

**Pro Bono Practices and Opportunities in Australia**

**I. Introduction**

Pro bono legal services are an important focus for Australian lawyers and law firms. Australia prides itself as a global pro bono leader; since 2007, a National Pro Bono Target has been used to encourage all Australian lawyers to complete at least 35 hours of pro bono legal services per year. Although pro bono legal services remain voluntary, the wide network of Australian organizations supporting the strategic delivery of pro bono legal services is providing increased access to justice for those in need.

**II. Overview of Pro Bono Practices**

(a)	<b>Professional Regulation</b>	
	<p>1. Describe the laws/rules that regulate the provision of legal services?</p>	<p>The Australian legal profession is comprised of solicitors and barristers.</p> <p>Solicitors are represented by the law society of the state or territory in which they practice (e.g., the Law Society of Victoria<sup>1</sup>) and are regulated by a legal practitioners board (e.g., the Victorian Legal Services Board<sup>2</sup>).</p> <p>Barristers are regulated by the relevant bar council or association in their jurisdiction (e.g., the Victorian Bar Association<sup>3</sup>).</p> <p>Each Australian state and territory has implemented regulations and rules governing the legal profession (e.g., in Victoria and New South Wales, lawyers are subject to a framework of legal profession uniform rules made by the Legal Services Council, pursuant to local legislation (the “<b>Uniform Rules</b>”)<sup>4</sup>).</p>
	<p>2. Describe any licensure requirements governing the provision of legal services.</p>	<p>The practice of law in Australia requires admission to the Australian legal profession. Each Australian state and territory has implemented regulations and rules governing admission, which typically require an Australian tertiary academic qualification in law, plus the completion of a practical legal training course and/or supervised legal training.<sup>5</sup></p> <p>Following admission, Australian lawyers are required to apply for and maintain a current legal practicing certificate (the specific requirements vary across the states and territories, but an Australian lawyer must typically be a “fit and proper person”</p>

<sup>1</sup> See <http://www.liv.asn.au/> (last visited on May 1, 2019).

<sup>2</sup> See <http://www.lsb.vic.gov.au/> (last visited on May 1, 2019).

<sup>3</sup> See <https://www.vicbar.com.au/> (last visited on May 1, 2019).

<sup>4</sup> See <http://www.legalservicescouncil.org.au/Pages/legal-practioners/for-legal-practioners.aspx> (last visited on May 1, 2019).

<sup>5</sup> See <https://www.lawadmissions.vic.gov.au/qualifications-and-training> (last visited on May 1, 2019).

		to hold and renew a practicing certificate, and must maintain appropriate professional indemnity insurance <sup>6</sup> ).
(b)	<b>Pro Bono Practice and Culture</b>	
	1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.	There are no explicit regulations or limitations on providing pro bono legal services in Australia or minimum fees imposed on provision of legal services. Legal costs charged to a client (if any) must however be fair and reasonable in the circumstances. <sup>7</sup>
	2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?	There are no rules in Australia requiring lawyers to work a minimum number of pro bono hours.
	3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?	Aspiring lawyers in Australia are not required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers.
	4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?	Public legal aid in Australia does not adequately meet the demand for free legal services, primarily due to means and merit testing, which may exclude members of the population who either (i) fall above the minimum means standards, rendering them financially ineligible, but who nonetheless have insufficient funds for legal representation or (ii) meet the minimum means standards but are seeking assistance on matters that do not meet the merit standards. In these circumstances pro bono legal services seek to address the need for free legal services. One major area of unmet need is in civil law matters, where it is difficult to obtain a grant of legal aid for many kinds of cases. <sup>8</sup>
	5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?	The main providers of Australian pro bono legal services include: <ul style="list-style-type: none"> <li>• community legal centers, which provide free legal and related services to the public, focusing on the disadvantaged and people with special needs;<sup>9</sup></li> <li>• law firms, who are able to access resources and expertise provided by the Australian Pro Bono</li> </ul>

<sup>6</sup> See [http://lsbc.vic.gov.au/?page\\_id=207](http://lsbc.vic.gov.au/?page_id=207) (last visited on May 1, 2019).

<sup>7</sup> See [http://lsbc.vic.gov.au/?page\\_id=254](http://lsbc.vic.gov.au/?page_id=254) (last visited on May 1, 2019).

<sup>8</sup> See <https://www.probonocentre.org.au/aus-pro-bono-manual/part-3/chap-3-1/#3.1.1> (last visited on May 1, 2019).

<sup>9</sup> See [http://www.naclc.org.au/cb\\_pages/clcs.php](http://www.naclc.org.au/cb_pages/clcs.php) (last visited on May 1, 2019).

		<p>Centre in the establishment of an effective pro bono program;<sup>10</sup></p> <ul style="list-style-type: none"> <li>• duty barrister schemes provided by Australian bar associations, to assist litigants with legal and financial need;<sup>11</sup> and</li> <li>• university legal clinics, which combine a teaching clinic for law students with qualified volunteer solicitors, who are able to provide free legal advice in specified areas of need (e.g., the Kingsford Legal Centre at the University of New South Wales, Sydney).<sup>12</sup></li> </ul>
(c)	<b>Obstacles to Provision of Pro Bono Legal Services</b>	
	1. Do lawyers require a license to provide pro bono legal services?	<p>All solicitors who provide pro bono legal services are required to maintain an appropriate Australian practicing certificate.</p> <p>Lawyers who volunteer and/or provide pro bono legal services only may be entitled to a “nil fee” practicing certificate.<sup>13</sup> In Victoria, for example, such a practicing certificate will include a condition that the holder is restricted to practicing as a volunteer at a community legal center or on a pro bono basis only.<sup>14</sup></p>
	2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?	<p>Foreign lawyers in Australia may practice either foreign law (subject to the applicable practicing restrictions) or may apply to be admitted as Australian lawyers; the relevant conditions and requirements are set and applied by the relevant legal practitioners board in the state or territory in which the foreign lawyer intends to practice. In Victoria, for example, foreign lawyers may be admitted either as an Australian-registered foreign lawyer or as an Australian legal practitioner.<sup>15</sup> There are no additional specific requirements in respect of the provision of pro bono legal services by foreign lawyers.</p>
	3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working	<p>Subject to certain specific exemptions, all Australian lawyers are generally required to hold or be covered by professional indemnity insurance</p>

<sup>10</sup> See <https://www.probonocentre.org.au/provide-pro-bono/law-firm/> (last visited on May 1, 2019).

<sup>11</sup> See <https://www.vicbar.com.au/public/community/pro-bono-scheme> (last visited on May 1, 2019).

<sup>12</sup> See <http://www.klc.unsw.edu.au/free-legal-advice> (last visited on May 1, 2019).

<sup>13</sup> See [http://lsbc.vic.gov.au/?page\\_id=1711](http://lsbc.vic.gov.au/?page_id=1711) (last visited on May 1, 2019).

<sup>14</sup> See [http://lsbc.vic.gov.au/?page\\_id=207](http://lsbc.vic.gov.au/?page_id=207) (last visited on May 1, 2019).

<sup>15</sup> See [http://lsbc.vic.gov.au/?page\\_id=226](http://lsbc.vic.gov.au/?page_id=226) (last visited on May 1, 2019).

<p>under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?</p>	<p>before engaging in legal practice, including pro bono legal services. Under the Uniform Rules, professional indemnity insurance requirements will vary depending on the capacity in which the lawyer intends to practice.<sup>16</sup></p> <p>A community legal service (“CLS”) must be insured for any legal services provided. If the CLS is a corporation, it must hold an approved insurance policy covering the CLS itself and each Australian lawyer carrying out work at the CLS. If the CLS is not a corporation, it must not engage in legal practice unless each Australian lawyer who engages in legal practice for or on behalf of the CLS holds or is covered by an approved insurance policy and the policy covers that practice.</p> <p>Australian-registered foreign lawyers are not required to hold professional indemnity insurance under the Uniform Rules; however, if an Australian-registered foreign lawyer does not hold an approved insurance policy, they must provide a written disclosure statement to each client before, or as soon as practicable after, being retained for legal services.</p> <p>In-house corporate or government lawyers are not required to hold professional indemnity insurance under the Uniform Rules; however, those wishing to provide pro bono legal services outside of a CLS must be covered by insurance. In certain Australian states and territories, in-house corporate and government lawyers are able to access the National Pro Bono Professional Indemnity Insurance Scheme, which provides such lawyers with free insurance coverage while working on pro bono projects approved by the Australian Pro Bono Centre.<sup>17</sup></p>
<p>4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?</p>	<p>There are no rules in Australia that prohibit advertising of pro bono successes or soliciting new pro bono clients. Any advertising or solicitation of new pro bono clients must comply with regulations (such as the Uniform Rules) and guidelines promulgated generally in respect of advertising and marketing by the applicable law society (e.g., the Law Institute of Victoria’s advertising and direct-marketing guidelines).<sup>18</sup></p>

<sup>16</sup> See [http://lsbc.vic.gov.au/?page\\_id=246](http://lsbc.vic.gov.au/?page_id=246) (last visited on May 1, 2019).

<sup>17</sup> See <https://www.probonocentre.org.au/provide-pro-bono/pi-insurance-scheme/> (last visited on May 1, 2019).

<sup>18</sup> See <https://www.liv.asn.au/Professional-Practice/Ethics/Ethics-Guidelines> (last visited on May 1, 2019).

	<p>5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?</p>	<p>Lawyers in Australia do not receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked. The Australian Pro Bono Centre previously made a submission to the Law Council of Australia that the continuing professional development (“CPD”) rules should permit a lawyer who undertakes at least one day (7.5 hours) of pro bono legal work to claim one CPD unit towards the required annual minimum of 10 units of CPD activity;<sup>19</sup> however, this proposal was not adopted.<sup>20</sup></p>
<p>(d) <b>Sources of Pro Bono Opportunities and Key Contacts</b></p>		
	<p>1. Describe any governmental sources of pro bono and/or other legal services in Australia.</p>	<p>The federal Attorney-General’s Department administers funding for the provision of legal aid services for federal law matters through legal aid commissions (“LACs”), and manages a community legal services program.<sup>21</sup> State and territory governments fund legal aid services for cases brought under state and territory law. There are eight independent LACs, one in each state and territory.</p> <p>The services offered by each LAC differ across jurisdictions. Eligibility for LAC services also varies among LACs and can be confirmed by contacting the appropriate LAC, or National Legal Aid, which represents the directors of the eight state and territory LACs.<sup>22</sup></p>
	<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Australia.</p>	<p>The main non-governmental sources of pro bono and/or other pro bono resources in Australia are:</p> <ul style="list-style-type: none"> <li>• The Australian Pro Bono Centre:<sup>23</sup> an independent, non-profit organization, which supports the provision of pro bono legal services by lawyers and law firms. Information and resources for existing and potential Australian pro bono legal service providers are</li> </ul>

<sup>19</sup> See [https://probonocentre.org.au/wp-content/uploads/2015/10/NPBRC\\_Submission\\_to\\_LCA\\_Pro\\_Bono\\_and\\_CPD\\_Rules\\_06032015.pdf](https://probonocentre.org.au/wp-content/uploads/2015/10/NPBRC_Submission_to_LCA_Pro_Bono_and_CPD_Rules_06032015.pdf) (last visited on May 1, 2019).

<sup>20</sup> See the meaning of “CPD activity” under Rule 8 of the Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015: <https://www.legislation.nsw.gov.au/#/view/regulation/2015/242> (last visited on May 1, 2019).

<sup>21</sup> See <http://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Pages/Legal-aid.aspx> (last visited on May 1, 2019).

<sup>22</sup> See <http://www.nationallegalaid.org/> (last visited on May 1, 2019).

<sup>23</sup> See <https://www.probonocentre.org.au/> (last visited on May 1, 2019).

		<p>available on its website, including the Australian Pro Bono Manual;<sup>24</sup></p> <ul style="list-style-type: none"> <li>• Justice Connect:<sup>25</sup> pro bono legal clearing house in Victoria and New South Wales;</li> <li>• LawRight:<sup>26</sup> pro bono legal clearing house in Queensland;</li> <li>• JusticeNet SA:<sup>27</sup> pro bono legal clearing house in South Australia;</li> <li>• Law Access Pro Bono Referral Scheme:<sup>28</sup> pro bono legal access scheme in Western Australia; and</li> <li>• National Association of Community Legal Centres:<sup>29</sup> the peak national body for Australian community legal centers, representing around 200 community legal centers providing pro bono and related legal services.</li> </ul>
	<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>As described above – interested local or foreign attorneys should contact the Australian Pro Bono Centre, the applicable legal clearing house in their jurisdiction and/or a local community legal center.</p>

May 2019  
Pro Bono Practices and Opportunities in Australia

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

<sup>24</sup> See <https://www.probonocentre.org.au/aus-pro-bono-manual/> (last visited on May 1, 2019).

<sup>25</sup> See <https://justiceconnect.org.au/> (last visited on May 1, 2019).

<sup>26</sup> See <http://www.lawright.org.au/> (last visited on May 1, 2019).

<sup>27</sup> See <http://www.justicenet.org.au/> (last visited on May 1, 2019).

<sup>28</sup> See <http://www.lawsocietywa.asn.au/law-access/> (last visited on May 1, 2019).

<sup>29</sup> See <http://www.naclc.org.au/> (last visited on May 1, 2019).