any costs order or costs component of a settlement agreement. Such arrangements are subject to the prohibition against entering into contingency fees arrangements.

(See also 3.4. Sample letters of engagement.)

Some law practices, as a matter of policy, direct any costs recovered in successful litigation to the law practice’s pro bono budget or other charitable causes (see 1.12. Costs and disbursements).

2.4. Risk management

In the process of setting up or maintaining pro bono practices, law practices should take steps to identify, analyse and manage any issues that may impede effective pro bono service delivery both to minimise exposure to liability and to maximise opportunities for undertaking pro bono work. This section of the manual discusses some of the issues that may arise in pro bono practice such as lawyers’ duties and conflicts of interest. It also looks briefly at issues relating to practising certificates and professional indemnity to the extent that these issues may affect pro bono service delivery. The section concludes with a discussion about disclosure to the court when acting pro bono and discrete task or limited pro bono assistance. The section does not deal with risk management issues that arise in legal practice generally but only those of specific relevance to pro bono.
Conflicts of interest

When deciding whether it can provide pro bono assistance, a law practice generally refers to its criteria which are often formalised in the law practice’s policy and procedure documents. These criteria will include consideration of conflicts of interest. Conflicts of interest may be:

- legal conflicts;
- ‘indirect’ or ‘commercial’ conflicts (in this manual, the term commercial conflict is used to describe the indirect conflict; commercial conflict also includes potential commercial conflict); or
- conflicts of a non-legal or non-commercial variety where the matter is viewed as being prohibitively controversial.

Law practices generally have systems in place to ensure legal conflicts of interest do not arise. No unique or additional policy or procedure is necessary in relation to direct legal conflicts and pro bono matters.

The more contentious area for the purposes of pro bono service delivery is that of commercial conflicts of interest, an expression commonly used to express the reason for an unwillingness to act because of concerns that existing or potential clients will question a law practice’s allegiances.

Commercial conflicts sometimes arise in the banking and insurance area because of the tendency of these clients to manage their legal needs through the use of panels of law practices. In some cases, a law practice may perceive a commercial conflict with a prospective pro bono client whose matter involves the company simply because the law practice is listed on the company’s panel, even though the law practice may have never received instructions from that company. Some government agencies and utilities also use the panel system. Similar concerns about commercial conflicts are also raised in the context of debates about mandatory pro bono regimes or in the awarding of government tenders to law practices that demonstrate commitment to pro bono work.

Some matters are perceived to be so politically, ideologically or ethically controversial that the law practice may have reservations about taking on the matter. This is usually for reasons similar to those related to commercial conflicts: a fear of alienating current, or prospective clients.

How some law practices perceive commercial conflicts or controversial matters

Law practices may be understandably sensitive about deterring current or potential clients, especially in the context of intense competition for legal work, and the tendency for corporations and government agencies to tender different aspects of their legal
requirements to different law practices. This sensitivity may manifest as reluctance to provide pro bono legal services in certain matters, for example, acting pro bono against government agencies because of a perception that this will prejudice the law practice in securing or retaining government legal work.

The following are some situations that may give rise to perceived commercial conflicts or prohibitions in relation to pro bono work:

- doing pro bono work that represents a ‘concern’ to, or advocating a point of view that is antagonistic to, or acting in proceedings against, the interests of a law practice’s existing clients (this may include acting in a matter that will directly impinge upon the known and explicit legal or business interests of a client, for example, where the purpose of a pro bono matter is to establish a legal principle that conflicts with a principle that an established client is continually seeking to defend and protect);

- appearing in matters against a particular class of clients (for example, doctors or banks) from whom a law practice customarily receives instructions;

- acting in a matter that is perceived to be contrary to the law practice’s business plan or business philosophy;

- acting for plaintiffs in a class action against a corporation, institution or government agency to whom previous unrelated legal advice has been provided;

- acting for what is perceived to be ‘the other side’, for example, a law practice that normally acts for doctors or banks, and then takes instructions to act for a patient or aggrieved customer, even though the defendant in question is not a client of the law practice;

- being accepted on a panel of a company against which a pro bono matter is referred, even though the law practice has never received instructions from that company;

- providing pro bono assistance to non-profit organisations with a political or campaigning objective;

- acting in politically sensitive or ethically controversial matters or matters perceived to be ideologically charged.

**Overcoming barriers to commercial concerns**

It is up to the law practice to decide how it will deal with commercial conflicts. An overly cautious approach to commercial conflicts has the clear potential to unduly inhibit a law practice from taking on pro bono work. A commercial conflict may, on occasion, be erroneously interpreted as a legal conflict, probably from an anxiety that a long-standing or desirable client may be alienated. This may in part stem from some confusion in relation to terms and definitional issues. Law practices should, without prejudicing their business interests, adopt a commonsense approach to commercial conflicts to ensure worthy
clients are not precluded from accessing pro bono assistance.

One approach that may allay concerns of commercial clients is for law practices to clarify that their commitment to pro bono is an integral part of their corporate image and public relations strategy. This approach may well be consistent with the corporate client’s own image: if commitment to pro bono work is one of the defining characteristics of corporate culture within many medium and large law practices, it is not unlikely that the concerned corporate client would wish to be positively associated with the goodwill that attaches to it through encouragement and tolerance of that pro bono activity. (Such an understanding between the law practice and client has the potential to lead to productive pro bono partnerships with corporate clients. See 1.2. Current models of law practice pro bono.)

The following are some of the practical ways some law practices accommodate commercial conflicts:

- Where a pro bono matter is being assessed for commercial conflict with an existing client of the law practice, that client is contacted so that the perceived conflict can be discussed, and consent from that client may be obtained. (There is evidence that corporations view law practices’ pro bono efforts as analogous to, and compatible with, their own community service obligations; the assumption that corporate clients are critical of pro bono work in general, or particular pro bono clients or controversial causes, may be unfounded.)

- Where a matter referred from a community service organisation is found to constitute a commercial conflict, a law practice may nonetheless give some general advice about the issues to the community service organisation and/or undertake research into particular areas relevant to the issues, or offer assistance by way of administrative support or secondment. (See 1.2. Current models of law practice pro bono, for some examples of non-legal pro bono support.

- The law practice can undertake to place the refused referral elsewhere.

- In one American law practice’s practice, if the law practice’s pro bono committee perceives that a proposed matter gives rise to a commercial conflict or is otherwise of concern to others at the law practice, the committee publishes a notice inviting those interested in the matter to attend a meeting or communicate with the committee. In some cases this may placate those concerned, or at least give the committee the opportunity to explain why they have pursued the matter. In other cases, this process has led to the law practice declining to pursue the matter, or to modify the focus of the proposed matter in such a way that it accommodates the concerns expressed.

- As part of their pro bono development, law practices could define and publish policies and procedures to identify and resolve potential commercial conflicts. A component of this policy could include
staff training and legal education on appropriate interpretation of commercial concerns. Ideally, any such policy would adopt a narrow definition of commercial conflict to ensure that pro bono work is not inhibited.

- As part of their pro bono development, law practices could define and publish policies and procedures to identify and resolve potential commercial conflicts. A component of this policy could include staff training and legal education on appropriate interpretation of commercial concerns. Ideally, any such policy would adopt a narrow definition of commercial conflict to ensure that pro bono work is not inhibited.

- Law practices could consider forming a commercial conflict committee. The committee could identify in advance areas that they suspect may cause problems with particular commercial clients, and consult and liaise with those clients to determine whether the client will support the law practice’s pro bono commitment to a particular matter or cause. This kind of approach would obviate ad hoc decision-making in relation to pro bono.

- Law practices should develop ties with other law practices with pro bono practices with a view to referring to those law practices pro bono matters that they are unable to undertake because of a conflict.

- In the case of conflicts of interest and secondments, at least one law practice equips its lawyers on secondment with a list of the law practice’s top 50 clients to facilitate quick conflict checking. In some cases, lawyers on secondment may be precluded from handling a particular matter.

  Additionally, as a matter of procedure, if a law practice has a policy about not taking on matters against a particular client, or class of clients, this information would ideally be made available to the referring agencies to avoid inappropriate referrals (see 2.1. Casework procedures).

Procedures for accommodating controversial matters

The controversial or sensitive nature of some matters may mean that some law practices may be cautious about taking them on. In these rare cases, a law practice may wish to adopt similar procedures to those that apply to commercial conflicts: additional scrutiny of the matter at a senior or committee level of a law practice. The advantage of this procedure is that it puts the management of the law practice on notice, enabling the law practice to develop in advance, if necessary, an appropriate strategy to deal with any media attention, and thus buffer the pro bono work from undue criticism.

Another procedure used by smaller law practices in the United States is to circulate all potentially controversial matters to all partners in the law practice for approval and provide a short period
during which a partner can ask for a review. Yet another approach adopted in some American law practices is to permit partners to take on highly controversial matters in their own names, rather than in the name of the law practice.

**Risk management: practice issues and pro bono work**

Some law practices with pro bono policies explicitly state that they will only provide pro bono legal assistance where they can do so with competence. Some law practices exempt particular areas in which they will not provide pro bono legal services. Clearly, pro bono legal work should be undertaken with the same degree of competency, expertise and professionalism and to the same high standard as any other legal work. Law practices can, however, consider acquiring expertise in new areas. Many successful pro bono initiatives are partnerships with special interest community service organisations and/or involve expert training of pro bono lawyers in areas in which they have previously not practised (see 1.14. Training and skills). For examples of these kinds of initiatives, see 1.2. Current models of law practice pro bono.

**Practising certificates and professional indemnity insurance**

Each jurisdiction has its own rules in relation to practising certificate and professional indemnity insurance requirements. Lawyers undertaking pro bono work should contact their relevant professional association and professional indemnity insurers on any specific requirements or exemptions. Employed lawyers undertaking in-house pro bono work will have their practising certificates and insurance needs met by the law practice. Professional indemnity generally extends to pro bono work so long as it is undertaken in connection with the practice of the law practice. Pro bono work done in this context should be undertaken with the knowledge and approval of the law practice, and subject to the same supervisory arrangements as fee-paying work.

**‘Discrete task assistance’ and professional liability**

As noted above, good practice dictates that pro bono work should be undertaken in the same way as any other work for any other client. It is well established that a legal practitioner will be liable in damages for failing to carry out in a timely manner and with reasonable skill and care that which he or she was engaged to do. (Liability of lawyers is generally founded on breach of contract; breach of a general duty in tort to take reasonable care; breach of statutory duty in relation to misleading or deceptive conduct, and breach of fiduciary duty.) The scope of this engagement is generally identified in the lawyer’s retainer which of course should be described with reasonable particularity and care (see 2.3. Letters of engagement).

Questions have been raised about liability of lawyers providing pro bono assistance for ‘unbundled’ services, that is, for assistance with part of a legal problem. There does not appear to be any
reason why there should be particular professional liability issues by virtue of the fact alone that legal assistance for a discrete task is provided pro bono. Differences of opinion between client and lawyer about the scope of assistance being offered, difficulties of communication between lawyers and clients and restrictions on the services available in particular circumstances are neither novel nor unique to pro bono. However, in the context of the provision of pro bono assistance, law practices should not ignore the distinctive circumstances or features of a particular case. For example, if the client is from a non-English-speaking background, has poor literacy skills or is not educated, particular care should be taken to ensure the client understands both any advice given and the limits of the scope of such advice. The essential element is that there is clear understanding of and agreement to the limited scope of the assistance offered and provided.

2.5. Troubleshooting

This section addresses some of the problems that can arise in coordinating and administering a law practice pro bono program. It is written from the perspective of a pro bono coordinator or other person with responsibility for coordinating the law practice’s program.

Partner support

Q The partners in my law practice don’t seem to support pro bono. What can I do about this?

There are several strategies to win partner support for a pro bono program. If your law practice does not yet have a program, you could seek out the partners who support pro bono and like the idea of their law practice formalising a pro bono program. In any reasonable sized law practice there is bound to be at least one, and sometimes many, partners who support pro bono. Ideally, the support will come from a senior and highly respected partner, amongst others. You could ask among the lawyers and secretaries who work for partners to identify those most likely to be interested. Your next step is to convince the partner or partners that the law practice will benefit from an organised program.

If there is reticence on the part of partners, make it clear to them that, as owners of the law practice, they ‘own’ the pro bono program. Circulating a draft pro bono policy for partner input and review can be helpful, as can reminding partners that they can refuse to take on pro bono matters. Agreeing to a pro bono budget up front can also help to reassure partners that their profit share will not be significantly affected. There are also articles on, for example, the benefits of pro bono in recruitment and skills development (including human interaction skills) that partners could be referred to.

If a pro bono program has already been approved in your law practice, you should have the senior partners or at least the board supporting the program. You can use the chair or other senior
partners in building support by, for example, publicising the pro bono work of the law practice, or the pro bono work of individual partners. You could report to the chair or the board on participation levels in pro bono including participation among partners. It should be made known that such reports are being made. Another way of building on the goodwill of supportive partners is to use them to place matters and encourage them to be ambassadors for pro bono within their practice groups.

If you are aware of partners who are particularly uninterested (especially if they are influential), you could arrange to meet with the partners to discuss areas of pro bono work they may be interested in. If those areas fit within the pro bono scheme, start feeding work to them in those areas. Advise partners of any positive feedback for the law practice from the program including in areas such as graduate recruitment, thank-you letters, or referrals to the pro bono program from clients or other friends of the law practice. You may never get support from 100 per cent of partners, however, the support of a reasonable number can mean that you have a useful and effective pro bono program. You could think about working in with other initiatives being run by your law practice. For example, if the law practice is running a leadership program for partners and senior associates, see if it is possible to include a presentation on your pro bono program. This way you get the future leaders of the law practice thinking about pro bono as integral to the law practice’s future directions. Another suggestion is to get your managing partner on board and ask him or her to speak about pro bono as part of the annual ‘state of the law practice’ or other ‘annual report’ to partners and staff.

It might be useful to have internal law practice presentations on what the pro bono practice has been doing to encourage a sense of ownership throughout the law practice. A presentation by lawyers undertaking pro bono work themselves can be very infectious.

You could also think about working with your human resources personnel to integrate pro bono into their projects, for example, including it in induction sessions and staff surveys and making sure there is a place in performance review forms to discuss pro bono. Including pro bono in review forms enables lawyers to tell reviewing partners what skill development they have gained through pro bono work.

Another thing to consider is how the pro bono monetary commitment is reported to the partnership in the partners’ accounts. For example, is it reported to partners as an ‘expense’ together with rent, salaries and the like? Perhaps a better approach is to report the pro bono monetary commitment in its own budget line as a ‘community contribution’ of the partners. That is, change the focus from an ‘expense’ to a ‘personal contribution’ in which the partners feel pride.
Writing off billable time

Q Partners in my law practice hate to write off billable time. How do I account for pro bono time to minimise partner write-offs?

There are various means of avoiding writing off billable time. The need to write off time depends on how pro bono work is credited within the law practice. Where pro bono matters are billed as commercial matters would be, and a single accounting adjustment is made, pro bono work is not written off by any partner. (See 1.10, Counting and crediting time.)

Inadvertent problems

Q How do I make sure that a pro bono matter I accept does not ‘inadvertently run into problems’? What do I do if it does?

The following strategies will help limit the potential for matters to run into problems:

- Select the right people. You should as far as possible select people with experience in the relevant area who will not need to spend large amounts of time familiarising themselves with the area of law. If no one has the required experience, choose people who are quick at learning new areas and who easily recognise the relevant issues which need to be followed through.

- Ensure there is a supervising partner who understands that it is their responsibility to ensure a matter does not encounter foreseeable problems (in the same way a partner would for a commercial matter).

- Some law practices adopt a process of setting fee estimates or budgets at the outset of each matter. Setting these at realistic and achievable levels is one way of ensuring that pro bono matters do not blow out. The pro bono committee, partner or other person approving pro bono work may wish to hold its approval of the matter, subject to being satisfied that the estimate has been carefully worked out and is not just a quick guess. If a matter has the potential to be very large and is hard to cost at the outset, it may be appropriate in some cases to approve the matter in stages, subject to review and with further approval based on the results and outcomes of the previous stage. If this per-matter budgeting process is adopted, ensure that the supervising partner and lawyers on the matter understand that it is their responsibility to monitor the budget for the matter. You could arrange for finance personnel to provide the partner/lawyers (and pro bono coordinator) with electronic reminders as budget targets come close, for example, at 70 per cent and 90 per cent. Such reminders allow for timely review of matters that are approaching estimate caps. Fee estimates can also be used as a basis for approving fee credits – that is, lawyers will only get fee credits to the agreed cap unless there are reasonable grounds for reviewing the fee estimate.

- Limit the credit (be it fee, time or other credit) available to the person
or people working on the matter to an amount that is reasonable for the work to be done.

- Some law practices have a procedure of reviewing on a regular basis the progress of pro bono matters, including hours spent/value of fees. This monitoring, which might be by the pro bono coordinator, committee or other person, can prevent or at least detect potential problems.

- If a particular matter is likely to be large and complex, you could consider whether to undertake the work on a staged basis where this is appropriate and not detrimental to the client's interests.

Make sure that the letter of engagement clearly sets out the scope of the work.

If a matter does blow out, you could speak with the partner or other senior lawyer on the matter and set priorities with them for completing the work as efficiently as possible. You could also seek to ensure that credit is not received for unnecessary work.

**Streamlining referrals**

Q  If my law practice takes too long deciding whether to accept a pro bono matter, when I phone to accept the matter the referring agency tell me they have already made a referral to another law practice. This wastes our time and annoys our partners. How can I avoid this in future?

Speak to the referring agency about the issue and discuss the difficulties with them. When the agency calls, you could ask whether or not the matter needs to be placed urgently and, if it does, indicate when you are likely to be able get back to them. Ask them if, on that basis, they want to contact another law practice or, if not, whether they can hold off until you get a decision. You could also circulate your referral criteria and preferred referral protocol to referring agencies. Another suggestion is that you work with other law practices to try to ensure that there is a standard protocol.

When accepting a referral, you could ask whether the referral is currently with any other law practice and if it is, you could decline to consider it until the other law practice(s) has made its intake decision.

You could also consider whether there is scope for speeding up the approvals process in the law practice either generally or in particular cases. For example, in liaising with practice groups or individual lawyers about taking on a new matter, you could advise that time is of the essence in responding. Where appropriate, you could seek the assistance of your pro bono partner in getting a response.

**Areas of competence**

Q  Many of the requests for pro bono legal assistance we receive are for areas of law outside my law practice's area of competence.
What should we do about this?

Pro bono clients are entitled to the same levels of quality and service as full-fee-paying clients. Law practices should not accept a matter that is outside the law practice’s areas of competence and pro bono matters should not be taken on solely because a lawyer or law practice wants to gain experience in an unfamiliar area of law. Having said this, some law practices have made a decision to meet a significant legal need by acquiring the expertise necessary to carry out pro bono matters which are outside the law practice’s core areas of practice. This sometimes involves engaging experienced lawyers and others to train lawyers to perform the work (and partners to supervise them).

You need to make a decision about whether or not the number of requests reflects the gap in the availability of legal services. If it does not, you should attempt to find out where those matters could be better placed, and then advise the referring agencies of your findings and also that the matters are outside your law practice’s area of competence. Alternatively you could train relevant staff to obtain preliminary information on a referral and to reject referrals that are outside your law practice’s area of competence.

If requests are being made because there is a lack of legal services in that area of law and the area of law fits within your pro bono program (although not within your current areas of competence), you could consider a training program to develop the required skills within your law practice.

If the requests your law practice is receiving reveal a gap in legal services, consider raising this at meetings with other pro bono coordinators. Law practices are increasingly working on a collaborative basis in this area and it may be that by identifying ‘gaps’ in such forums, new service delivery models can be identified.

Intake procedures

Q I want to set up an intake procedure that is fast and efficient. Any suggestions?

The efficiency of a law practice’s intake procedure is going to depend very much on having clear guidelines about the sorts of matters that you act in, the information that you need from referring agencies, and ready access to the person or committee with authority to accept or reject matters. An intake form can assist in obtaining relevant information quickly. Advising referral agencies what you need to know is a good means of ensuring they will have all the information when they ring you.

If your pro bono procedure involves decision-making by committee, you might want to set up mechanisms to ensure it is not too time-consuming. These might include approval by email with a permitted response time of 24 hours and a return rate of over 50 per cent being sufficient for decisions.
One way of setting lines of authority is to develop a policy on who can accept matters that are likely to generate 'fees' to a certain sum. For example, pro bono coordinators can approve matters below $X, a pro bono partner can approve up to $Y and anything beyond $Y must go to the committee. (See also 1.3. Defining pro bono for the law practice, 1.8. Coordinating pro bono work in the law practice and 2.1. Casework procedures.)

Group emails

Q  I have been receiving group emails from pro bono referral agencies. I start intake only to find out later that the matter was referred two hours after the initial email. What can I do about this?

Group emails – or referring matters by any means to more than one potential legal service provider – may appeal to a referring agency in some circumstances. However, they can have practical implications for law practices. It is desirable that protocols be developed by referring agencies and law practices. If a law practice is considering taking a matter referred by group email and/or takes the matter, the law practice could send an email to the group saying that they are considering or have taken the matter.

In the absence of improved referral protocols, you might explain to referring agencies what the issues are for your practice and how you would like to receive referrals. If you do not wish to receive group emails, let the referring agencies know this. If you do receive such an email, you could if you wish respond by asking the sender to contact you again if they have exhausted all other avenues of referral. (2.1. Casework procedures.)

Problems with clients

Q  I have a pro bono client who is not acting in accordance with the law practice’s instructions. What should I do?

When you establish your relationship with a client you need to be clear about the basis on which you are acting. You can send a letter of engagement indicating that if the client does not follow your reasonable advice then you will cease to act.

Before terminating the relationship with the client, however, you should ensure that the client properly understands the advice which they have been given and the legal consequences of the decision they are taking. The client should also understand that the course of action they intend to take is against your advice and as a result you will cease to act. You also need to consider how serious the damage will be if they act against your advice. If it is only a minor matter, you may be able to continue acting. If it is a serious departure from your advice, it suggests that the client does not have confidence in the advice and you should consider withdrawing from the matter.

Termination of the relationship is a serious step to take. It is desirable
that a law practice’s pro bono policy or procedures document makes clear who in the law practice can make this decision and what steps will be taken before this occurs, for example, discussing the matter with the client.

Q  I have a very difficult pro bono client who is giving our staff a very hard time and they are furious with me. What should I do about this?

Often pro bono clients will have different expectations from commercial clients about the services you will provide. Generally the matter they are seeing you about impacts on their personal life and it is not part of their job, or their general skill set, to be liaising with lawyers. They might be slower than commercial clients to respond to your requests for information. Some pro bono clients will require more detailed and sometimes repeated information about their matter. Some will have particular needs that must be accommodated, for example, a disability that requires documents in a particular format. If these kinds of issues are explained to the lawyer taking on the matter, it might avoid situations that lead to the client being perceived as ‘difficult’ rather than just having different needs.

An early assessment of the client by the pro bono coordinator (or other person responsible for intake) should be made in order to see whether or not they are likely to be ‘difficult’, and any perceived problems should be relayed to the lawyers taking on the matter. Some clients are difficult because they do not understand the way law practices work, have been forced to fight at each stage in the matter before they got to you, or do not understand the way the law or legal processes work.

You should ensure at the beginning of the matter that clients understand what you are going to do for them, how long it is likely to take, the reasons for any requests you make, any deadlines in the matter (and what are not deadlines) and how the matter is likely to proceed. It may be wise to go over these if and when a client becomes difficult. Sometimes the pro bono coordinator will need to intervene in the matter and become a point of contact for the client. It may also be that one person working on the matter is better able to handle the client than others. It may be appropriate to instruct the client that they need to contact that person only.

You should attempt to understand why the client is difficult and explain the client’s position to the lawyers. Very often you need to be a cultural interpreter for lawyers within the law practice as well as for clients. It may be appropriate in some circumstances to move the matter to a person who perhaps has the skills to deal with the client.

Depending upon the particular problems with the client, it may be appropriate to seek to resolve them by meeting with the lawyer/
partner doing the work and the client. Where necessary and appropriate, the client may need to be reminded of the possible grounds for termination which should have been articulated in the letter of engagement.

Finally, it might be appropriate to discuss the difficulties with the referring agency, particularly if they have had a long-term relationship with the client prior to the matter being referred.

**Pro bono referrals**

**Q** I have just received a call from a person who received my number from another pro bono law practice. What can I do about direct pro bono referrals from other law practices?

If it is the case that you do not accept referrals directly, you should contact the law practice which passed your details on and advise them of this. Bear in mind that the client may not be accurately reporting the circumstances of the referral. Again the development of a protocol between law practices is useful. If a coordinator is unable to take on a matter but genuinely believes that the matter has merit, good practice would suggest that the coordinator (who may already have done at least some intake) would themselves refer the matter to another law practice.

In terms of the particular client who has contacted you, insisting that you take them on, you should explain that the law practice has guidelines and you can only accept the matter if it comes within those guidelines.

**Defining pro bono work**

**Q** Some partners within the law practice classify work for friends, family, school, etc, as pro bono when really it doesn’t fall within the definition of pro bono work. How should I handle this?

You should ensure that the definition of pro bono for acceptance into the pro bono program is clear and that, where appropriate, the definition specifically excludes work for family, friends and children’s private schools. This document should be circulated throughout the law practice and be readily available on internal document management systems. If necessary and where appropriate, you could ask the pro bono partner (if your law practice has one) or other supportive partners to help convey the message about the law practice’s pro bono criteria. Consider regularly advertising the pro bono criteria within the law practice.

The pro bono criteria should be approved at the highest level in the law practice (for example, by the board). If you are then approached to do work that is outside the criteria, you can refuse on the basis that it is outside the law practice’s pro bono criteria. You can explain that there are all types of matters which people would like to be able to do without charge but that the law practice has determined the criteria for the types of matters the law practice will act in without
charge. Ensure that the partners are aware that the criteria have been approved by the law practice’s managing body.

Alternatively, you might advise the partner or other person who has approached you that whilst the matter may not fit within the pro bono criteria, there may be other reasons (such as public relations) why the law practice might want to consider doing the work on an unpaid basis. For example, in one law practice such work is undertaken on a ‘productive non-billable’ basis so that a person’s time is recorded but there is no fee credit applied. The decision to do this kind of work is not one that is approved under the law practice’s pro bono procedures but rather a decision of the relevant practice group or managing partner. So it may be that the person in fact does the work but it does not come out of the law practice’s pro bono budget nor is it counted towards the law practice’s pro bono work.

If your law practice’s accounting system has a specific code for pro bono matters, you can check to see whether files that are outside the pro bono guidelines are being opened. Some law practices have mechanisms in place so that no new pro bono matters can be opened on their system without the appropriate approval process having been completed. (See 1.3. Defining pro bono for the law practice and 1.11. Pro bono policy.)

**Pro bono budgets**

**Q** I have been asked to prepare a pro bono budget for my law practice. We haven’t really had a formalised program before, so I have nothing to guide me. How can I accurately determine my law practice’s annual pro bono budget?

First you need to decide what will be accounted for within the budget. For example, is it just the salary or charge-out rate of the pro bono coordinator that will be taken from the budget, or do you also pay the cost for secretarial support, occupancy, or other charges often attributed to practice groups? You will also need to determine the types of work the scheme is likely to do. Litigation, for example, is expensive and time-consuming, however, you can do a number of short advices quite cheaply. Consider making provision in the budget for disbursements consistent with your law practice’s policy on internal and external disbursements. Remember to include provision for conferences and seminars which are important networking and learning opportunities, such as community legal centre conferences and pro bono conferences. It may be necessary or desirable to allow for travel to develop pro bono opportunities.

It may be worthwhile talking to other law practices which are roughly the same size and have similar aims in their pro bono program to get an idea of what to budget for. (See also 1.7. Setting targets and budgets.)

**Distributing pro bono work**

**Q** Some lawyers in my law practice complain they are approached
too often with pro bono work while others complain that they never have the opportunity to do pro bono work. How can I achieve even distribution of pro bono work throughout my law practice?

It is unlikely that you will ever achieve even distribution of pro bono throughout the law practice. Some areas of the law practice will always have more of the skills needed to meet the needs of pro bono clients. Nevertheless there are ways to try to improve distribution. One approach is to work out in which areas your law practice has strengths and then seek to build the pro bono program to match these strengths with community need. Another possibility is to develop expertise in areas which do not naturally fall into any particular group and train interested people across the law practice. Teams of lawyers can be trained to take on work outside their general area of practice. For example, lawyers from any practice in the law practice can be trained to do general advice work if your law practice does outreach, or they can be trained to undertake work in a particular area.

In addition, many matters don’t fall within the expertise of a specific practice group but rely more upon general legal skills shared by all lawyers. These matters can be given to groups normally not receiving pro bono referrals.

You could think about setting up a matching system, whereby a junior lawyer in a group that does not receive much pro bono work may be able to work under the supervision of a partner in another group. Where there is some discrete research task within a larger matter, you could ask the supervising partner to think about getting someone from another group to do that component of the work, provided this is not at the expense of quality of work.

Think proactively about pro bono opportunities for groups that might not get many casework referrals. For example, is there scope for involvement in community legal education work? Would individuals in those groups be interested in secondment opportunities or being on the pro bono committee?

Q  Our law practice receives frequent requests for pro bono assistance in one particular area. I am concerned that I am overworking those in this high demand area of law. What can I do about this?

You need to consider capacity in accepting pro bono matters. If the demand is in one area you should consider whether or not you can train lawyers from another area of the law practice to do this work. You need to balance what you can achieve given the human resources you have in that area of law. You may reach the stage where you decline further referrals in that area for a period.

Means tests

Q  I find it hard to draw the line in relation to means tests for our in-house pro bono programme. What means test do other law practices use?
Most law practices do not have a specific financial means test but their definitions of pro bono work for individuals focus upon people who are disadvantaged and marginalised. The ability to pay for legal services, or otherwise obtain legal services, should be taken into account. So, for example, law practices accept people who would fall outside the legal aid means test but who could not reasonably pay a lawyer.

A degree of flexibility is important. It is a matter of the law practice being satisfied that the particular person does not have the capacity to obtain other representation. In part this is a financial question but other matters may also be relevant, such as the area of law (for example, could the case be done on a speculative basis) or, for some law practices, whether it is a public interest matter. Law practices will also take account of other matters, such as the likely resources required by the matter. (See 1.3. Defining pro bono for the law practice.)

Unpopular matters

Q I have just received a referral for a matter that satisfies my law practice’s means and merits test and is within our sphere of competence. However it is an unpopular matter for an unsympathetic client. How do I present this matter to the law practice?

The more you get to know people within various groups of the law practice the more you will realise which lawyers and partners may be prepared to act in particular matters. It is better to send ‘unpopular’ work to sympathetic partners or lawyers to avoid generating ill will for the pro bono program. If you have a lawyer and partner prepared to act in the matter, it becomes easier to have the matter accepted by the law practice. If the referral satisfies your pro bono criteria, this should be pointed out to the law practice.

If the engagement letter makes it clear that the law practice is not prepared to act against the law practice’s advice you can use this as a means of reassuring the partners that the matter will not get out of hand.

Commercial conflicts

Q How do I deal with commercial conflicts?

Commercial conflicts in pro bono matters should be dealt with at first instance in the same way as for commercial matters. If you feel that the policy should be more relaxed for pro bono matters, you will need to speak to the person within your law practice who is responsible for the conflicts policy and to the partners in charge of client contact in the areas where you wish to act pro bono and seek to have a pro bono specific policy.

In particular cases, your law practice could consider a dialogue with the client with whom there may be a perceived commercial sensitivity. It may be that they don’t find it problematic. In one law
practice, where a matter is potentially commercially sensitive, the coordinator might do an email to all partners asking for any reasons for the matter not being taken on (rather than asking if they think the law practice should take it on). If there are any replies, there is then a discussion with those partners before the pro bono/managing partner makes a final decision. Consulting is a good protection policy in case of later problems and at least it provides an opportunity for some debate about the perceived conflict.

**Non-English-speaking clients**

Q How should my law practice accommodate pro bono clients from non-English-speaking backgrounds?

Often if a client is referred by, for example, a legal aid agency, the referring agency will allow you to use the interpreting services available to them without charge. If that is not possible, the law practice will need to ensure that there is a properly qualified interpreter to assist the client. It is not acceptable to have friends or family interpreting anything but the most basic conversations (for example, to organise an appointment). The law practice needs to accept that it will sometimes need to bear the cost of an interpreter in order to ensure equal access to its pro bono program by people from all backgrounds. (See also 4.1. Interpreter services.)

**Part-time pro bono coordinators**

Q I am a part-time pro bono coordinator. How do I balance client work with pro bono administration and work?

In part, the answer depends on how your pro bono administration time is credited. If you don’t get any credit for this time, you will probably fit the pro bono work in around the edges and never feel as though you can spend much time on it. If you are able to record your time as if it were a normal file, or if you get fee relief for a portion of your time, you will do more of it and will feel less pressured. In either event, it is an ongoing challenge because administrative tasks can get pushed to the side when particular client matters demand attention. It might help if you set aside a particular day(s) or afternoon(s) each week (depending upon how part-time your pro bono work is) which you try to designate as pro bono administration time.

If you are a part-time coordinator it is important to review your status as the program grows. For example, in a particular law practice one day per week may be sufficient at the development phase of a pro bono program, but insufficient 12 months later. It is a good idea to keep detailed records or time sheets of all time spent on pro bono intake, administration and matters.

Many junior lawyers and support staff are keen to support the law practice’s pro bono program, so you may be able to delegate discrete administrative tasks, such as minuting committee meetings.
and preparing agendas or maintaining pro bono administration files.

**Sourcing work**

Q  Where do we find pro bono clients?

Those in the legal aid sector e.g. the Law Society Pro Bono Services Office are best placed to identify pro bono clients. This is because they work in areas and with organisations that are accessible to people who are disadvantaged or marginalised and they have a good idea of the legal resources available to assist clients. Generally if you are contacted by such an agency it is because they are aware that there is no other form of support available. You should build contacts within the community legal sector including with volunteer legal services, community legal centres and legal aid. If you develop an interest or expertise in a particular area, you may wish to contact the peak bodies for that area (for example, if you were developing expertise in issues for people with a disability you would contact disability organisations). (See 1.6. Identifying needs and sources of work.)
3. Precedents & Pro Formas

3.1. Precedents and pro formas

This section contains sample precedents and pro formas that, for the most part, have been created by Australian law practices in the course of developing and operating their pro bono programs. The documents have been rendered anonymous and are provided as practical examples and are not intended to be definitive or exhaustive. The commentary in 1 Planning, developing and maintaining a program and 2 Procedures and practice issues refers to these documents at relevant points.

The materials in this section are likely to be of use to law practices in the process of developing their pro bono programs and also to law practices with established pro bono practices. For example, law practices drafting or revising their pro bono policy may get useful ideas from the sample policies included at 3.2; documents relevant to a law practice’s procedures for dealing with requests for assistance and matter management can be found at 3.2–3.3 and 3.5–3.10. Law practices wishing to adopt procedures to facilitate evaluation of their pro bono casework may be assisted by the sample forms at 3.9 and 3.10. Law practices developing engagement letters for pro bono matters may benefit from the samples at 3.4. The section also includes a sample memo and questions that a law practice could include in a law practice-wide survey of pro bono (3.5), examples of secondment agreements (3.12) and material relevant to encouraging pro bono work (3.13).

Law practices should adapt or modify the materials in this section to suit their own requirements.

3.2. Sample pro bono policies
**Sample 1 - Pro Bono Scheme**

**Pro bono work**

We are committed to pro bono work and to developing a coordinated, focused, well balanced and meaningful pro bono practice.

The phrase pro bono derives from the Latin pro bono publico meaning for the public good. It usually refers to the provision of legal services either free or at substantially reduced cost to those who would otherwise be unable to protect their lawful rights and interests.

The practice’s criteria for pro bono work is relatively broad so as to increase our commitment to people in need and causes that benefit the community. Our substantial charity client base enables the practice to best utilise our core expertise as corporate lawyers, while acting in the interests of the public good.

**Criteria for selection of pro bono matters**

**Criteria for selection**

In order for a pro bono matter to be undertaken by the practice, our Pro Bono Committee (“the committee”) must be satisfied of the following.

(a) **The work:**

   establishes or preserves the rights of those who cannot afford professional legal advice without subsidy (other than in respect of purely -commercial disputes), the disadvantaged or marginalised, or classes of persons who otherwise deserve public support;

   seeks to further a particular public good, correct a perceived injustice or otherwise address issues which are of broad community concern; assists non-profit organisations having objects for the benefit of the public, sections of the public or the natural world; or

   improves the laws or the administration of the legal system from the perspectives of availability, efficacy, equity or justice (including through law reform participation and legal education).

(b) **The work is in the form of providing legal advice, representation or using legal skills.** For example, community service is not regarded as being of a pro bono nature for this purpose but time spent by members of the practice where our legal skills and training are used other than for a specific matter will generally be recorded by the practice.

(c) **The matter does not create a legal conflict of interest with another**
existing or former client of the practice. Commercial conflicts may impact on the decision to act if the nature of the matter or the identity of any current client or the pro bono client is such as to warrant the practice not acting. The committee will consider whether commercial conflicts can be dealt with by receiving the consent of the fee paying client.

(d) The matter falls within the professional expertise of the partner who will be responsible for it.

**Additional criteria**

(a) In complex cases or cases where the committee is unsure whether to act, the committee may consider the following means and merit tests.

i) **Means test:** A general enquiry may be made of an applicant's capacity to pay for legal services to ensure they properly come within the objects of the practice's pro bono policy. If the applicant is in receipt of welfare benefits he or she will, prima facie, meet the informal means test. Satisfying a means test is unlikely to be a consideration in clear public interest cases. In addition, where the client is a charity or non profit organisation with public good objects a means test will not be applied.

ii) **Merits test:** Although there will be no formal merits test, all litigious matters should have reasonable prospects of a successful outcome. Where we are asked to act for a client in place of other lawyers, the committee will need to be satisfied that the circumstances in which the client is changing practices do not suggest that the practice should not act.

(b) The committee will assess matters against the selection criteria in this policy on a case by case basis. In particular, when considering litigious matters the committee will have regard to future staffing availability. In controversial or difficult decisions, managing partner sign off may be sought by the committee and where the matter is sizeable then executive or deputy executive partner sign off will be sought to conpractice we have the capacity.

**The practice’s policy**

(a) Pro bono work is of equal importance to fee paying work and for all purposes must be treated in the same way. In particular:

i) pro bono matters should be initiated, conducted and supervised by a partner in the same way as fee paying matters;

ii) matters of a pressing commercial or litigious kind will be given equal priority as for similar fee generating work; and

iii) lawyers will be given credit for time spent on a pro bono matter in
the same way as for fee paying matters.

(b) Lawyers will be asked to specify their pro bono activities in the self-assessment forms filled out for performance reviews.

Opening and conducting a pro bono matter

Receiving instructions

You may be asked to take on a pro bono matter by the committee, by a partner or directly by a prospective pro bono client (eg, a charity or community group).

You may only open a pro bono matter if either:

(a) it has been referred to you by the committee; or

(b) the committee has approved the matter.

Approval by the Pro Bono Committee

The committee must approve all pro bono matters for new and existing pro bono clients.

The committee will consider whether the matter should be approved on the basis of the criteria set out in section 2 and, where relevant, the practice’s general policy for opening new matters, including assessing risk management issues.

The matter will be referred to the managing partner by the committee for approval where it is unusual or sensitive.

Opening matters

Before opening a pro bono matter you must carry out a conflict search in the usual way to ensure it does not create a legal or commercial conflict of interest with another client of the practice.

Fees and disbursements

Before opening a pro bono matter you should discuss with the client and, where relevant, the supervising partner appropriate arrangements in relation to fees and disbursements. Once established, these arrangements should be set out in an engagement letter for the matter (see Engagement letters, below).

(i) Fees

Usually the practice undertakes pro bono matters for no cost, particularly where the client is financially disadvantaged (whether in absolute terms or relative to the expected cost of the matter). However, in some circumstances it may be appropriate to charge a reduced fee or fees which exceed a certain limit, for example where the pro bono client is a charity or other non profit organisation which has substantial funds. The preference is for this to be determined by
the committee, having regard to the client, the nature of the matter and the current level of pro bono work undertaken by the practice.

Note that where we charge a fee (even at a reduced rate) to a pro bono client, GST will be added to our bill unless the matter relates to GST free services.

(ii) Disbursements

The practice will generally bear disbursements such as fax, photocopying, postage and courier which are less than $500 in total for the matter.

The client will usually bear out-of-pocket and third party expenses (such as search, filing and lodgement fees and counsel’s fees). In relation to some of these fees such as counsel’s fees, you will have to indicate at the time of billing whether the relevant services were acquired by the practice as agent of the client or by the practice as principal. That impacts on the GST treatment of our bill.

If the client is or may be unable to pay disbursements over $500 or its expenses, please consult the committee. In exceptional circumstances all or part of them may be paid by the practice.

Engagement letters

You must send out an engagement letter for a pro bono matter in the same way as for a fee paying matter. You will need to adjust the section on fees and disbursements in accordance with the arrangements agreed with the client. If no fees will be charged you should state that and, if relevant, include any assumptions/ scope of work beyond which fees will be charged. Similarly, with disbursements you should state which disbursements the client will be expected to cover (with an estimate of those amounts) and those which the practice will cover.

Time recording and billing

You should record your time in the same way as for a fee paying matter. To the extent fees and disbursements are to be billed this should be done through the usual billing system. If you are charging a reduced fee you should bill that monthly, subject to any agreement reached with the client.

Subject to any alternative arrangements, disbursements on pro bono matters will be billed on request and at least once a year or at the end of the matter. Accounts will send a ledger report at the relevant time on each matter asking whether disbursements should be billed or written off.

Sample 2 – Pro Bono Scheme

What is pro bono work?
Pro bono work is work undertaken by law practices, legal organisations and lawyers in the provision of assistance to people or groups who require legal representation but who would otherwise be unable to obtain it and would therefore suffer an injustice.

In particular, pro bono work at [Practice] relates to work done:

a) which requires the use of professional legal skills
b) for people who cannot afford a lawyer or who have no other real access to the courts and the legal system and for whom legal aid is not available
c) without a fee or without expectation of a fee or at a reduced fee
d) that raises an issue of public interest
e) for non-profit organisations such as charitable organisations who work on behalf of members of the community who are disadvantaged or marginalised

**Why do it?**

[Practice] believes that the provision of pro bono assistance to organisations and individuals is a valuable contribution both to our practice and to the community at large. Participation in pro bono work is an individual and voluntary decision by each lawyer at [Practice]. Pro bono work may provide the opportunity for professional and personal development and often presents opportunities for experiences outside the more typical work undertaken by the practice.

The Pro Bono Policy has the commitment and support of the Partnership and pro bono work is strongly encouraged. The practice has established a Pro Bono Committee which meets monthly. The Committee comprises [names]. The role of the Committee is to allocate pro bono work from clients, monitor the pro bono work the practice handles and report to the Management Committee, make recommendations for new pro bono clients and be a discussion forum for queries from partners or staff.

**Procedures for undertaking pro bono work at [Practice]**

Pro bono matters are handled in exactly the same manner as all others. The highest standards of work must be maintained at all times in relation to file work and liaison with the client; files will be supervised in the usual manner. All correspondence must be signed by your supervising Partner.
Partners and staff interested in undertaking pro bono work should consult with [Pro Bono Partner] in regard to Litigation matters and [Partner] for Commercial matters. A register of interested practitioners can be found on the [Practice] pro bono Intranet website. If you wish the practice to handle a specific pro bono matter you should follow the procedure outlined below.

**Categories of pro bono work**

Pro bono work falls into two categories:

**a) Work done externally and after hours**

For example, work at voluntary legal services or charitable organisations. This does not need approval of the pro bono partners however the Pro Bono Committee would like to be informed of this work so a register can be maintained. The time undertaken is to be recorded by the partner or staff member.

**b) Work done in practice time and using the practice’s resources**

(i) This work will be directed to the pro bono partners who will contact staff directly for assistance or e-mail those listed on the pro bono register.

(ii) Alternatively, Partners and staff can refer requests for the practice to do pro bono work to the pro bono partners.

**Approval process**

(i) Prior to undertaking any pro bono work the staff member should discuss the expected time commitment with their supervising partner to ensure they have their support to do the work.

(ii) Work can be referred to [Pro Bono Partner] for approval.

(iii) Work done externally and in the staff member’s own time does not require approval of the pro bono partners, however as noted above ideally the Pro Bono Committee will be advised of your involvement.

(iv) A conflict search must be undertaken prior to any pro bono work being accepted by the practice as with any usual file. Work which may represent concern for the practice’s existing clients may not be approved. Not all pro bono requests will be undertaken.

(v) Approval will ideally be provided without delay unless the matter raises issues which the Pro Bono Committee will need to discuss in
a meeting or which will require Management Committee approval.

File management procedures

(i) Pro bono matters are now treated in the same way as chargeable matters. A detailed memorandum outlining the procedures that are now in place can be found in Document #. For reference, the Control Code is [. . .] the Client Code is [. . .], the Classification is [. . .] and the Description should read [Practice: pro bono] then details of client.

(ii) The work will be supervised in the usual manner by the responsible partner. The pro bono partners require 3 monthly reports in relation to each file. These reports should be sent by e-mail to the Pro Bono Committee.

(iii) A draft bill is to be prepared on each file and sent to the pro bono partner. The particular practitioner will then be allocated an appropriate equivalent in costs based upon the reasonable time spent on the matter. Bills are to go to [Pro Bono Partner] in the first instance.

(iv) The practice monitors the time spent on pro bono work and the equivalent financial commitment being made on an annual basis to pro bono matters.

(v) The Pro Bono Committee reports to the Management Committee on a 3 monthly basis.

General points

a) The practice will continue to establish further guidelines regarding the nature of the work.

b) The Pro Bono Committee and the practice will consider establishing appropriate relationships with referring organisations;

c) Your comments and feedback about the practice’s policy or generally about pro bono issues are welcome to be sent to the Pro Bono Committee e-mail group or to any members of the Committee.

d) It is worth outlining that pro bono work is not:

e) work undertaken for a business development purpose.

f) work undertaken at reduced rates for employees, acquaintances, family or clients of the practice or work undertaken as a loss leader.

Sample 3

Pro Bono Scheme – general approach and administrative procedures

Purpose

This Pro Bono policy is a statement of staff and partnership commitment to the practice’s core purpose of ‘making a difference’ in a positive way in our community and is an accurate reflection of our commitment to our corporate responsibility to act for the good of our community and our approach to pro bono work within [Practice].
[Practice] recognises that there are individuals and organisations that work for the public good in our community or that cannot afford the professional services of a lawyer. In appropriate cases, we seek to provide legal services to such organisations and individuals on a without charge or reduced charge basis.

**Scope**

This policy is a statement of intent covering the general approach to the performance of Pro Bono work throughout the practice by all staff and partners. It puts into practice the practice’s core values and confirms the practice’s commitment to make a difference to the wider community.

This policy also sets out the administrative procedures that should be adopted for Pro Bono matters.

**What is pro bono work?**

Pro Bono legal services include the rendering of legal services:

a) without expectation of compensation; or

b) for less than our usual commercial rates, for certain individuals and organisations;

in accordance with this policy.

It also includes active involvement in not for profit community based organisations where legal work is conducted by [Practice] for that organisation in accordance with this policy.

Pro Bono work does not include work performed for a not for profit organisation that has not been approved in accordance with this policy. It does not include work done without charge or at a reduced rate for family and friends of practice members.

Pro Bono work is not a substitute for legal aid work, although the practice does have a formal commitment to the legal aid assistance scheme.

We will only provide legal services where we can do so with competence.
We cannot, of course, provide legal services in circumstances that would give rise to a conflict with our existing clients or parties for whom we provide Pro Bono services.

**Benefits of the Pro Bono Scheme to [Practice]**

**Practical benefits**

a) Provides a practical means by which the practice can contribute back to the community  
b) Enhances personal development of lawyers in the practice  
c) Improves the quality of advice given by lawyers in that they have a more well rounded and informed perspective on life  
d) Harnesses the enthusiasm of lawyers interested in public interest matters  
e) Increases the knowledge base of lawyers  
f) Increases job satisfaction, gives lawyers a greater consciousness of the worth of their jobs (varied and life enriching experience)  
g) Improves practice morale, emphasises practice’s core values and signals to clients and staff that the practice values more than simply the bottom line  
h) Broadens the culture of the practice.

**Strategic benefits**

a) Promotes good corporate citizenship in a spirit of community responsibility  
b) Reinforces the reputation of the practice and individual lawyers in the community and to clients  
c) Assists in attracting to the practice lawyers who share the practice’s core values

**Responsibilities**

**The Pro Bono Partner (Currently [name])**

a) ensure that the Pro Bono policy is approved and endorsed by the partners  
b) ensure that all staff are aware of and familiar with the policy  
c) allocate Pro Bono work throughout the practice in consultation with Practice Group Heads  
d) monitor the time and cost of performing such work  
e) with the assistance of the Pro Bono Committee and in liaison with Practice Group Heads, decide whether to accept a particular pro bono matter  
f) with the assistance of the Pro Bono Committee arrange conflict of interest checks and client screening for potential pro bono clients  
g) liaise with other partners and senior associates and special counsel to monitor staff performance of pro bono work  
h) liaise with and report to the Managing Partner in relation to the operation of the pro bono program  
i) endeavour to raise public awareness of the practice’s Pro Bono program.
Pro Bono Committee members (currently [names])

a) facilitate consultation with employees on the Pro Bono policy
b) ensure that all staff are aware of and familiar with the policy
c) assist the Pro Bono partner
d) prepare an annual report to the Board on the operation of the Pro Bono policy
e) provide mentoring and tutoring to other members of the practice in relation to the performance of Pro Bono work in consultation with Practice Group Heads
f) endeavour to raise public awareness of the practice’s Pro Bono program
g) liaise with the Marketing Director to develop a Pro Bono segment for the practice’s intranet and web site and ensure that they are kept current

Review and development of the Pro Bono Policy

The Pro Bono policy will be developed jointly by the Pro Bono partner and the Pro Bono committee in consultation with partners and staff.

The policy will be reviewed annually.

The Pro Bono policy will be displayed on the practice’s intranet.

Training

All staff will be informed of the Pro Bono policy and training will be provided in relation to opening and managing pro bono files as required.

The policy

This policy is intended to provide direction for the growth and development of the Pro Bono program and to encourage and promote a pro bono culture within the practice.

While it is recognised that a framework for the policy is appropriate, it is also recognised that certain situations will need to be dealt with on a case by case basis and with a level of flexibility.

Membership of assistance schemes

The practice is a member of the Law Institute of Victoria legal assistance scheme and the Public Interest Law Clearing House (PILCH) and will accept referrals in appropriate matters.

The practice does not accept referrals in criminal, personal injury or family law matters or in matters which would require acting against a client of the practice.

Public interest matters

The practice will accept instructions in public interest matters on a
case by case basis where they do not cause a conflict of interest with a current client of the practice.

**Charitable organisations**

The practice currently acts for a number of charitable and non-profit organisations.

The practice will continue to provide legal services to current charitable and non-profit organisations with a Pro Bono component to those services as determined by the Pro Bono Partner and Committee in consultation with the partner in charge of that client.

The practice may provide Pro Bono legal services to charitable, public interest and non-profit organisations who are not current clients of the practice with the approval of the Pro Bono Partner and the Pro Bono Committee and in consultation with the appropriate Practice Group Head.

**Special needs community organisations**

The practice is committed to providing Pro Bono legal services particularly to those individuals and organisations in the following groups:

a) the physically and mentally disabled  

b) the underprivileged in our community  

b) not for profit community based arts organisations  

d) protection of the environment  

e) charitable work under the auspices of local government.

**Sources of referral**

The practice will:

a) Develop and maintain strong ties with community sector organisations, particularly those already clients of the practice and in accordance with the Government Pro Bono Secondment Scheme.  

b) Make sure organisations are aware of the policy and any limitations in the policy.  

c) Develop ties with other legal practice Pro Bono Practices with a view to referring applications to them that fall outside of the expertise of the practice.  

**Budget**

*Practice* Pro Bono practice has an annual budget of ... for the 2002/2003 financial year. This budget is to be reviewed annually by the Pro Bono Partner in consultation with Director of Finance and the Committee and approved by the Managing Partner.
Judging the effectiveness of [Practice's] Pro Bono Scheme

The following criteria will be used to assess the effectiveness of the Pro Bono Policy and scheme generally, by the Pro Bono Partner and Committee.

a) Is the Policy and Procedure easily found and accessible to all staff (on the intranet) and is it kept up to date
b) Is the scheme responsive to need
c) Does the scheme deliver results for Pro Bono clients
d) Does the scheme have potential to grow to meet these needs
e) Is the resourcing of the scheme effective – does it give value for money
f) Is the scheme well-coordinated and managed
g) Has the scheme been operated within budget
h) Have relationships been formed or developed with appropriate organisations and related service groups
i) Have referrals been made to appropriate related services
j) Has Pro Bono work been given the same standard of care and attention as any other file
k) Has Pro Bono work been appropriately and adequately supervised
l) Was the client satisfied with the results of the legal service and has the client been followed up after finalisation of the matter.

Sample 4 – Pro Bono Work

Definition

In order for a matter to be considered as pro bono it should:

a) involve the exercise of legal skills;
b) be provided on a free or substantially reduced fee basis or on a speculative basis where the prospects of recovering fees do not commercially justify undertaking the work on a speculative basis;
c) be provided to clients who are disadvantaged or marginalised and cannot afford to pay full market rates; and
d) be provided to clients who are unable to access legal aid.

Pro bono services are provided to both individuals and organisations representing those individuals. Our pro bono services include:

a) provision of advice on commercial and litigious matters;
b) undertaking commercial legal work, for example, incorporating associations, drafting, contracts, negotiating leases, property work;
c) advocacy services;
d) negotiation services; and

Eligibility

In order for a client to be eligible for pro bono assistance the following
factors must be considered:

a) The client must be disadvantaged or marginalised either economically or socially;
b) The client must be on a low income and clearly unable to afford legal assistance;
c) If the client is an organisation, it must be a non-profit organisation without access to large funds;
d) If the matter is litigious it must have reasonable prospects of success;
e) If the matter is of public interest it might be accepted even though its prospects of success are not strong;
f) [Practice] must be able to adequately resource the matter at the time of the application;
g) [Practice] will prioritise matters involving children and young people, people with disabilities, Aboriginal people and public interest concerns;
h) The matter must fall within the expertise of the lawyers working at [Practice].

To this end we do not assist in the following matters:

i) [specify matters]

**Referral process**

Referrals can be made by telephoning the [Pro Bono Coordinator]. Most referrals come from organisations such as the Law Society Pro Bono Services Office and the Legal Aid Bureau on behalf of individuals. However, [Practice] accept referrals directly from individuals.

Each week referrals are accessed to determine whether or not they can be accepted. Referrals can be assessed more urgently if need be.

[Pro Bono Coordinator] must be made aware of all pro bono referrals.

**File administration**

Each pro bono matter is opened under its own file number and must be supervised by a partner.

Pro bono time is recorded differently from chargeable time. (See doc ##)

Each pro bono matter must be recorded on the pro bono database. This database must be updated monthly as it is reviewed by the [Pro Bono Coordinator] and pro bono partners at monthly meetings (See doc ###).
All partners supervising pro bono matters receive a status report in relation to their matters each month.

Pro bono review meetings are held fortnightly and attended by [Pro Bono Coordinator] and two of the pro bono partners.

A quarterly report outlining the progress of some pro bono matters and other developments in the practice is provided to the partners each quarter.

**Nature of pro bono work**

[Practice] provide a broad range of pro bono services including:

1. Representing clients involved in litigation;
2. Providing commercial advice to clients on a variety of issues including incorporation, tax issues, lease issues, funding contract issues and employment issues;
3. Assistance on policy issues and drafting submissions;
4. Assistance for parts of matters for example conducting specific research or providing advice on a particular point, drafting of court documents, acting in negotiations and advising on strategy.

**Sample 5**

**Pro Bono Scheme**

**Why does [Practice] have a Pro Bono Policy?**

[Practice] has had a long commitment to conducting pro bono work. The [Practice] Pro Bono Scheme is a primary example of [Practice's] community leadership role. The Practice recognises and supports the inherent professional responsibility of all lawyers to provide assistance to those within our community who would be otherwise unable to obtain access to legal advice and representation.

This responsibility is a key value of our professional culture. At [Practice], pro bono work is therefore not seen as an act of charity, a marketing opportunity or a recruitment gimmick. It is at the very heart of what we do, and how we view our success as a Practice.

The [Practice] Pro Bono Scheme is managed by the National Pro Bono Director. Each office has a nominated Pro Bono Partner and Pro Bono Co-ordinator. This core group forms the basis of the National Pro Bono Management Committee.

**What types of matters qualify for the [Practice] Pro Bono Scheme?**

Pro bono assistance is available to:

a) individuals who are unable to obtain Legal Aid and are otherwise unable to afford legal representation; and
b) community organisations, non-profit organisations and charitable bodies who are unable to afford appropriate legal representation or whose resources are better directed towards providing community services.

Our pro bono client must be:

a) willing to accept our advice when given and to act appropriately on that advice; and

b) the matter must not create a conflict of interest with existing clients of the Practice.

Disbursements

a) 
[Practice] will cover the first $200 of internal disbursements and $150 of external disbursements incurred on each pro bono file. No additional disbursements are to be incurred without the client’s consent to meet those costs.

Types of matters

a) [Practice] will provide free legal advice and representation across a range of matters, where we have appropriate partnership expertise to supervise files.

b) We will not accept pro bono matters in areas of law where we cannot provide the client with appropriate legal expertise.

c) Although there will be significant input by partners into the Pro Bono Scheme, the majority of pro bono matters are those where lawyers primarily conduct the matter themselves, under a partner’s supervision.

Opening new pro bono matters

a) Requests for pro bono assistance are directed to the National Pro Bono Director, the state Pro Bono Co-ordinator or the state Pro Bono Partner. No pro bono file will be opened without the approval of one of these members of our National Pro Bono Management Committee. These people will consult with appropriate partners to ensure that the relevant group has capacity to conduct a pro bono matter before allocation.

What types of matters do not qualify for the [Practice] Pro Bono Scheme?

Pro bono matters are not:

a) matters which have been undertaken for some business development purpose;

b) matters which are performed at reduced rates for acquaintances, family or clients; or

c) matters which are performed for charitable or non-profit community organisations which have the capacity to pay for legal representation.

This does not mean that work in these types of matters should be
curtailed. Rather, such matters must not be opened as [Practice] pro bono matters and must not be assigned a ‘[pro bono code]’ prefix. Any matters which are opened as [pro bono code] matters but do not qualify for the [Practice] Pro Bono Scheme must be reclassified with the appropriate code.

**The [Practice] commitment to pro bono legal services**

a) [Practice] is committed to conducting legal work in pro bono matters in [geographical area] offices up to the value of [quantity] in a single financial year.

b) Pro bono matters do not qualify for second rate service. It is essential that [Practice] pro bono matters are conducted with the same high standards expected of all other [Practice] legal work. [Practice] pro bono clients are entitled to receive the same high quality of service provided to all [Practice] clients.

**The role of partners**

a) Partners have a key role in the management of the National Pro Bono Scheme. It is essential that partners maintain proper supervision of pro bono files, to ensure that each matter receives an appropriate level of resources.

b) Our National Pro Bono Scheme is not intended ordinarily to assist on extremely large matters or to undertake repeat work for the same client. If the supervising partner becomes aware of a file which appears to be developing into a much larger matter than was originally intended or requests for further work are received, the partner should contact the National Pro Bono Director, the state Pro Bono Co-ordinator or the state Pro Bono Partner.

c) If the supervising partner forms the view that a matter does not have reasonable prospects of success, the client should be properly advised. [Practice] will not continue to act in pro bono matters where the matter does not have reasonable prospects of success or where the client does not accept our advice.

**All lawyers are expected to conduct pro bono matters**

a) The [Practice] Pro Bono Scheme is the shared responsibility of all legal staff. Pro bono work is not to be undertaken only by a few partners or lawyers.

b) All lawyers are expected to conduct at least one pro bono matter each financial year. It is the responsibility of the National Pro Bono Director and National Pro Bono Management Committee to ensure that pro bono matters are properly allocated to all lawyers.

c) Pro bono matters which are conducted by lawyers will be included as part of a solicitor’s annual professional review.

**Pro bono matters are recognised as part of a solicitor’s budget performance**

a) Work conducted under the [Practice] Pro Bono Scheme is fully recognised within individual and practice group budgets, and must be properly recorded. An individual legal staff’s budgetary performance is calculated through the combination of billable time
and pro bono time.

3.3. Sample pro bono procedure

A legal assistance agreement, schedule and client protocol are included at the end of this section.

Pro bono procedure

This procedure sets out the process for:

a) applying for Pro Bono assistance; and
b) opening, managing and billing Pro Bono files.

This procedure is to ensure that:

a) accurate and reliable Pro Bono data can be obtained when monitoring and billing Pro Bono matters; and
b) lawyers receive credit for work they do on Pro Bono matters.

Creating a new pro bono matter

Create a Pro Bono matter through . . . [explain procedure as per relevant software program]

Lawyer charge out rates

Previously, when creating a Pro Bono matter the lawyer’s charge out rate was set to zero. This is not to be done for future Pro Bono matters. The lawyer’s charge out rate will be set as per any normal matter depending on the client.

Entering time for a pro bono matter

Lawyers will enter their time as chargeable as per any normal matter. This will enable the fee earner to get recognition for any Pro Bono work they may do.

Pro bono files and file administration

Where Pro Bono files are conducted for no charge, and involve a litigious matter, a Legal Assistance Agreement must be signed by the Pro Bono client in the form attached at Appendix 1 to this policy. The legal assistance agreement clearly sets out the work to be undertaken on a Pro Bono basis and must be regularly reviewed by the lawyer in charge of the Pro Bono matter and the supervising partner.

In all other Pro Bono matters conducted for no charge, the client should be sent the Pro Bono Client Protocol in the form attached at Appendix 2.

Clients being charged a Pro Bono discounted rate are to receive initial cost letters in the usual manner, edited to reflect the Pro Bono discount applying to that client.
Billing pro bono files

All Pro Bono billing must be done by the Accounts department.

When billing a Pro Bono matter, a discount will be applied to the bill to reduce the bill to either nil (if the work is completely free) or to the amount we wish the client to pay. In order to do this, the person responsible for billing Pro Bono work will need to [explain procedure for relevant software program in relation to billing and discounting].

Applications for pro bono work by staff

Any member of staff wishing to provide Pro Bono services to any individual or organisation is to apply in writing to a Pro Bono committee member for approval. This may be done via email.

The Pro Bono committee member will provide a copy of the application to the members of the committee and liaise with the appropriate Practice Group Head.

A meeting will be held for consideration of the application within 48 hours. Meetings may be held via email.

The staff member will be provided with a response to the application within 5 working days of the application.

Applications for pro bono work by external parties

Any application received by any member of the practice to provide Pro Bono legal services must be forwarded to a Pro Bono committee member.

The Pro Bono committee member will provide a copy of the application to the members of the committee, liaise with the appropriate Practice Group Head and call a meeting for consideration of the application within 48 hours. Meetings may be held via email.

The applicant will be provided with a response to the application within 5 working days of the application.

Criteria for consideration of a pro bono application

a) The ability of the applicant to pay for legal assistance
b) Whether or not the applicant falls within the Policy
c) Whether there is a sufficient element of public good to be achieved in the performance of the Pro Bono legal work
d) The projected extent of the legal assistance required
e) The projected length of the Pro Bono project
f) Whether there are staff within the practice with sufficient expertise to carry out the Pro Bono work with efficiency and competency
g) Whether there is any conflict of interest.

Legal costs and disbursements

For matters approved by the Pro Bono partner and Committee in accordance with this policy, our services are to be provided free
For approved clients, such as charities or religious bodies, the Pro Bono Partner and Committee in consultation with the relevant Client Partner, may approve the provision of Pro Bono services at a fixed percentage for different types of work, at no charge or for a combination of both no charge and reduced charge rates.

As a general guide, the percentages to be applied are:

a) 0%；

b) 50% of our usual rates.

For example, we may provide miscellaneous telephone advice to a particular charitable institution at no fee (0%) and otherwise charge that institution 50% of our usual fees. The applicable fees are to be determined by the Client Partner for that client in consultation with the Pro Bono Partner and Committee.

The practice will not charge for internal disbursements such as photocopying, faxing and telephone charges.

The client will pay for any external disbursements unless otherwise agreed with the practice.

**Engaging counsel**

Counsel who are engaged to work on any Pro Bono matter must be engaged to provide those services on a Pro Bono basis or the client must agree to provide payment for any Counsel's fees prior to any liability being incurred.

**Office resources**

On a case by case basis, the Pro Bono partner and committee may allow the use of office equipment and office resources to assist a special needs or charitable organisation.
Appendix 1

Legal assistance agreement

[Practice] agrees to accept instructions from [Client] in relation to the matter referred to in the attached Schedule on the basis set out below. This is an agreement in relation to the terms and conditions of the retainer of [Practice] by [Client].

Terms and conditions

[Practice] agrees to waive charges for professional services in the event that the action is unsuccessful;

[Practice] will not charge an amount for professional services which is higher than the amount recovered for professional services as party and party costs;

[Practice] will charge all reasonable disbursements incurred and also all disbursements authorised by [Client] whether or not party and party costs are recovered;

[Practice] may request [Client] to pay to [Practice] such amounts as are required for anticipated disbursements and [Client] shall pay such amounts to [Practice] immediately;

[Client] will pay the sum of $##.00 at the commencement of instructions which will be held in trust to cover the anticipated disbursements set out in the Schedule;

[Practice] will not be responsible for contracting with any barrister on behalf of [Client];

[Practice] will be entitled to cease to act for [Client] on giving seven days written notice of intention to do so;

[Practice] will be entitled to cease acting for [Client] without notice should [Client] choose not to accept a recommendation regarding
conduct or resolution of the action made by [Practice].

Notes
a) Party and party costs are legal costs which are given by the law as a partial indemnity to the successful party in litigation.
b) Disbursements are payments made by the legal practitioner on behalf of the client to third parties.
Schedule

Legal Practitioner:

[Name], lawyer, will have the care and conduct of this matter under the supervision of [Name], partner.

Client:  ##

Matter:  Legal services with respect to ## involving:

##

##

##

Method of charging:  In the event of a successful outcome to the action, [Practice] will charge at the rate ordered by the Court on the appropriate Court Scale. A copy of the Scale can be provided on request.

Anticipated Disbursements:  Disbursements [Client] will be required to pay include:

  ## Filing fee :  $ 
  STD phone calls :  current rate 
  Expert reports :  $ 


.............................................................................................

for [Client]
for [Practice]
Appendix 2

Client protocol

I acknowledge that I am being assisted under the [Practice] Pro Bono Scheme and I agree that:

a) My lawyer has offered to assist me because of concern for justice and for the public good, and not for any motive of profit.

b) I will be treated the same as a fee paying client by my lawyer and this means that I will respect my lawyer’s time as I were paying for it.

c) I have the same legal rights and obligations as fee paying clients.

d) I will keep my lawyer fully informed of any change in my personal circumstances or details.

e) I will provide clear and timely instructions to my lawyer.

f) I will pay disbursements to my lawyer in advance and when requested.

g) I will listen carefully to my lawyer’s advice about the running of my case respecting that it is his or her professional training which qualifies my lawyer to give the advice.

h) I will not waste the resources of my lawyer.

i) If I have a complaint about my lawyer I will discuss it with my lawyer first.

3.4. General letter of engagement

[Note This is merely a sample Letter of Engagement and not a Law Society approved format. It is to help law practices to develop their first engagement letter. You may adapt this letter as may be appropriate to suit the manner in which you practise or how you wish to charge your client. What is important is that you do not insert any terms in your Warrant to Act or Letter of Engagement in breach of the Rules, the Legal Profession (Solicitors’ Accounts) and the Legal Profession (Deposit Interest) Rules.]

Dear Sirs,

SUBJECT MATTER: _____________ LETTER OF ENGAGEMENT

1 We refer to the meeting on _____________ between the undersigned and your Mr/Ms _____________.

2 Once again we thank you for instructing us in this matter.

(Establish client identity of an individual)

3 From 15 August 2007 law practices in Singapore are required by the Law Society to check the identity of their client before they act for them.

Thank you for producing your original identity card / passport /
driver’s licence to the practice to establish your full name and address

4 We are also required by the Law Society’s Rules of Practice to inform you of the principal terms of our engagement as your solicitors / counsel* in Singapore.

Scope of our services

6 The lawyer / Director / Partner in charge of your matter will be Mr / Ms / Dr / Mrs _____. She / He will be assisted by Mr and Ms _____ who are secretaries / legal executives / paralegal staff in our law practice.

7(1) During the course of the matter, we shall keep you advised on the progress of your matter on a regular basis either by telephone, electronic mail or fax or letter enclosing copies of relevant correspondence. You can of course contact us for a progress report at any time. The respective lawyers you can contact are __________ at (65) __________ and paralegal staff are __________ at (65) __________ and their e-mail addresses are ___________ and ___________.

7(2) During the course of the matter where applicable we will explain to you any proposals of settlement or other offers made or positions taken by other parties which affect your case. We will also where appropriate evaluate with you if a course of action requested by you justifies the risk or expense involved.

8 The scope of our services which we foresee following our first meeting will extend to the following:

8.1 Representing you in legal proceedings brought in Singapore in connection with the foregoing: _______________

8.2 Doing all things as may be required or necessary and / or incidental in connection with the foregoing.

9 This letter countersigned by you constitutes your Warrant to Act in favour of us with respect to representing you generally in Singapore in connection with the above matter and no further warrant to act will be necessary for compliance with Order 64 Rule 7 of the Rules of Court.

Information on discovery of documents

10 It is our duty to advise you that you must not deliberately destroy documents (including electronic documents) relevant to the issues in this matter that are in your possession, custody or power. Documents that are “relevant” to the issues in this matter include documents that do not support or adversely affect your case, or are confidential or informal. A party “deliberately” destroys relevant documents if he intends to put these documents out of reach of the other party in pending or anticipated litigation. If a party is found to have deliberately destroyed relevant documents, the Court may
strike out that party’s claim (if he is the Plaintiff) or defence (if he is the Defendant), even if a fair trial is still possible. It may therefore be necessary for you to suspend any corporate document destruction programme immediately. From now on, you should not destroy any document which could conceivably be relevant, however unimportant it may appear to you.

If you have already destroyed relevant documents before instructing us in this matter, you are still required by the Rules of Court to disclose to your opponent that these documents were once in your possession, custody or power. As stated above, the Court has the power to impose severe sanctions if the destruction was deliberate. Your obligation to preserve evidence continues until this matter is finally resolved. The same obligation applies to your opponent. After action is commenced, you will in due course have to list, and then produce for your opponent’s inspection, relevant documents that are not privileged (including new documents that you create through internal discussion or otherwise) and which are in your possession, custody or power. We would therefore wish to be involved in the formulation of anything relevant to this matter which you may wish to commit to writing.

Please ensure that every individual in your organization who may be affected by your discovery obligations in this matter is made aware of the need to preserve relevant documents, whether or not those documents are privileged. If you have any questions about this advice or any other discovery-related topic not covered by this advice, please feel free to contact our Mr ____________ or Ms ____________.

Information on fees

11 [PLEASE INSERT RELEVANT INFORMATION REGARDING PAYMENT OF DISBURSEMENTS /WAIVER OF FEES / NOMINAL FEES]

Information on liability costs for a litigation matter

12 In the event that you are unsuccessful, you are likely to be ordered to pay your opponent’s legal fees.

Even if you succeed in the litigation the Court may not order your opponent to pay your legal fees

19 If we instruct experts, translators or other third parties on your behalf and with your approval, you will be responsible for paying their fees directly to them upon presentation of their invoices.

If GST is payable

20 As we are a business registered under Singapore’s Goods and Services Tax Act, our legal fees and certain disbursements will be subject to a 7% Goods and Services Tax (‘GST’) to be borne by
Ceasing to act for you

21 We are entitled to terminate our engagement to act for you on the grounds set out in Rule 42 of the Law Society’s Professional Conduct Rules and this includes where you have been in breach of our agreement on payment of fees set out in this agreement.

At the time of termination, we are entitled to exercise a lien (a right of possession) over all documents and monies held on your account until full payment is received. In the event if you decide to appoint new law practice, we will as required by the Law Society’s Rules release all documents to them only upon receipt of an undertaking from your new lawyers to protect our right over your documents handed over to them for outstanding legal costs.

22 Please sign and return to us the attached copy of this letter and the enclosed Warrant to Act.

23 Please do not hesitate to contact our Mr ____________ or Ms ____________ if you require any clarification on any of the above matters or for any other purpose as this matter progresses.

Yours faithfully,
Appendix 11D – Warrant to Act

WARRANT TO ACT

I, ______________________ (NRIC No.: _______________) hereby agree to engage the services of M/s_________________ on the terms and conditions set out above and hereby grant that firm my Warrant to Act for me in Singapore in connection with legal proceedings relating to ___________________________.

Signed on the _________ day of ___________2011.

Name: ________________________

NRIC No.: ________________________
3.5. Pro bono survey

The following sample memo and questions may be used or adapted by practices who wish to undertake an audit of the current pro bono work being undertaken by staff and others at practices. Included also are sample questions designed to provide people in the practice with an opportunity to express interest or opinions on the kinds of pro bono activities they would like to undertake and see the practice undertake in the future.

Sample memo covering survey

Many of you would have noticed that an increasing number of practices are looking at ways of organising and targeting their pro bono activity. The practice is currently reviewing its pro bono policy and formalising its pro bono activities. By pro bono, we mean [consider inserting the practice’s definition of pro bono].

We are aware that many people in the practice have been undertaking pro bono work for some time. To assist the practice review and organise its pro bono activities, we are undertaking a survey of the kind of pro bono work you may have done, or are currently doing. The information from this survey will ensure that the practice, in reviewing and assessing its pro bono activity, is aware of its current commitment and contacts and the expertise that currently exists within the practice. The survey also gives you the opportunity to give us an idea of the kind of pro bono work you would like to do and would like to see the practice undertaking in the future. This will assist the practice to develop and expand its pro bono commitment in a way that is cohesive and appropriately reflects the aspirations of those wanting to undertake pro bono work in the future.

Sample questions surveying current/past pro bono practice

Do you currently undertake pro bono work? If yes, what is the nature of that work?

How were you referred this work? (For example, Law Society Pro Bono Services Office, the Legal Aid Bureau, other?)

Have you made any contacts with individuals from outside agencies/organisations (for example, family service centres, non-profit organisations)? If so, please describe.

For work undertaken within the practice:

(for each matter)

What is the matter number and matter description?
Who was the partner supervising the matter?

What other lawyers/partners/non-legal staff were working on the matter/s?

Who is the client?

How was the client referred to you? (direct request from individual/organisation, barrister, friend/other associate, other?)

What is the nature of the work being undertaken (specify area/s of law)?

How have you been accounting for your time on the work? (Possible response codes: not recorded time, entered as pro bono, entered as billable/non-billable and applied/sought fee credits/write offs, other method, etc?)

What was the basis upon which the work was done? (For example, no fee, reduced fee, charge/no charge for internal/external disbursements, etc.)

What is the approximate (dollar) value of services/advice provided in this work?

For work undertaken outside the practice:

Do you undertake pro bono work outside the practice? (For example, at a legal clinic as a volunteer?)

How often do you attend? (Could include questions about hours/days of week)

What is the nature of the work you undertake? (For example, direct legal advice/assistance)

Does the practice support you in this work in any way? (For
example, travel assistance, ability to leave work early, use of practice resources (specify), fee/time credits, other?)

If respondents answer ‘no’ to the above question, practices could ask whether respondents would like the practice to provide support, and if so, what?

**Sample questions surveying interest in pro bono**

What areas of pro bono casework interest you?

- Bankruptcy
- Domestic violence
- Immigration
- Criminal law
- Powers of attorney/guardianship
- Employment
- Tax

Other (*please describe*)

- Housing and tenancy
- Consumer
- Corporate work
- Legal research and writing
- Family law
- Wills

Are there particular types of activities you would like to undertake other than casework? For example, secondments to community legal organisations, law reform and policy work, community legal education, participation in specialist advice clinics.

Are there particular areas, issues or client groups or organisations that you would like the practice to consider giving priority to?

Any other comments?
## 3.6. Pro bono database and sample monthly report

### 1 Database – sample fields

<p>| Request Date: |  |
| Matter Number: | Accepted: |
| Client: |  |
| Contact Made By: |  |
| Date Of Birth: |  |
| Address: |  |
| Postcode: |  |
| Telephone: | Facsimile: |
| Language Spoken at Home if not English: |  |
| Income Source: |  |
| Client Category: |  |
| Referred From: |  |
| Referred To: |  |
| Area Of Law: |  |
| Outline of Case: |  |
| Decision: |  |
| Other Side: | Specify: |
| Costs Letter: |  |
| Costs letter signed: |  |
| Limitation Date: |  |
| Supervising Partner: |  |
| Group: |  |
| Solicitor(s): |  |
| Completed: | No |
| File: | Open |
| Date Closed: |  |
| Rate: |  |
| Status of matter |  |</p>
<table>
<thead>
<tr>
<th>Date</th>
<th>Details of the status of the matter go in here.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>Previous status reports go below.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 3.7. Sample referral and assessment form

**Referral**

<table>
<thead>
<tr>
<th>Date referral received:</th>
<th>Organisation:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source of referral:</th>
<th>Contact person:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Client details**

<table>
<thead>
<tr>
<th>Name:</th>
<th>Contact (where client an organisation):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Street address:</th>
<th>Postcode:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Postal address:</th>
<th>Postcode:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Telephone:</th>
<th>work:</th>
<th>home:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Guidelines**

Description of matter:

---

---

---

---

---

Within pro bono? Yes No

Targeted area? Yes No

Other party/ies:

Conflict? Yes No

Client’s general financial position:
Can the client pay disbursements?  Yes  No
Alternative forms of assistance available?  Yes  No
Comment:

General assessment of merit:

Limitation date/next court date:

Referral rejected:
Referral accepted:

<table>
<thead>
<tr>
<th>Solicitor acting:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervising Partner:</td>
</tr>
<tr>
<td>Group Convenor:</td>
</tr>
<tr>
<td>Pro Bono Coordinator/ Partner:</td>
</tr>
</tbody>
</table>
3.8. Application for assistance form and related forms

Application for pro bono assistance

This form must be completed in accordance with the pro bono guidelines.

Matter name:

1. Facts of the Matter

(Please provide a brief overview of the relevant factual background of the matter.)

2. How is this matter in the ‘Public Interest’?

(Please provide an explanation)

3. Level of Pro Bono Assistance Sought (Please tick)

| Full assistance (that is, client to pay disbursements only) |
| Concessional fee arrangement (that is, client to pay professional costs at a reduced rate) |

4. Comments on Assistance Sought

(Provide any relevant details)

5. Cost estimate: $ ___________ to $ _____________

6. Financial Year in which majority of costs likely to be incurred: 20___/___

7. Merits of the Prospective Client’s Case as Assessed by Team Leader Responsible (A brief explanation of merits of the case)

8. Financial Resources of the Prospective Client

(Please list assets and/or access to financial resources)

9. Seriousness and Complexity of Matter

(Assess seriousness and complexity and consider whether the matter could be readily conducted by other representatives such as a trade union at an affordable cost)
10. Capacity; as far as can be predicted, does [Practice] have available resources, given other commitments, to be devoted to the matter?

11. Does the matter afford a good training opportunity to practitioners within the Practice or allow the Practice to explore a novel point of law or otherwise allow the Practice to expand its profile within the community?

12. Are there any other matters which the Committee should consider which have not been addressed?

_______________________  ___________________________
Signature of Team Leader   Signature of Lawyer Acting

Dated: _________________

**Pro Bono Committee decision**

When reviewing an application for Pro Bono assistance, the Pro Bono Committee must adhere to the Pro Bono guidelines. The following information must be completed and a recommendation made.

<table>
<thead>
<tr>
<th>Matter name:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Points for consideration</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the Committee believe that pursuing the matter will be in the public interest?</td>
<td></td>
</tr>
<tr>
<td>Has the Team Leader assessed the merits of the prospective client's case as reasonable?</td>
<td></td>
</tr>
</tbody>
</table>
Does the Committee believe the prospective client has insufficient financial resources?

Could the matter be readily conducted by other representatives at an affordable cost?

Does [Practice] have available resources given other commitments?

Does [Practice] overall performance for the year enable acceptance of this application?

Does this matter provide an opportunity for training of junior lawyers/expanding practice profile?

**Decision:**

The Pro Bono Committee is satisfied that this matter meets the [Practice] pro bono guidelines

Or

The Pro Bono Committee is not satisfied that this matter meets the Pro Bono Committee guidelines for the following reasons:

Signed____________________________________

For and on behalf of the Pro Bono Committee

Dated____________________________________
3.9. Sample new pro bono matter memorandum

Thank you for accepting this pro bono matter.

Attached please find:

The referral and assessment form

This form provides:

a) contact details for the client;
b) a description of the work to be undertaken. Additional work for the client must not be undertaken without the written approval of [Pro Bono Partner] or [Pro Bono Coordinator];

The draft letter of engagement

Please consider the engagement letter, amend as necessary and forward to the supervising partner for signature. Two copies of the letter should be forwarded to the client, one for the client to sign and return.

You should not commence work on the matter until the signed letter of engagement is received unless the matter is urgent.

The following documents received from the client
a.

Opening the matter

The matter opening form has been forwarded to the supervising partner for signature. You will be notified by finance of the matter number.

Initial interview

Please notify me of the date and time of the initial interview. Usually I will sit in on the initial interview, and at that interview ensure the client is aware of the terms of engagement.

Billing

Please enter your time against the matter number in the usual way.

The matter will be billed in a billing run on or about the 15th of each month. You do not need to prepare a bill yourself. The unauthorised bill will then be forwarded by [. . .] to the supervising partner’s billing in tray for authorisation and printing. Finance will pay all authorised bills around the 23rd of each month.

Finalising the matter

On completion of the matter, please:

a. ensure all bills are paid;
b. close the file in the usual way;
c. archive the file in the usual way.

Procedures for pro bono matters are set out in full in the Procedures Manual at [. . .].

If you have any questions about the procedure for pro bono matters, please do not hesitate to contact me.

Once again, thank you for your assistance with this matter.

Regards

[Pro Bono Coordinator]

3.10. Sample evaluation form

Pro Bono Scheme

<table>
<thead>
<tr>
<th>Client Name:</th>
<th>Matter Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solicitor Acting:</td>
<td>Supervising Partner:</td>
</tr>
<tr>
<td>Date Completed:</td>
<td></td>
</tr>
</tbody>
</table>

Assistance Provided:

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

Outcome:

_________________________________________________________________________
_________________________________________________________________________
Total Cost: $___  Fees: $___  Disbursements: $___

Benefit of assistance to:

Client: ____________________________________

Yourself: __________________________________

Practice: __________________________________

Other: ____________________________________

Ways the matter could be handled more efficiently or effectively (if any):
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

Is it worthwhile undertaking similar work on a pro bono basis? Why/why not?
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
### 3.11. Pro bono matter closure report

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Responsible solicitor</td>
</tr>
<tr>
<td>2.</td>
<td>Name of client</td>
</tr>
<tr>
<td>3.</td>
<td>Client types</td>
</tr>
<tr>
<td>4.</td>
<td>Nature of matter and area of law (eg incorporation of charitable trust)</td>
</tr>
<tr>
<td>5.</td>
<td>File number</td>
</tr>
<tr>
<td>6.</td>
<td>Fee basis (eg significantly reduced fee; no fee; or hybrid fee – part paid/part free or reduced)</td>
</tr>
<tr>
<td>7.</td>
<td>Detail of the source of the referral of this matter, including any linked relationship to paid or pro bono work from this client or from any other source resulting in the referral.</td>
</tr>
<tr>
<td>8.</td>
<td>Date matter commenced</td>
</tr>
<tr>
<td>9.</td>
<td>Date matter closed</td>
</tr>
<tr>
<td>10.</td>
<td>Approximate number of hours spent on the matter</td>
</tr>
<tr>
<td>11.</td>
<td>Approximate value of work completed on the matter, assuming it was on a paid basis and at full rates.</td>
</tr>
<tr>
<td>12.</td>
<td>Indicate the primary reason for closing the matter</td>
</tr>
<tr>
<td>13.</td>
<td>Describe outcome of the matter (please attach a copy of the advice given, agreement reached; terms of settlement; or judgment, whichever is appropriate)</td>
</tr>
</tbody>
</table>
14. Summarise feedback received from client and/or from within [the Practice] (please attach any letters received)

15. Describe any media attention to the matter (please attach copy of any newspaper or journal article published on the matter by any third party)

16. Pro-active public relations on the matter (please attach copy of any press releases or articles published, drafted by the responsible solicitor)

17. Detail any internal value adding arising out of the matter (please attach a copy or provide details of any internal seminar given; memoranda sent to staff etc)

18. Detail any new legal expertise gained from working on the matter

3.12. Secondment agreements – Adapted from Australian samples

Sample secondment agreement: 1

Secondment agreement between [Organisation] and [Practice] and [Secondee]

CONFIDENTIAL

Partner

Contact

Attention:

Dear

Secondment to [Organisation]

We are pleased to conpractice that [Secondee] will commence his secondment with [Organisation]
We conpractice the secondment on terms as follows:

1 The secondment

[Practice] (the Practice), as part of its pro bono commitment, will provide to [Organisation] (the Centre) a lawyer, without charge or cost to the Centre and the Centre recognises and accepts that the purpose of the position is to assist the Centre in the provision of the legal services it provides in the local community.

[Secondee] will work with the Centre […] days each week for 6 months from [Date].

[Secondee] is:

(a) admitted to practise as an solicitor in Singapore and has a current practising certificate;
(b) has good oral and written communication skills;
(c) has good computer skills; and
(d) has an interest in social justice.

2 Direction and responsibility

[Secondee] will work under the direction of the Principal Solicitor of the Centre from time to time and be responsible to the Principal Solicitor, or any other officer or -officers of the Centre nominated by the Management Committee for the Centre.

The Centre will be responsible for all of [Secondee’s] work for the Centre during the course of the secondment.

The Practice may not direct [Secondee] in the performance of his work for the Centre during the period of the secondment, and the Centre will have sole control of the tasks which he performs, and the manner in which those tasks are performed, during that period.

[Secondee] will be treated by the Centre like all other employees of the Centre, and [Secondee] will be bound by the policies and procedures of the Centre from time to time. The Centre will ensure that [Secondee] has read and has access to the Centre’s policies and procedures.

If the Centre or [Secondee] perceives any actual or potential conflict of interest arising out of the work to be done by [Secondee] during the secondment, the Centre will consult the Practice, and if required by the Practice, exclude [Secondee] from such work or take any other steps necessary to eliminate the conflict.

The Centre will notify its Management Committee of any conflict of interest when it occurs.
3 Salary and benefits

Notwithstanding 2 above, [Secondee] will remain the employee of the Practice and the Practice will remain financially responsible for the payment of [Secondee’s] salary and other benefits, including superannuation contributions, holiday pay and other leave entitlements. The Practice will continue to comply with its obligations under superannuation guarantee legislation.

4 Leave

As a continuing employee of the Practice, [Secondee’s] rights in respect of annual leave, long service leave and sick leave will remain unaffected. Leave other than sick leave will only be taken with the approval of the Centre.

The Centre will inform the Practice of any annual or sick leave taken by [Secondee] so that the Practice’s personnel records may be kept up-to-date.

5 Confidentiality

The Practice will not require [Secondee] to divulge any information in relation to any matters in which he has worked for the Centre except for:

(a) matters in relation to which the Centre has given instructions to the Practice to act; or
(b) information which may be necessary for the purposes of resisting or defending any claim or demand made against the Practice or [Secondee] arising out of or in connection with his secondment.

6 Permitted contact with the practice

Without affecting the obligation under 5 above, [Secondee] may:

(a) consult with the Practice for advice and assistance in the performance of his work;
(b) for those purposes, maintain a computer link with the Practice;
(c) receive internal Practice correspondence and publications for the purpose of keeping up-to-date with developments in the law or the Practice’s practice.

7 Termination

The Centre or the Practice may terminate the secondment at any time by notice in writing to the other party and to [Secondee].
8 Liability and indemnity

The Centre will ensure that the Centre’s professional indemnity insurance will cover [Secondee] for the period of the secondment. If necessary, the Centre will advise its insurers of the secondment arrangements.

The Practice will not be liable for any act or omission of [Secondee] during the secondment, including any liability by way of negligence or arising from any duty of care which may exist, whether by way of contract or otherwise and the Centre will not make any claim against the Practice based on any act or omission of [Secondee] of any nature.

[Secondee] will not be liable to the Centre for, and the Centre will not make any claim against [Secondee] in relation to any act or omission by [Secondee] during the secondment, except an action based on fraud, serious misconduct or wilful neglect of duty.

The Centre will indemnify the Practice and [Secondee] in respect of any claim or liability made by or to any third party in relation to the secondment on a full indemnity basis, except to the extent that the claim or liability is occasioned by [Secondee’s] fraud, serious misconduct or wilful neglect of duty.

9 Appraisal

At the time at which the Practice conducts its staff performance and salary reviews, we may request that you give us a brief review of the nature of the work performed by [Secondee] to that date and your assessment of his performance.

On completion of the secondment, we would be grateful if you would provide us with a review of the secondment indicating the nature of the work [Secondee] performed for you and your assessment of how well the arrangement met your needs and expectations.

10 Acknowledgment

The Centre may, with the prior approval of the Practice, make any local media release or otherwise publicise the Practice’s contribution to the service delivery of the Centre in recognition of that fact.

11 Communication

Any questions regarding the legal professional aspects of the secondment should be directed to [Practice pro bono partner] on . . . . Any queries regarding other aspects of the secondment should be directed to [Practice Pro Bono Coordinator] on . . .
If the above terms are acceptable to the Centre would you please have the appropriate officer sign the enclosed copy of this letter on behalf of the Centre and return it to [Practice Pro Bono Coordinator].

As discussed, we are unable to guarantee a lawyer beyond any individual secondment. We are hopeful however that the secondment will be a continuing one.

Yours sincerely

[Practice Pro Bono Partner]

cc:
Sample secondment agreement: 2

Secondment agreement between [Organisation] and [Practice] and [Secondee]

1 Introduction

The purpose of the Pro-Bono Secondment Scheme is to increase the participation of the private legal profession in the provision of not-for-profit, or community, legal services.

Additionally, the Scheme aims to complement available resources, and to provide an opportunity for young lawyers engaged in the private legal profession to be exposed to and to experience community legal issues.

2 Operation of agreement

2.1. This Agreement comes into force on the date the secondment commences.

2.2. The secondment shall commence on . . . on a full-time basis for a period of 6 months.

2.3. The secondment will cease on . . ., unless otherwise agreed by all parties and in consultation with the Pro-Bono Secondment Committee ('Committee').

3 Direction and responsibility

3.1. [Secondee] will work under the direction of and be responsible to the [Organisation].

3.2. Subject to Clause 7.2, [Practice] may not direct [Secondee] in the performance of her work for the [Organisation] during the secondment, and the [Organisation] will have sole control of the tasks which he performs and the manner in which those tasks are performed.

3.3. The [Organisation] will be responsible for all of [Secondee’s] work for the [Organisation] during the course of the secondment.

4 Centre’s obligations

[Organisation] agrees to:

4.1. Provide and maintain so far as practicable, a working environment that is safe and without risk to the health of the secondee.

4.2. Ensure the secondee is sufficiently covered under the Centre’s existing professional indemnity insurance policy to enable the secondee to provide legal services in the Centre’s name.

4.3. Maintain proper and adequate additional insurance at all times.
during the secondment including Public Liability Insurance and professional indemnity insurance.

4.4 Provide adequate supervision and training to the secondee during her time at the Centre.

4.5 Allow the secondee to attend meetings, training sessions, seminars and social events conducted by [Practice].

4.6 Allow the secondee to consult with [Practice] for advice and assistance in the performance of her work and maintain a computer link with [Practice] for those purposes.

4.7 Permit the secondee to receive internal [Practice] correspondence and publications for the purpose of keeping up-to-date with developments in the law or [Practice’s] practice.

4.8 Allow [Practice] to state that the secondee is or was on secondment to [Organisation] in its annual report, business capability statements, tenders, etc. [Practice] may also refer to the secondment during employment interviews with graduates or other candidates, and in other internal publications. In all other circumstances, [Practice] will not, without prior written permission of the [Organisation] and Committee, promote or advertise in any way that [Practice] has provided the secondee on secondment to [Organisation].

4.9 Not, at any time during the secondment, employ or make an offer of employment to the secondee or by any direct or indirect means encourage the secondee to make, or intimate to the secondee that [Organisation] would be prepared to entertain an application for employment with [Organisation].

5 Practice’s obligations

[Practice] agrees to:

5.1 Not charge [Organisation] for the secondee’s time and service. This arrangement is being entered into on a pro-bono basis and no fees will be applicable.

5.2 Continue full payment of the secondee’s salary, leave entitlements, employer superannuation contributions, WorkCover and related employment costs during the secondment.

5.3 The secondee remaining an employee of the practice for the duration of the secondment.

6 Secondee’s obligations

[Secondee] agrees to:

6.1 Abide by the policies, guidelines and principles of the Centre while conducting work in the Centre’s name.

6.2 Strictly comply with client confidentiality procedures of the Centre.
6.3 Observe safe work practices and procedures of the Centre, accept personal responsibility for protecting her own health and safety and to act in a manner that does not jeopardise the health and safety of others.

6.4 Attend training sessions and meetings as required by the Centre.

7 Conflict of interest

7.1 [Practice] will not be taken to have a conflict of interest where [Practice] provides services to a third party who has had dealings with [Organisation] merely because [Secondee] is seconded to the Centre.

7.2 The parties acknowledge that from time to time [Secondee’s] work at the Centre may involve issues which relate directly or indirectly to matters or clients with which [Practice] may be involved. [Secondee] agrees to bring any such issues of which she has knowledge to the attention of the Centre and [Practice] who shall discuss and agree [Secondee’s] involvement in such matters or clients.

8 Complaints and grievance procedures

8.1 Parties understand that grievances, complaints and concerns regarding the secondment can be raised with either the Pro-Bono Secondment Facilitator or the party’s relevant representing committee member. The parties are encouraged to undertake informal resolution of such issues prior to raising them with the Facilitator or Pro bono Secondment Committee.

SIGNED for and on behalf of the [Organisation] by ..........................................

SIGNED for and on behalf of the [Practice] by ............................................

SIGNED by [Secondee] by..........................................................
3.13. **Encouraging pro bono**

The following three sample memoranda are examples of those used by practices to encourage and promote pro bono within the practice.

**Sample memoranda**

**Memorandum to all lawyers**

**Pro Bono Program**

We are extremely pleased to report that [number] lawyers volunteered to work on new pro bono matters in response to the [date] appeal. Lawyers volunteered to work on projects with [list of agencies]. [Number] lawyers responded to the request for help with the [agency project].

We are also grateful to those partners who have agreed to supervise on pro bono projects.

Listed below are some additional appeals for assistance which we have received in recent weeks: [List details]

**Other organisations**

The groups listed above represent only a fraction of the groups with which we work and of course, each group has many more cases than those mentioned. If you are interested in volunteering to work in a different area, please contact [name].

**Memorandum to all fee earners from the Pro Bono Committee**

1. Our first pro bono newsletter has produced a gratifying response. Attached as Exhibit A is a list of new matters taken on as a result. You will soon receive an updated list of current pro bono matters with these incorporated.

2. Our enquiry regarding the need for assistance produced a list of projects, listed in the attached Exhibit B. Some require the assistance of more than one solicitor.

3. We have compiled a list of available pro bono training materials (attached as Exhibit C). Those marked with an asterisk are already in our library.

4. We are about to canvas all lawyers who do not appear on any of our records as having billed any time to pro bono matters since [date] to ensure that our records are complete.

5. We plan to send a notice to all lawyers working on pro bono matters to remind them that: (a) all original correspondence and pleadings must be filed; and (b) the substance of and contacts involved in all non-litigation matters should be documented somewhere in [Practice] records (in the form of memoranda to the files, if necessary). All lawyers will be reminded of and encouraged to review the practice’s Pro Bono Manual.
Memorandum to lawyers

At [time] on [date] the Pro bono Committee will hold the practice’s annual pro bono seminar for lawyers to discuss the wide variety of litigation and non-litigation pro bono projects available. We have invited representatives from [name of agency] which has helped match [Practice] lawyers with pro bono clients. [Senior partner] will also attend to describe the practice’s pro bono policy and commitment.

Because of the high value placed on pro bono work by the practice, we believe that it is important that you attend if at all possible. The seminar will help you to become familiar with [Practice] pro bono practices and available projects.

If you do not plan to attend the seminar, please fill out the attached form and send it to [name].

I will not attend the pro bono seminar on [date]

Name: ____________________________

Sample policy statements regarding credit given for pro bono time

The following statements are taken from law practice pro bono policies and show how some practices express their position on crediting time.

Example 1

Policy on billable credit for pro bono time by lawyers

The management committee is committed to the principle that pro bono time should receive appropriate credit during evaluations and partnership selection. For years we have looked at ways to further encourage pro bono activity, such as by giving billable credit for pro bono time; but the cost in programming time and inaccurate financial records required to implement such a change proved too high.

Recently however, the Management Committee has adopted the recommendation of the Practice’s Pro Bono Committee and Pro Bono Advisory Committee, effective immediately, to treat all pro bono time as billable time on the year-end reports provided to members of the Management Committee as they begin deliberation on the appointment of new partners and to the Evaluation and Compensation Committee. All monthly and other interim reports during the year will remain unchanged and will continue to show pro bono time as Practice time. But the final, year-end reports used for associate evaluation and compensation and for partnership selection will treat pro bono time as if it were time that had been reported, billed and collected.

We hope that this will reinforce the Practice’s desire to encourage individual lawyers to find time to participate in serving those unable
to pay.

Example 2

**Equality of treatment**

Pro bono work is treated, as far as possible, 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 any other work undertaken by the practice. Lawyers performing work on a pro bono basis will receive full fee credit in the same way as any other work undertaken by them for the practice. (See 3.2. **Sample pro bono policies**: 1.)

Example 3

**Pro bono matters are recognized as part of a solicitor’s budget performance**

Work conducted under the [Practice] Pro Bono Scheme is fully recognized within individual and practice group budgets, and must be properly recorded. An individual legal staff’s budgetary performance is calculated through the combination of billable time and pro bono time. (See 3.2. **Sample pro bono policies**: 6.)

Example 4

**How does [Practice] regard pro bono work?**

Pro bono work is highly regarded by the practice and advances a solicitor’s career. As much as possible both partners and legal staff will be involved in pro bono work. Time engaged by all lawyers in pro bono work is to be properly recorded and valued in the usual way in the practice’s records.¹²¹
4. Information & Resources

4.1. Interpreter services

This section discusses the availability of interpreters and provides some tips for working with interpreters effectively.

**Using interpreters**

Using interpreters effectively is a skill. Lawyers, paralegals and administrative workers should be trained in using interpreters. Some key points to remember are:

- Use professional, trained interpreters, not family members or friends.

- If the case is of a sensitive nature such as an interview relating to sexual assault or incest, ensure that an interpreter of appropriate gender, cultural or religious background is provided.

- Brief the interpreter before the interview about the nature of the case and the purpose of the interview. Decide in advance whether consecutive or simultaneous interpreting will be used.

- Arrange the seating to enable direct communication between you and the client. Frequently a triangular arrangement will be effective.

- At the beginning of the interview you should introduce yourself and the interpreter and explain the role of each and how the interview will be run.

- Speak in the first person to the client and use ‘you’ when referring to the client. For example, ‘Please tell me what you did next . . .’.

- Maintain eye contact with the client if this is culturally appropriate.

- Use short sentences and allow time for the interpreter to interpret.

- Avoid any legalese, jargon or slang.
• Do not speak louder when using interpreters; speak slowly and naturally.

• Ask the client to repeat back to you (through the interpreter) their understanding of what has been said to ensure that they understand.

• Stop the interview if the interview is not working and go over how to use interpreters with the client or interpreter.

Interpreters have a professional ethical obligation to maintain client confidentiality. Where a client comes from a small community they or their associates may know the interpreter and thus the duty of confidentiality is of key importance.

4.2. Clients with disabilities

This section provides an overview of disabilities and provides some practical tips for working effectively with clients. Some clients have disabilities that may affect their cognitive capacity and present particular issues for working with a legal practitioner. This section also outlines some general principles and points to keep in mind when assisting people whose disabilities do not affect their cognitive capacity.

What is a disability?

There are many different ways of defining disabilities. Generally definitions relate to diagnostic criteria that identify the specific disability and, in many cases, the resulting functional limitation or impairment. However, many other definitions exist and these are usually linked to the provision of services and supports to individuals.

In general, however, a disability can be described as a condition, disease or illness resulting in some kind of limitation or impairment of a person’s functional ability when compared to a person without a disability.

Types of disabilities

There is a great diversity of disabilities from those which result in a person being completely dependent on others for most or all of their daily needs to those which are less evident and which have very little or no impact upon a person’s capacity to live independently.

Whilst it is not necessary for legal practitioners to have an exhaustive knowledge of disabilities in order to provide legal assistance to a person with a disability, it may prove helpful to develop a basic understanding of some of the more common disabilities. It will also be helpful to know which disabilities may give rise to particular needs for clients when seeking legal assistance.

While it is not always possible to neatly compartmentalise disabilities, most disabilities will fall within one or more of the following broad categories. It should be remembered though, that some people have multiple disabilities across these categories,
and some new sub-categories are emerging, such as behavioural disabilities.

**Physical disability**

This broad category includes disabilities affecting the body, or a part or function of the body and that result in limited physical capacity and/or mobility from the loss of a limb, to those caused by disease or illness such as HIV/AIDS. Many of the issues affecting people with physical disabilities relate to: access to the built environment, or medical treatment and care, or illnesses and chronic disease, or compensation, physical rehabilitation, injury and trauma. Generally speaking, this category of disability would not affect legal competence or cognitive capacity; however, notable exceptions include acquired brain injury and the late stages of muscular dystrophy.

**Psychiatric disability**

Commonly termed ‘mental illness’, this category includes conditions such as schizophrenia or depression that affect a person’s thoughts, emotions, perceptions and/or behaviour. Psychiatric disabilities can be episodic, with patients displaying few, if any, positive symptoms at other times. Many of the issues affecting people with psychiatric disabilities will be related to voluntary/involuntary treatment, family and criminal law, financial management and discrimination. Many psychiatric disabilities don’t affect legal competence and cognitive capacity; some do or only do so sporadically.

**Intellectual disability**

This category includes disabilities that affect a person’s competence, cognitive capacity and social and adaptive skills. It includes Down’s syndrome and some kinds of autism and learning disabilities. Many of the issues affecting people with an intellectual disability are related to access to information and education, residential support services, community participation and integration, guardianship and administration, capacity and consent. In most cases intellectual disability will not affect legal competence although by definition cognitive capacity is limited.

**Neurological disability**

This complex category refers to an impairment or limitation due to injury or illness affecting the central nervous system, including the brain, and includes multiple sclerosis, Parkinson’s disease and dementia. There is very little information about the numbers of people affected by neurological disabilities. Many of the issues affecting people with neurological disabilities will relate to advances in medical treatment, ethics and treatments, degenerative disability and genetic predisposition. In some cases there will be no impact upon legal competence and cognitive capacity whilst in others there
may be reduced or lost capacity over time.

**Sensory disability**

This category includes many of the more familiar disabilities such as being visually or hearing impaired. These disabilities affect a large proportion of the population particularly as people begin to age. Many of the issues affecting people with sensory disabilities will relate to access to information, access to education, communication, and technical and other aids/adjustments. There is no impact upon legal competence or cognitive capacity, however, some people who are hearing and/or visually impaired may have received less education or social interaction and may experience barriers communicating with others.

**Legal competence and cognitive capacity**

There are some disabilities that may have an impact on how a lawyer deals with a client, obtains instructions and provides advice. Where a client’s disability has a significant impact on their comprehension and thought processes – or cognitive capacity – this may impact upon their ability to provide sound instructions. This includes some people with intellectual disability, acquired brain injury, mental illness, dementia and some neurological disabilities such as certain forms of multiple sclerosis.

The following notes may assist.

**Acquired brain injury**

- can be caused by stroke, accident (for example, in a motor vehicle accident) or excessive drug and alcohol use;

- can impair memory, thinking, perception, attention and emotions; the brain injury can result in dis-inhibited behaviour or poor impulse control;

- can affect very specific functions of the brain whilst other functions are unaffected;

- in some cases people can rehabilitate over time.

**Dementia**

- involves a loss of short-term memory and recognition of very familiar people, places and objects;

- can progress into confusion and disorientation and a general decline in cognitive ability;

- can be caused by other disabilities such as HIV/AIDS;

- Alzheimer’s disease is one type of dementia.
Intellectual disability

- Generally defined as having an IQ score of less than 70–75 and limitations in two or more skill areas. The person must be born with the disability or manifest limited cognitive capacity as determined by IQ tests prior to the age of 18.

- People with an intellectual disability experience limitations in some of the following skill areas: communication, self care, home living, social skills, community use, self-direction, health and safety, academic functioning, leisure and work. A psychologist is the best person to assess whether someone has an intellectual disability.

- Intellectual disability affects the way a person learns. They may have difficulty understanding abstract concepts or with learning new information or understanding complex instructions.

- Other terms that have been used for intellectual disability are: ‘learning disability’, ‘mental retardation’, ‘mental handicap’ and ‘developmental disability’.

Mental illness

- May affect perception, thoughts and/or mood;

- Is often episodic: a person can be well for a period of time and then experience an episode of mental illness; people with schizophrenia often display ‘negative’ symptoms which include loss of motivation and a decline in general functioning when active or ‘positive’ symptoms are not present;

- Examples of mental illnesses are: schizophrenia, depression, bipolar affective disorder (formerly known as manic depression);

- A psychiatrist is the best person authorised to diagnose and initiate treatment for someone with a mental illness.

Working with clients with a disability affecting cognitive capacity

A diverse range of disabilities may affect cognitive capacity and it should not be assumed that clients with a disability will all have the same needs. For example, a person with schizophrenia who is not actively symptomatic may experience no difficulties with cognitive capacity whilst a person with intellectual disability may appear extremely compliant but not be able to understand what is happening. The following points regarding the ways cognitive capacity may affect your client are worth considering:

- The client may take longer to learn things, especially new information.

- They may have difficulty understanding abstract concepts.

- They may have difficulty reading and writing.
• They may have a short attention span and might be easily distracted.

• They may find it difficult to understand complex questions and instructions.

• The disability may affect how the person talks.

• The client may find it difficult to maintain eye contact.

• The client might find it difficult to adapt to new situations.

Communication

A person with limited cognitive capacity will be able to provide instructions, give evidence and make decisions about the progress of their matter to varying degrees depending on the level of their capacity, whether they are affected by their disability at the time and on how well the practitioner communicates with them.

Client interviews and speaking on the phone

A person with a disability that affects cognitive capacity may have a short attention span and may have difficulty staying on the same subject. The person may appear to understand and provide the appropriate responses when in fact they have not understood. They may not have absorbed information discussed at a previous meeting. When speaking to or taking instructions from a client with limited cognitive capacity, the following strategies might assist:

• Allow additional time for interviewing your client.

• Select a quiet, private area free of distractions and interruptions.

• Allow the person to tell their story, saving questions until the end.

• Don’t interrupt or finish the person’s sentences for them.

• Use open rather than leading questions.

• Use simple words and sentences – one idea at a time.

• Avoid abstract concepts and don’t use jargon.

• Check whether they understand by asking them to repeat the information in their own words or by asking follow-up questions.

• Be aware that the client may need more breaks than other clients.

• Be aware that the client may not wish to identify as having an intellectual disability or may wish to hide the effect of their disability. He or she might give a false appearance that they understand what is being explained to them.

• Be observant of the client’s non-verbal behaviour.

Writing letters to the client

Find out about the client’s skill level in reading and writing.
Where the client has difficulty reading, information contained in any letter can be communicated in person or on the phone (see Communication below). Client agreements can be presented in a format that assists understanding, for example, by:

- using at least 14 or 16 point type;
- using line spacing of at least 1.5.;
- using a clear and easy-to-read font;
- using short sentences and short paragraphs;
- using headings;
- writing in point form;
- using plain English and everyday words; and
- including only necessary information in the letter.

**Support persons**

A person with limited cognitive capacity may bring a support person with them to an interview or to court. One of the roles of the support person is to assist the client in communicating with other people but it is important for lawyers to speak directly to the client and not the support person. A support person can reinforce the issues discussed with a lawyer through the stages of the court process and can be invaluable in assisting the lawyer to communicate effectively with their client. They should be able to indicate when they believe the client does not understand what is being said or when the client needs a break. It may be appropriate in some circumstances to ask the support person to sign a confidentiality agreement.

**Court appearances**

It is important to explain the court process to the client and, if possible, to arrange for the client to visit the court room in advance of the hearing. If a person has a support worker or caseworker it may help to have them present at the hearing.

**Clients who may lack capacity**

Most people with limited cognitive capacity have the capacity to instruct a lawyer, particularly if care is taken with communication. There will, however, be some people who, because of the level of their disability, lack the capacity to instruct effectively. Note that some people will have had a guardian or financial administrator appointed who may need to be informed of decisions or matters affecting the client, for example, if legal proceedings are being contemplated. (Legal practitioners may also need to be cognizant that in some cases, a client with a disability may be subject to a trusted person’s exploitation or undue influence, such as family members or ‘friends’.)
General principles and tips

Communication

Some people with disabilities use communication aids such as a voice synthesiser or a communication board. They will need to show the legal representative how to work with the aid and some may take longer to communicate than others. Time should be allowed for this in consultations.

Some people who are hearing impaired will require an SEE (Signing Exact English) (sign language) interpreter who will need to be arranged prior to consulting. The cost of the interpreter will most likely need to be covered by the legal practitioner or law practice. They may also need to communicate using a TTY (telephone typewriter) rather than a telephone or use text messages on a mobile phone.

Some people with speech impediments or who are ‘non-verbal’ may require a specialist interpreter either in person or on the telephone. These services will need to be arranged before the consultation and are generally cost free.

It is important not to assume that people who are non-verbal also have limited cognitive capacity.

Some people will require information in alternative formats such as large print, audio recording, Braille or a specific electronic format. It may be the responsibility of the legal practitioner to provide these alternatives.

Medication

Some people with disabilities need to take treatments and/or medications that may affect their behaviour or comprehension. This can sometimes be confused with the effects of the person’s disability upon their capacity. If a person appears affected by medication or treatment, legal practitioners should ensure their communication with the client is effective to the extent that they are confident that they are acting according to the client’s instructions, and in the client’s best interests.

Access to courts and other venues

Physical access to a court or venue and access to information provided within these environments should be considered. The client should be asked if they have any particular access needs such as always having an accessible toilet facility nearby.

4.3. Social Service Agency Referrals

For a list of social services please key in/click on the following hyperlink http://www.ncss.gov.sg/social_service/index.asp