

Pro Bono Practices and Opportunities in New Zealand¹

I. Introduction

New Zealand’s population of approximately 4.8 million residents is served by approximately 13,843 lawyers, amongst which just over 13,000 lawyers practice locally, with a further 756 based overseas holding a practicing certificate issued by the New Zealand Law Society (“NZLS”).² Two thirds of law firms in New Zealand spend 1-5% of practice time on pro bono work, and the value of pro bono work in New Zealand is estimated to be between approximately \$20 million and \$100 million annually.³ Twenty-four Community Law Centres (“CLCs”) provide certain categories of legal services at no cost to people who are unable to meet the cost of a private lawyer or do not have access to legal aid. Direct pro bono work undertaken by CLCs equates to up to \$50 million annually.⁴

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	1. Describe the laws/rules that regulate the provision of legal services?	<p>The Lawyers and Conveyancers Act 2006 (LCA) governs the provision of legal services in New Zealand.</p> <p>The NZLS regulates all New Zealand lawyers in the provision of legal services.</p> <p>Criteria for admission is completion of law degree and a practical legal studies course, in each case approved by the New Zealand Counsel of Legal Education.⁵</p>
	2. Describe any licensure requirements governing the provision of legal services.	<p>All lawyers are required to:</p> <ul style="list-style-type: none"> • gain admission to the High Court of New Zealand as both a barrister and a solicitor.⁶ • obtain an annual practicing certificate from the NZLS. • complete a minimum of ten hours of Continuing Professional Development each year.⁷

¹ This chapter was drafted with the support of Rachel Gowing of Bell Gully.

² NEW ZEALAND LAW SOCIETY, Snapshot of the Profession 2018, available at https://www.lawsociety.org.nz/_data/assets/pdf_file/0020/119270/Snapshot-of-the-Profession-2018.pdf (Feb, 2018) (last visited on October 2, 2019).

³ LAW FOR CHANGE, Profession’s gift to the community, Law Talk 820, available at <http://www.lawforchange.co.nz/wp-content/uploads/2013/07/Pro-Bono-Law-Talk-1.pdf> (Jun, 2013) (last visited on October 2, 2019).

⁴ *Community Law Delivers Real Return on Investment for NZ Public*, COMMUNITY LAW (March 23, 2018), <http://communitylaw.org.nz/community-law-delivers-real-return-investment-nz-public/> (last visited on October 2, 2019).

⁵ NEW ZEALAND COUNCIL OF LEGAL EDUCATION, nzcle.org.nz (last visited on October 2, 2019).

⁶ Section 48(1), Lawyers and Conveyancers Act 2006.

⁷ Section 6, Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education – Continuing Professional Development) Rules 2013.

(b)	Pro Bono Practice and Culture	
	<p>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.</p>	<p>The same criteria are required, whether providing free legal services or legal services to paying clientele.⁸</p> <p>Under the LCA, a lawyer may either be (i) an employed lawyer, i.e., employed by law firm or employed as in-house counsel by an entity that is not a law, or (ii) employed on his or her own account.⁹</p> <p>An employed lawyer may provide legal services to the public through the law firm or own practice; an in-house lawyer is limited to the provision of legal services to their employer and cannot extend to the clients of the organization.¹⁰</p> <p>Thus, an in house lawyer may not engage in the provision of pro bono legal services but a lawyer working on their own account or for a law firm may, provided the law firm agrees to take on the pro bono work.</p> <p>However, a lawyer may provide legal services to the public as a volunteer through a CLC or the Citizen’s Advice Bureau¹¹</p>
	<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>Lawyers in New Zealand are not required to work a minimum number of pro bono hours.</p>
	<p>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</p>	<p>Aspiring lawyers in New Zealand are not required to complete a minimum number of hours of pro bono legal services in order to become a licensed lawyer.</p>
	<p>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?</p>	<p>The major unmet legal needs in New Zealand continue to be found in high need communities.</p> <p>The New Zealand experience seems to mirror that of Australia, where 65% of unmet need for legal</p>

⁸ NEW ZEALAND LAW SOCIETY, Guidance for lawyers undertaking pro bono work, available at <https://www.lawsociety.org.nz/practice-resources/practice-briefings/Guidance-for-lawyers-undertaking-pro-bono-work.pdf> (July, 2018) (last visited on October 2, 2019).

⁹ Ibid.

¹⁰ Ibid; see also Section 9, The Lawyers and Conveyancers Act 2006 (LCA).

¹¹ Sections 10(5) and 31(4).

		<p>services is found within 10% of the population. These tend to be civil and administrative issues, and often cluster together.</p> <p>In CLCs, the following areas of law are consistently the highest volume: Employment, Family, Financial (which encompasses credit contracts, bankruptcy), Immigration and Consumer.¹²</p>
	<p>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?</p>	<p>The main providers of pro bono legal services in New Zealand are:</p> <p>(i) CLCs: independent, either run as charitable trusts or incorporated NGOs.</p> <p>Generally provide free legal consultation and representation to everyone, with a focus on individuals with limited financial resources.</p> <p>There are 24 CLCs across Aotearoa New Zealand and 120 outreach locations, covering major city centers as well as rural communities.</p> <p>The estimated value of CLCs value to the New Zealand community is approximately \$30 to \$50 million per annum.¹³</p> <p>(ii) Law Firm Pro Bono Programs: many law firms have developed pro bono programs.¹⁴ For example:</p> <p>DLA Piper encourages all of its lawyers globally to provide 35 hours of pro bono legal services per year.¹⁵</p> <p>Bell Gully publishes a Pro Bono & Community Report annually and targets to contribute approximately \$1 million annual fee equivalent to pro bono work.¹⁶</p> <p>(iii) Other Pro Bono Programs:¹⁷</p>

¹² General Manager, Auckland Community Law Centre.

¹³ NEW ZEALAND INSTITUTE OF ECONOMIC RESEARCH, NZIER report to Community Law Centres of Aotearoa, The value of investing in Community Law Centres, available at <http://communitylaw.org.nz/wp-content/uploads/2018/03/The-value-of-investing-in-Community-Law-Centres-An-economic-investigation.pdf> (last visited on October 2, 2019).

¹⁴ The two firms referenced are indicative of what the large firms are doing in the pro bono space.

¹⁵ NEW ZEALAND LAW SOCIETY, Global links aid firm's local work, available at <https://www.lawsociety.org.nz/practice-resources/the-business-of-law/pro-bono/global-links-aid-firms-local-work> (last visited on October 2, 2019); see also DLA PIPER, Pro Bono, available at <https://www.dlapiper.com/en/newzealand/focus/probono/pro-bono/> (last visited on October 2, 2019).

¹⁶ BELL GULLY, A Helping Hand: Bell Gully's Pro Bono & Community Report, available at <https://www.bellgully.com/Shared%20Documents/Helping%20Hand%202017-2018%20FINAL%20digital%20spreads.pdf> (2018) (last visited on October 2, 2019).

¹⁷ There are other programs not referenced here, but these are indicative.

		<p>In the Employment Court in Auckland. There is a limited program that provides free, limited assistance to persons without legal representation with the drafting and preparation of initial Court documents (either a statement of claim or statement of defense).¹⁸</p> <p>University Legal Clinics: Some law schools, such as the University of Canterbury and the Auckland Law School have clinical programs as part of their course work offering, which creates pro bono opportunities for law students.¹⁹</p>
<p>(c) Obstacles to Provision of Pro Bono Legal Services</p>		
	<p>1. Do lawyers require a license to provide pro bono legal services?</p>	<p>Lawyers in New Zealand do not require any other license in addition to the regular license to practice law.</p>
	<p>2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?</p>	<p>If you are a lawyer from another jurisdiction you can provide any legal services but generally you may not carry out work in any of the reserved areas of work. Both 'legal services' and 'reserved areas of work' are defined in s6 of the Lawyers and Conveyancers Act 2006 (the LCA). Under s25 of the LCA you may also:</p> <ul style="list-style-type: none"> • do any work, or transact any business in New Zealand that concerns the law of another country or international law • provide legal services (including appearances) in New Zealand in relation to any proceedings before a court or other body if it is essential for the purposes of the proceedings that you have knowledge of the law of another country or international law • use your home jurisdiction description, subject to certain constraints.²⁰

¹⁸ EMPLOYMENT COURT OF NEW ZEALAND, Pro Bono Legal Assistance Service (Auckland only), available at <https://www.employmentcourt.govt.nz/info-guidance/professional-help/> (last visited on October 2, 2019).

¹⁹ See the University of Canterbury, Clinical Legal Studies [https://www.canterbury.ac.nz/courseinfo/GetCourseDetails.aspx?course=LAWS386&occurrence=15S1\(C\)&year=2015](https://www.canterbury.ac.nz/courseinfo/GetCourseDetails.aspx?course=LAWS386&occurrence=15S1(C)&year=2015) (last visited on October 2, 2019). and Auckland Law School, Equal Justice Project (<https://www.auckland.ac.nz/en/on-campus/life-on-campus/clubs-societies/club-categories/social-responsibility/equal-justice-project.html>) (last visited on October 2, 2019).

²⁰ NEW ZEALAND LAW SOCIETY, Lawyers from other jurisdictions, available at <https://www.lawsociety.org.nz/for-lawyers/joining-the-legal-profession/lawyers-from-other-jurisdictions> (last visited on October 2, 2019).

	<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 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>In New Zealand, professional indemnity legal insurance cover is advised but not required when representing pro bono clients.²¹</p> <p>A lawyer providing pro bono legal services in New Zealand should ensure that a limited retainer outlining the scope of their work is in place.²² This will inform the duty of care required in each pro bono case and ensure that the lawyer is not held responsible for issues arising outside the specified scope.²³</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 New Zealand that prohibit advertising of pro bono successes or soliciting new pro bono clients.</p>
	<p>5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?</p>	<p>Lawyers in New Zealand do not receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked.</p>
<p>(d) Sources of Pro Bono Opportunities and Key Contacts</p>		
	<p>1. Describe any governmental sources of pro bono and/or other legal services in New Zealand.</p>	<p>The Right to Legal Assistance:</p> <ul style="list-style-type: none"> • In Civil Proceedings:²⁴ <ul style="list-style-type: none"> ○ Civil legal aid is available for private disputes and other non-criminal disputes, including proceedings over debt recovery, breach of contract, defamation and bankruptcy. ○ Available for proceedings before tribunals or specialist courts such as the Human Rights Tribunal and the Employment Court. ○ Not available for matters relating to cases before the Disputes Tribunal or the Motor Vehicle Disputes Tribunal, problems with educational institutions or matters for companies or groups of people.

²¹ NEW ZEALAND LAW SOCIETY, Guidance for lawyers undertaking pro bono work, available at <https://www.lawsociety.org.nz/practice-resources/practice-briefings/Guidance-for-lawyers-undertaking-pro-bono-work.pdf> (July, 2018) (last visited on October 2, 2019).

²² NEW ZEALAND LAW SOCIETY, Guidance to lawyers considering acting under a limited retainer, available at <http://www.lawsociety.org.nz/practice-resources/practice-briefings/Guidance-to-lawyers-acting-under-a-limited-retainer.pdf> (December, 2017) (last visited on October 2, 2019).

²³ Ibid.

²⁴ MINISTRY OF JUSTICE, Civil Legal Aid, available at <https://www.justice.govt.nz/courts/going-to-court/legal-aid/get-legal-aid/can-i-get-family-or-civil-legal-aid/> (last visited on October 2, 2019).

	<ul style="list-style-type: none"> • In Criminal Proceedings:²⁵ <ul style="list-style-type: none"> ○ Criminal legal aid is available to anyone who cannot afford a lawyer and has been charged with an offence that could be punished with a prison term of at least six months. ○ Legal aid may also be available for the appeal of such conviction or sentence. ○ Non-serious criminal charges do not qualify for legal aid, such as driving offences. However, legal aid may be available for certain non-serious charges if the defendant faces a special barrier of disability, which includes difficulties with reading or writing, or mental illness. <p>State-Subsidized Legal Aid: New Zealand has a legal aid system that uses public funds to provide free legal services to those who cannot afford a lawyer.</p> <p>Qualified individuals will be able to select a lawyer from any practicing lawyers authorized to serve as a legal aid provider to advise and represent them.</p> <p>The Ministry of Justice oversees the legal aid programs and lawyers can only provide legal aid services if they have a contract with the Ministry of Justice.</p> <p><u>Eligibility Criteria:</u></p> <p>Legal Services Act 2011²⁶ and the Legal Services Regulations 2011 sets out four key considerations:</p> <ul style="list-style-type: none"> • <i>status of the applicant:</i>²⁷ while residence in New Zealand when making the application is not required, if the applicant is overseas and the proceedings might reasonably be brought in an overseas jurisdiction, then legal aid in New Zealand may not be available.²⁸ • <i>financial eligibility:</i> considers gross <i>annual</i> income taking into account family size and
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²⁵ MINISTRY OF JUSTICE, Criminal Legal Aid, available at <https://www.justice.govt.nz/courts/going-to-court/legal-aid/get-legal-aid/can-i-get-criminal-legal-aid/> (last visited on October 2, 2019).

²⁶ Sections 6 to 8, Legal Services Act.

²⁷ Section 10(1)(a), Legal Services Act 2011.

²⁸ Section 10(4)(c), *ibid.*

		<p>composition,²⁹ disposable capital,³⁰ whether insurance funding is available³¹ etc. For criminal matters, the Legal Services Commissioner must be of the opinion that the applicant does not have sufficient means (looking to the applicant’s income and disposable capital).³²</p> <ul style="list-style-type: none"> • <i>Merits</i>: must show reasonable grounds for taking/defending the <i>proceedings</i> or being a party to the proceedings.³³ <p>Must also show a significant <i>personal</i> interest in the outcome which justifies pursuing the matter or that the proceedings involve domestic violence or mental health.³⁴</p> <p>For criminal matters, the Commissioner may grant aid if it appears to be necessary in the interests of justice.³⁵</p> <ul style="list-style-type: none"> • <i>nature of the proceeding</i>: <p>Civil: show that the nature of the proceeding requires legal representation and the applicant would suffer substantial hardship if aid were not granted.³⁶</p> <p>Criminal: if it relates to a criminal charge, sentencing or appeal to be heard in the District Court, High Court, Court of Appeal or Supreme Court.³⁷ As of September 2, 2013, criminal offenders are entitled legal representation³⁸ on a range of matters if the case appears before the New Zealand Parole Board, including conditions of release on the statutory release date, parole, residential restrictions etc.</p>
	<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in New Zealand.</p>	<p>Many of New Zealand’s law firms provide legal advice on a pro bono basis. In addition, the Equal Justice Project pro bono team is a group of law</p>

²⁹ Regulation 5, Legal Services Regulations 2011.

³⁰ Regulation 6, *ibid.*

³¹ Section 13, Legal Services Act 2011.

³² Section 8, *ibid.*

³³ Section 10(3), *ibid.*

³⁴ Section 11(4), *ibid.*

³⁵ Section 8(1)(c), *ibid.*

³⁶ Section 7(1)(e), *ibid.*

³⁷ Section 6, *ibid.*

³⁸ Section 49 (3)(c), Parole Act 2002.

		students who provide support to practitioners, interest organizations, and community groups. ³⁹
	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?	Not at this stage but there is a proposal in place for establishment of a pro bono clearing house which might enable this in future.

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³⁹ <http://equaljusticeproject.co.nz/pro-bono/> (last visited on October 2, 2019).