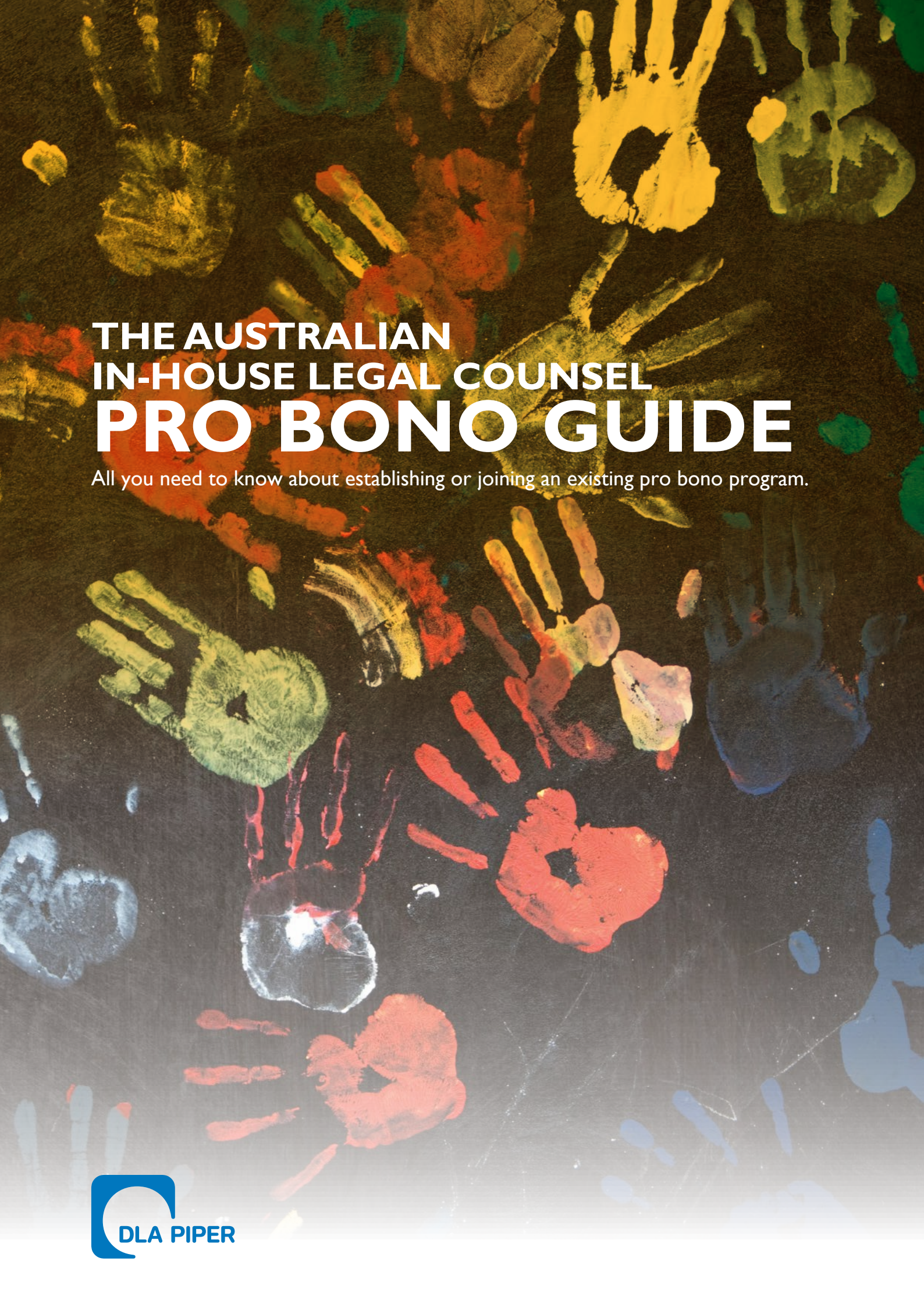

THE AUSTRALIAN IN-HOUSE LEGAL COUNSEL PRO BONO GUIDE

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

DLA PIPER

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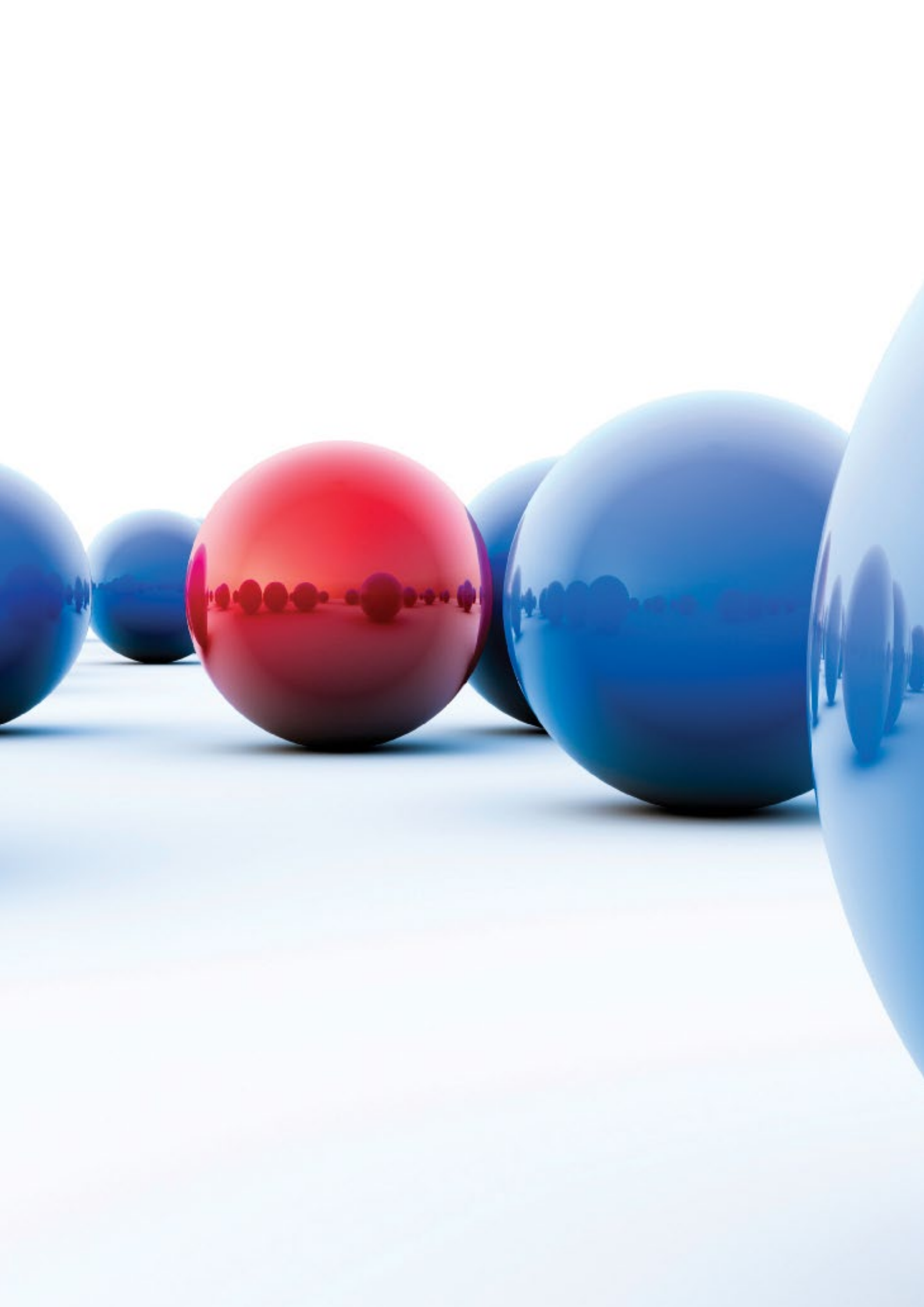


INTRODUCTION

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

With this in mind, we introduced a free professional indemnity insurance scheme for the National Pro Bono Resource Centre. The scheme has opened the way for in-house lawyers to participate in the delivery of free legal services to the community.

Given the growing interest in pro bono, particularly among younger lawyers, in-house legal teams in Australia have been eager to capitalise on these new opportunities to ensure they contribute to their organizations' broader corporate responsibility objectives. Pro bono programs are known to improve engagement and retention and as such assist employers in remaining competitive in the recruitment market.

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

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

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

Bob Charlton

Managing Director, Asia Pacific
DLA Piper

WHAT IS PRO BONO?

The National Pro Bono Professional indemnity Scheme defines pro bono as:

(i) a lawyer of paralegal who, without fee or expectation of a fee, advises and/or represents a client in cases where:

  (A) the client has no other access to the courts and the legal system; and/or

  (B) the client's case raises a wider issue of public interest; or

(ii) a lawyer or paralegal involved in free community legal education and/or law reform; or

(iii) a lawyer or paralegal involved in the giving of free legal advice and/or representation to charitable and community organizations.

WHY SET UP A PRO BONO PROGRAM?

As lawyers we have a privileged position in society. That privilege is the ability to provide legal advice and representation.

With that privilege come important responsibilities to ensure that everyone is able to access legal advice and to contribute to the administration of justice.

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

THE BUSINESS CASE FOR CORPORATE PRO BONO

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

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

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

AM I COVERED FOR PRO BONO WORK?

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

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

NATIONAL PRO BONO PROFESSIONAL INDEMNITY INSURANCE POLICY

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

Lawyers working in-house or in government roles can now obtain professional indemnity insurance for pro bono work free of charge through our insurance scheme with the National Pro Bono Resource Centre (NPBRC). The National Pro Bono Professional Indemnity Insurance Policy is underwritten by LawCover and is held by the NPBRC.

The policy is only applicable for in-house and government lawyers seeking to undertake pro bono work.

If you are volunteering at a Community Legal Centre, your work will be generally supervised by the principal solicitor and is covered by the professional indemnity insurance held by the Centre. Generally speaking, such legal work is performed by volunteer lawyers working on-site at the Centre, and will not be able to be performed off-site in your own office.

Some in-house lawyers already have professional indemnity insurance obtained for them and paid for by their employer.

Some products, such as the policy promoted by the Australian Corporate Lawyers Association and Marsh, cover lawyers for work undertaken on a pro bono basis.

In-house lawyers who hold this policy are already covered for pro bono work, and don't need to register under the free National Pro Bono Professional Indemnity Insurance Policy.

How do I apply?

To obtain access to the National Pro Bono Professional Indemnity Insurance Policy, lawyers need to undertake the following steps:

1. Complete the short application form available at www.nationalprobono.org.au specifying the name(s) of the lawyer seeking cover and the nature of the pro bono work proposed.

   Note: The insurance scheme only covers pro bono matters which meet the definition of the National Pro Bono Professional Indemnity Scheme, and is not available where other professional indemnity insurance is in place. The National Pro Bono Professional Indemnity Scheme defines pro bono work as where a lawyer or paralegal 'without fee or without expectation of a fee, advises and/or represents a client in cases where a client has no other access to the courts and the legal system or where the client's case raises a wider issue of public interest'. It also defines pro bono as activities where the lawyer is involved in 'free community legal education and/or law reform; or in the giving of free legal advice and/or representation to charitable and community organizations'.

2. Fax the application form to NPBRC for approval.

3. Await written confirmation that the applicant lawyers have been added to the policy schedule. Once confirmation is received, lawyers are able to commence pro bono work.

4. The NPBRC has developed a standard letterhead for use by in-house lawyers providing pro bono advice under the free insurance scheme. The use of the 'National Pro Bono Project' letterhead for all correspondence is important because it will assist to limit the risk of exposure for the corporation, and it will prevent corporations from holding themselves out as 'law practices' in contravention of some states' regulations.

IMPORTANT CHANGES TO PRACTISING CERTIFICATES

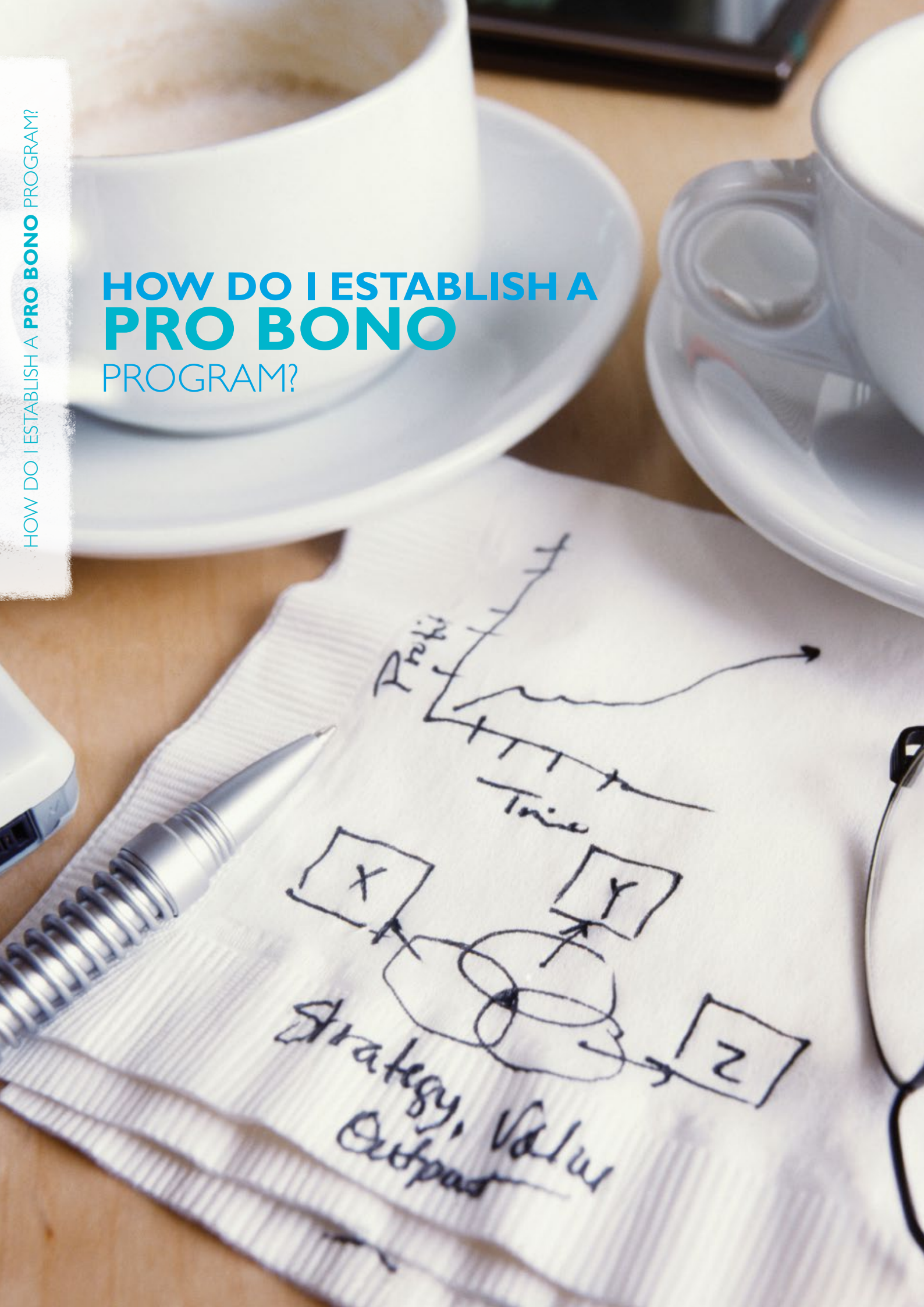
As with all legal work performed, lawyers holding a restricted practising certificate will be required to be supervised by a lawyer holding an unrestricted practising certificate.

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

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

For further information regarding the restrictions in place in your jurisdiction, please contact Daniel Creasey, Asia Pacific Pro Bono Manager at DLA Piper. Alternatively, contact your local law society, and request that any applicable restrictions be removed once you have received confirmation of cover under a scheme of insurance.

HOW DO I ESTABLISH A PRO BONO PROGRAM?



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

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

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

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

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

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

Case Study: A major chain of fast-food restaurants employs a legal team at its head office to deal mainly with property matters relating to its portfolio of commercial properties. A number of the legal team have previously worked in large commercial firms where they have participated in regular pro bono work through the firms' pro bono program. The lawyers draft a pro bono policy for the corporate legal team which proposes that each lawyer will be permitted to spend up to 3% of their time on pro bono matters. The policy is approved by the General Counsel. The corporate legal team join the Public Interest Law Clearing House and indicate a willingness to accept the referral of property law matters. Over the first 12 months the legal team are offered 10 referrals from the clearing house. Due to capacity constraints the legal team accepts six of the referrals. The matters referred include repossession matters where children were at risk of homelessness, and lease advices for charities and not-for-profit organizations.

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

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

Case Study: A telecommunications company has a community program which focuses on supporting animal welfare. The legal team is asked by the company's Corporate Responsibility Director to consider ways that it could contribute to the company's community program. The lawyers believe that their contribution should be through pro bono, since there is a substantial unmet legal need in the community. The legal team meets with the Pro Bono Animal Law Service and indicates a willingness to accept referrals of pro bono matters. As a part of the project, the lawyers attend animal law conferences, join professional organizations, such as Lawyers for Animals, and are funded to participate in University animal law courses. The legal team develops substantial skills in this emerging area of the law and become recognised as experts in this field.

HOW WILL WE ACCESS PRO BONO CLIENTS?

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

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

WHAT WILL IT COST?

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

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

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

SAMPLE PRO BONO POLICIES

We have prepared a sample pro bono policy which may be used by in-house legal teams when establishing pro bono programs.

The policy may be used in its current form or amended to suit your individual needs. See Appendix 1 for the sample policy document.

Regulatory and Compliance Issues

When performing pro bono work in Australia, lawyers are required to comply with all regulations applicable to legal practice in their jurisdiction. The information on this page details some of the key compliance issues which must be considered prior to commencing work on a pro bono matter. The information contained below is not exhaustive, and practitioners engaging in pro bono should contact our Australia Pro Bono team for further information.

Costs agreements

Although you will be acting on a pro bono basis, it is still important to enter into a retainer with the client which sets out the terms on which you will act. The retainer should make clear that no costs will be charged, except (where applicable) any third party disbursements. It is important to ensure the retainer complies with local requirements in your jurisdiction. It is also important to ensure the retainer is drafted in plain English and is explained to the client, so that they understand the terms on which you are acting.

A sample pro bono costs agreement is provided in Appendix 2. This document should be tailored to suit individual circumstances. In litigious matters, it may be appropriate to consider entering into a costs agreement that enables costs to be recovered from the unsuccessful party in the event of a costs order in favour of your client. The legal position with respect to pro bono costs in Australia is unsettled. As such, it is common for pro bono lawyers to enter into a conditional costs agreement with pro bono clients at the commencement of a litigious matter.

DLA Piper is able to provide a precedent conditional costs agreement on request. Please contact our Australia Pro Bono team for further information. In the normal course, any costs recovered by DLA Piper in pro bono matters are donated to charity. Some law firms and corporate legal teams use the costs recovered on pro bono matters to fund costs associated with the management of their pro bono programs. Your pro bono policy should deal with the question of how your organization will deal with recovered costs, if you intend to provide pro bono services in litigious matters.

Amongst other things, the retainer should include details of the process by which a pro bono client may make a complaint against a lawyer. It is also advisable to set out the circumstances in which the lawyer may make a decision to cease to act.

Corresponding with pro bono clients

Communications with pro bono clients should be tailored to suit the client. Some pro bono clients will have limited English language skills, therefore plain English drafting, and face to face meetings to explain the content of written communications, may be important.

It is also important to consider the most appropriate letterhead to use when sending communications on a pro bono matter. When considering this question it is often useful to begin by determining which entity is providing the legal services, and where the professional indemnity risk lies.

If your in-house legal team is providing pro bono services under the National Pro Bono Insurance Scheme, then you should utilize the letterhead provided by the National Pro Bono Resource Centre, which is available on their website. In accordance with the National Pro Bono Policy, all work on pro bono matters should be supervised by a nominated senior legal practitioner.

If the professional indemnity risk is carried by a community legal centre with whom you are partnering to provide pro bono legal services, then correspondence should be on the letterhead of the Legal Centre and approved by the Principal Solicitor of the Community Legal Centre.

If you are partnering with a law firm, and the law firm is carrying the risk, then communications should be sent on the letterhead of the law firm, and approved by a partner of the firm.

Some in-house legal teams have professional indemnity insurance in place which covers pro bono work performed by their legal team. In these circumstances it may be appropriate for correspondence to be delivered on the company letterhead.

Trust monies

Solicitors' trust accounts are subject to regulation, and any legal practitioner accepting monies must comply with relevant regulations in their jurisdiction. In most cases, it will be possible to deliver pro bono services without the need to deal with trust monies. In relation to projects where it may be necessary to accept monies on trust, it is advisable to consider a partnership with a law firm or Community Legal Centre.

PARTNERING OPPORTUNITIES WITH DLA PIPER

PARTNERING OPPORTUNITIES WITH DLA PIPER

We have a successful track record in Australia of partnering with the legal teams of our clients on community projects.

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

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

- Homeless persons legal clinics.
- Women's domestic violence court assistance schemes.
- Legal services for charities and nonprofits.
- Secondment programs with highly regarded Community Legal Centres.
- Mental health legal clinics.
- Indigenous legal projects.
- Community legal education initiatives.
- Animal protection.
- Prisoners legal services.
- Capacity building projects in developing countries.

To the right is a sample of some of the many projects we have run in partnership with other organizations.

An Unprecedented Global Pro Bono Partnership

DLA Piper and Verizon have launched a global pro bono partnership to provide services in the areas of education, veteran's needs, domestic violence, women's support and ethics training. In the United States, we represent veterans applying for Combat-Related Special Compensation, help domestic violence survivors normalize their immigration status through the Violence Against Women Act and U Visa programs and teach Street Law. Throughout Asia Pacific, we are working with Verizon to deliver contract and negotiation workshops for our pro bono clients, in order to build their capacity in each jurisdiction. In Brussels, we support Interface3, an organization that provides disadvantaged women with access to free IT training to help them gain employment in the IT sector. In Moscow, we work alongside partners White & Case, Microsoft and PILnet to design and deliver a Professional Responsibility and Ethics in the Global Legal Market course at Moscow State University. In the United Kingdom, we worked with Verizon to deliver a legal and commercial seminar programme for Save the Children, aimed at building the charity's capacity. In Sweden, we worked with Verizon to contribute research and analysis on rape laws and prosecutorial policies for a comparative report aimed at advising the Haitian Government on revision of Haiti's rape laws.

The Tanzania Law School Project

New Perimeter (www.newperimeter.org), our nonprofit organization, enables our lawyers to contribute to large-scale pro bono projects primarily in less developed and post-conflict countries. Through New Perimeter, we collaborate with General Electric, the International Senior Lawyers Project and our Africa Group firms in Tanzania and Kenya, to bring practical legal and commercial expertize to students at the Law School of Tanzania. Since 2010, our lawyers have provided a two-week training course on legal drafting for the country's next generation of lawyers. Students 'learn by doing' through hands-on, practical workshops. To date, over 980 Tanzanian law students have benefitted from the teaching sessions.

Zambia Law School Training

Through New Perimeter, an international team of our lawyers partnered with our Africa Group firm, Chibesakunda & Co, and firm client Stanbic Bank to deliver training on legal writing and analysis skills to fourth-year law students at the University of Zambia (UNZA) School of Law in Zambia. Local senior counsel from Chibesakunda and Stanbic delivered sessions on the practical aspects of working at corporate law firm and in the banking sector in Zambia. In addition to the training, the DLA Piper Foundation issued a grant to UNZA that was used for the purchase of law books and technical equipment. New Perimeter plans to return to UNZA for future training sessions.

The 'Text Santa' Campaign

In the UK, we are supporting ITV's 'Text Santa' annual fundraising appeal by working alongside ITV lawyers and the Text Santa team to put in place all relevant legal documentation needed for the campaign, as well as supporting the team to expand the appeal. The Text Santa appeal is a core part of ITVs Corporate Responsibility strategy and supports a variety of charities through a combination of public and corporate donations.

Hospitality Training Project

In Moscow, we are providing pro bono legal expertise to assist IHG (InterContinental Hotels Group) to establish an innovative new approach to Hospitality training in Russia. Our lawyers, together with IHG's Russia/CIS operations team, are working to create a unique Hospitality degree program affiliated with an internationally recognized hotels school. The program will enable participants to obtain a qualification that will equip them to work internationally. The first of its kind in Russia, the practical training project will be hosted in various IHG properties located in Moscow, allowing students to gain first-hand experience in an international standard hotel property, something which is lacking in the existing Russian hospitality training curriculum. Classroom training will be split between the participating university's classroom and the hotel property.

OTHER IMPORTANT CONTACTS

Public Interest Law Clearing House NSW
Public Interest Law Clearing House Vic
Public Interest Law Clearing House Qld
National Pro Bono Resource Centre
CorporateProBono.org
Australian Corporate Lawyers Association

PRO BONO UPDATES

Send an email to **legal.updates@dlapiper.com** and follow **@dlapiperprobono** to receive pro bono updates to help you stay informed on pro bono issues and on the pro bono work undertaken by in-house lawyers.

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

Daniel Creasey
Asia Pacific Pro Bono Manager
DLA Piper Australia
T +61 3 9274 5210
daniel.creasey@dlapiper.com

Or contact any partner at DLA Piper Australia.
www.dlapiperprobono.com

APPENDIX I
SAMPLE **PRO BONO** POLICY

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

1 INTRODUCTION

1.1 [Company] has an institutional commitment to Corporate Responsibility (CR).

1.2 As part of this commitment, and recognising the substantial unmet legal needs in our community, the legal division will encourage and facilitate the participation of corporate lawyers in pro bono work.

1.3 This policy has been endorsed by the General Counsel and provides the framework under which pro bono legal work will be undertaken.

2 STATEMENT OF PRINCIPLES

2.1 [Company] regards pro bono as an important aspect of a lawyer's professional responsibility and professional development. Lawyers enjoy special privileges by which they participate in, and are a part of the legal system. They have and always should work to improve that system, and the community's access to it.

2.2 Undertaking pro bono work is also an ethical duty that all lawyers must accept. Many in our community are unable to afford legal services. By providing pro bono legal assistance, [Company] lawyers will assist in improving access to justice.

2.3 [Company] acknowledges that it owes a social responsibility to the community in which it operates.

[Company] accepts that, as a business which benefits from our community, we must also contribute to our community.

Through the provision of pro bono services, [Company] lawyers will increase community awareness of legal and human rights.

2.4 We will seek to provide pro bono services in a manner which emphasises education and empowerment and result in long-term change in our community.

2.5 The decision whether to participate in pro bono initiatives will be up to each individual.

3 DEFINITION

3.1 [Company] has adopted the National Pro Bono Professional indemnity Scheme definition of pro bono.

3.2 The National Pro Bono Professional indemnity Scheme defines pro bono as:

(i) a lawyer of paralegal who, without fee or expectation of a fee, advises and/or represents a client in cases where:

(A) the client has no other access to the courts and the legal system; and/or

(B) the client's case raises a wider issue of public interest; or

(ii) a lawyer or paralegal involved in free community legal education and/or law reform; or

(iii) a lawyer or paralegal involved in the giving of free legal advice and/or representation to charitable and community organizations;

4 ASPIRATIONAL TARGET

4.1 We encourage [Company] lawyers to become signatures to the National Pro Bono Professional Aspirational Target and its Statment of Principals.

5 COORDINATION

5.1 The General Counsel will appoint a pro bono coordinator from within the legal team.

5.2 The pro bono coordinator will have the day to day responsibility for managing the pro bono projects undertaken by the legal team. Specific responsibilities include:

5.2.1 Ensuring that all members of the legal team who participate in pro bono activities have been added to the National Pro Bono Professional Indemnity Insurance Policy held by the National Pro Bono Resource Centre.

5.2.2 Coordinating pro bono projects established by the legal team.

5.2.3 Acting as the first point of contact for [identify referrers of work or specific charities for whom the legal team undertakes pro bono legal work, eg The Homeless Persons Legal Clinic, Public Interest Law Clearing House, the Red Cross, the pro bono coordinator at DLA Piper Australia].

5.2.4 Arranging for the legal team to receive training in areas of law relevant to pro bono practise.

5.2.5 Promoting a pro bono culture within the legal team.

5.2.6 Working with the CR Director to identify opportunities for the legal team to integrate pro bono assistance into the broader community program of the organization.

5.2.7 Collating pro bono data for input to the company's annual CR report.

6 PRO BONO WORK COMPETENCY, SERVICE AND OBLIGATION

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

7 INTERNAL PRO BONO WORK

Note: This section is only relevant for in-house teams proposing to undertake internal matter-based pro bono work that involves opening files for individuals or charities.

DELETE IF NOT APPLICABLE.

7.1 Pro bono matters will come to the legal team by way of referrals. The sources of referrals include:

7.1.1 [Select or insert relevant referrers].

7.1.2 Charities with whom [company name] has an existing relationship.

7.1.3 Community legal centres.

7.1.4 The Public Interest Law Clearing House.

7.1.5 The Law Society/Institute and Bar Association referral services.

7.1.6 Courts and tribunals.

7.2 Some matters will come from within the organization or from other sources. These are to be assessed and approved in the same way and according to the same criteria. They should not receive preferential treatment.

Allocation and supervision

7.3 Matters are allocated to solicitors by the Pro Bono Coordinator in consultation with the solicitor's relevant supervisor, and on the basis of interest, availability and expertise.

7.4 All pro bono matters should be registered and their progress monitored by the Pro Bono Coordinator. Supervisory responsibility remains within [each team/the General Counsel/the relevant supervising lawyer holding an unrestricted practising certificate].

7.5 Participation in pro bono work is encouraged but is not mandatory. This is subject to the normal expectation that a solicitor, except in unusual circumstances, will undertake work that is assigned to him or her by a supervisor who considers that a matter is appropriate for them to handle.

First interviews and terms of engagement

7.6 Given the lack of sophistication of many potential clients and their inexperience with the law, special care may be needed in communicating expectations and the way a matter is likely to proceed. The Pro Bono Coordinator should sit in on the first interview with pro bono clients in most cases and should ensure that the terms of engagement are clearly articulated and understood.

7.7 The Pro Bono Coordinator should provide assistance to the solicitor handling a pro bono matter to ensure that an appropriate retainer is in place in compliance with the relevant Legal Profession Act.

7.8 Time should be recorded on all pro bono matters, especially where the matter involves a potential costs recovery.

Disbursements

7.9 The legal team's budget will include an allocation for disbursements in pro bono matters, such as medical or other expert reports, court filing fees and the like. Internal costs such as photocopying, faxing etc will not be charged to the client. Where a barrister is needed, the Pro Bono Coordinator will assist in finding appropriate pro bono assistance.

7.10 Local Pro Bono Coordinators should be aware of, and make use of the various mechanisms for obtaining funding for disbursements. For instance, the Law Society of NSW administers a Pro Bono Disbursement Fund. Legal Aid is sometimes granted for the payment of disbursements if the matter is taken on a pro bono basis. All courts have special provisions for seeking relief from the payment of court fees. The Pro Bono Coordinator will assist with such applications.

Recovery of costs

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

7.12 All costs recovered on a pro bono matter will be donated to charity.

Charging for pro bono work

7.13 The legal team will not charge individual pro bono clients except where costs are recoverable from another party.

Recoverable costs will be pursued on the most favourable basis. Contingency fees are not charged.

Adverse costs orders

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

8 Guidelines for external pro bono work

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

Delete if not applicable.

Agencies

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

Attendance at legal clinics

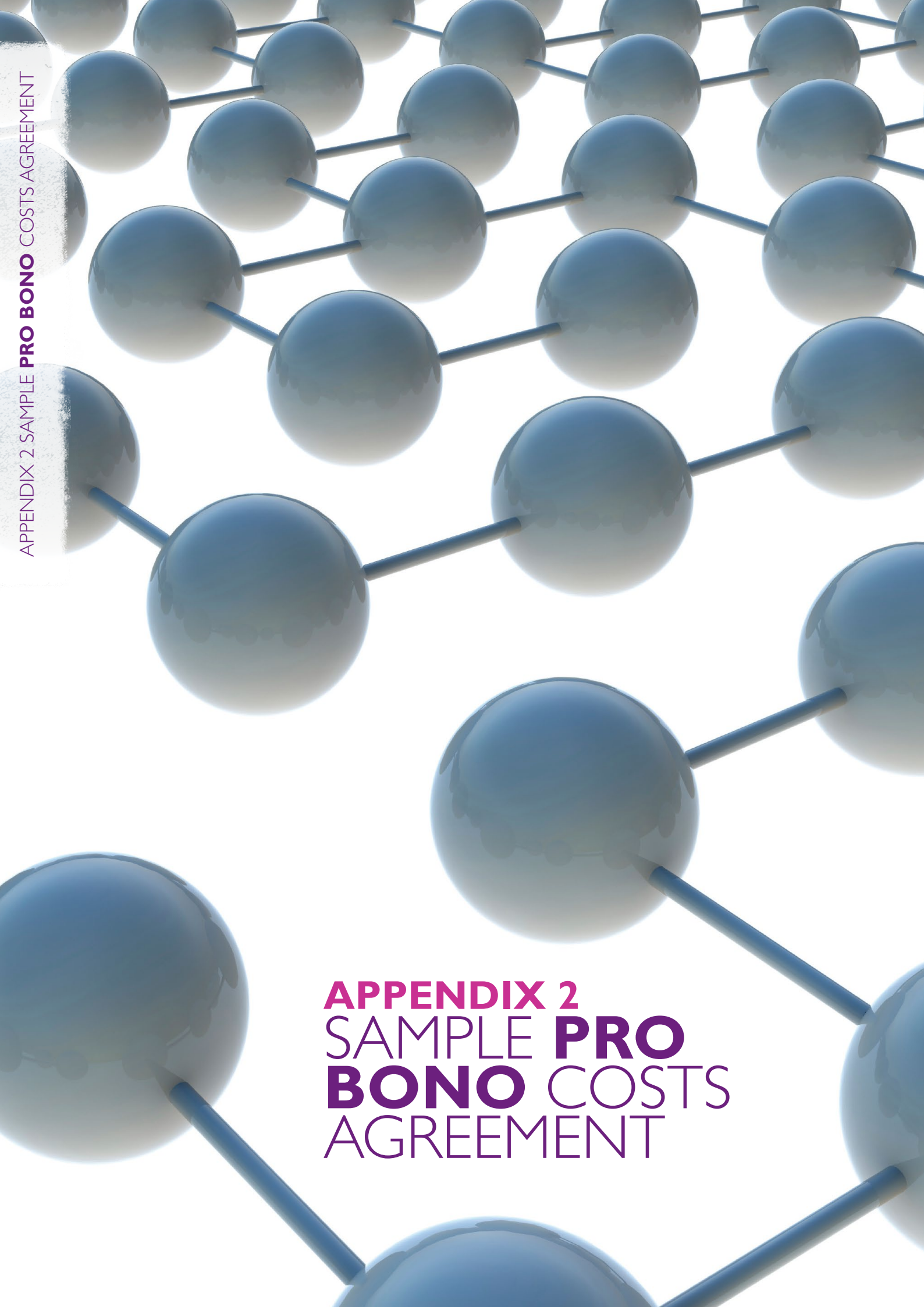
8.2 [Company] has established a free weekly legal clinic [for the homeless at [location]].

8.3 Lawyers who volunteer for the clinic must ensure their attendance on their rostered dates. It is the responsibility of rostered lawyers to find a replacement if they are unable to attend.

8.4 Lawyers are entitled to be reimbursed for their costs of travel between the office and the clinic.

Volunteer lawyers

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



APPENDIX 2
SAMPLE **PRO BONO** COSTS AGREEMENT

CONFIDENTIAL

Our ref: [ ]

Your ref: [ ]

[*Date*]

[*Addressee details*]

cc:

Dear [*Name*]

CLIENT AGREEMENT: [*DESCRIBE MATTER*]

Thank you for your instructions [*state how/when instructions received*]. We are pleased to be able to assist you in this matter.

At the outset, we need to enter into a Client Agreement with you setting out the terms on which we will assist you.

This letter, [*if there are attachments insert,* its attachments] and the enclosed Pro Bono Standard Conditions form our offer to enter into a Client Agreement with you. If there are any inconsistencies between the terms outlined in these documents, the terms stated in this letter will prevail.

Please read these documents carefully.

If they are acceptable to you, please sign and return the enclosed copy of this letter.

If they are not acceptable to you, please contact me immediately.

If you do not return a signed copy of this letter, but continue to provide us with information and instructions on your matter, we will assume that you have accepted our offer and the terms contained in these documents.

1 CLIENT AND ADVISOR

Our client in this matter will be [*enter full legal name of specific client entity or, if client is an individual, insert words such as 'the person to whom the letter is addressed'*] (**you**). Your advisor will be [*enter full legal name*] (**we** or **us**).

2 SCOPE OF SERVICES

We will provide you with the following services in relation to your matter:

[*Clearly set out the scope of the work so there is no dispute regarding the extent of our pro bono assistance*].

3 MATTERS OUTSIDE THE SCOPE OF SERVICES

We will not be providing advice on [*list related issues/matters which we will not be advising on*].

4 TIMETABLE

We confirm that [*tasks, due dates or time for completion – set out what has been agreed as to timetable*]. If we become aware that this timetable is likely to change we will notify you as soon as possible.

5 OUR TEAM

[*Name*], [*title*], is the legal practitioner who will primarily perform the work. [*First name*]'s direct line is [*number*]. Please contact [*first name*] if you would like to discuss anything in relation to the matter. [*Name*], [*title*] will also supervise [*first name*] and assist as necessary.

Where appropriate, we will adopt a team approach to ensure that your work is performed as efficiently as possible. A senior lawyer will always be responsible for your work. However, the senior lawyer may delegate tasks to other members of the team with the appropriate skill and experience.

6 WHAT YOU HAVE TO PAY

We have agreed to act for you in this matter on a pro bono basis. This means that we will not charge you for our professional fees or for our [*if not charging third party disbursements insert standard charges or disbursements if charging third party disbursements insert standard charges*].

[*Delete the following paragraphs if not charging for third party disbursements*]

We will charge you for disbursements. Disbursements are expenses we incur on your behalf for services supplied or payments charged by third parties. We will incur such disbursements as agent for you and will only recover from you the amount paid by us to the third party (inclusive of any GST the third party has included in that amount).

Set out below is a list of the likely disbursements you will incur in this matter and an estimate of your total disbursements. However, this is only an estimate and is not binding on us. I will let you know if the estimate needs revising.

DISBURSEMENT	AMOUNT
[*type of disbursement*]	$[ ]
[*type of disbursement*]	$[ ]
[*type of disbursement*]	$[ ]
Estimated *total disbursements*	$[ ]

We will obtain your approval and consent before we incur any disbursements which are not listed in the table above.

We will normally send you an account for disbursements monthly, but this may vary depending on the amount of disbursements incurred. In certain circumstances we may request that you provide us with the funds for such disbursements up front. We will place this money in our trust account in your name. Once we have issued you with an account for disbursements we are entitled to withdraw that money to pay for them.

Where possible, we will assist you to obtain funding for, or exemption from, third party disbursements. If we do receive any funding or are able to claim exemption from a disbursement incurred in your matter, and you have already paid us for the relevant disbursement, we will provide you with a refund up to the amount we have received or the amount of the exemption.

7 FEEDBACK

[*Set out any review processes that are proposed or agreed*]

We pride ourselves on the provision of a high quality service to our clients at all times. If you would like to discuss our performance, please contact [*name*]. If that does not resolve the situation, you can contact me [or our Team Leader, [*name*]].

Once again thank you for instructing us. We look forward to working with you. If you have any queries about any aspect of this letter [*if relevant insert, its attachments*] and the Pro Bono Standard Conditions please do not hesitate to contact us. Otherwise, please confirm your acceptance by signing the enclosed copy letter and returning it to us as soon as possible.

[*Signoff*]

I agree to be bound by this letter [*if relevant insert,* its attachments] and the Pro Bono Standard Conditions.

After I have been issued with an account for disbursements in relation to this matter, I authorise and direct [*insert full legal name*] to recover such amounts out of any funds which they hold in their trust account on my behalf from time to time.

I consent to an external quality system accreditation authority accessing files in relation to my matter provided they do so on a confidential basis.

Signed: ……..

[**Client's name**]

Dated: ___/___/___

Attachments Pro Bono Standard Conditions
[*List other attachments*]
Copy of Client Agreement letter

PRO BONO
STANDARD
CONDITIONS

YOUR INSTRUCTIONS TO US

Your instructions to us are summarised in the client agreement letter.

To allow us to provide you with the best legal services possible, you must give us all the information you have that is relevant to your matter. This information should be in writing if possible. Please don't assume we already have all the relevant information.

If you remember, or become aware of, any other information relevant to your matter, you must let us know immediately.

We may need to ask you for more instructions. Therefore, if you go away from your residence or business you must tell us how to contact you while you are away.

OUR WORK FOR YOU

The client agreement letter sets out the particular work we will do for you. We will try to keep you updated on the progress of the work we do.

We will carry out our work with professional skill and diligence.

Our only duty of care is to you. If any other person wants to rely on our work, they do so at their own risk, unless we agree in writing that they may also rely on it.

If any advice we give you is based on assumptions or qualifications, we will tell you what they are. However, we will not be responsible if new information comes to hand later showing that a stated assumption was incorrect or a stated qualification was inapplicable.

If possible, we will give you reasonable notice that we intend to end the client agreement with you.

If either of us ends the client agreement, you must pay any outstanding disbursements that are incurred up to the time the client agreement is ended.

ENDING THE CLIENT AGREEMENT

You may end the client agreement and withdraw your instructions at any time and for any reason.

We may end the client agreement and stop acting for you if we discover that we have a conflict, or if we have another good reason, or if you do one or more of the following:

- You do not follow our reasonable advice.
- You breach our agreement.
- You require us to act unlawfully or unethically.
- You fail to give us instructions.
- In our view, you lose confidence in us.
- You fail to pay an amount in line with the client agreement.
- You lose legal capacity.
- You object to an alteration to the client agreement and we reject that objection.

If possible, we will give you reasonable notice that we intend to end the client agreement with you.

If either of us ends the client agreement, you must pay any outstanding disbursements that are incurred up to the time the client agreement is ended.

PRIVACY

You consent to us collecting, using and disclosing your personal information to provide legal services to you. We may need to disclose this personal information to other individuals or organizations including other parties, other lawyers, experts and witnesses, courts and tribunals and other organizations that need to be involved in your matter. If you do not provide the personal information we need from you, we may not be able to provide these legal services to you.

Where you provide us with personal information you have collected from other individuals, you confirm that:

- The information has been collected in line with the applicable privacy laws.
- We are authorised to receive that information from you and use it to provide legal services to you.

- Unless exempted under the applicable privacy laws from doing so, you have taken reasonable steps to ensure that the individuals are aware, or would have expected, that their personal information could be provided by you to your legal advisers.

When acting for you, we may disclose personal information about other individuals to you. You agree to use, disclose, handle, store and transfer that information only in accordance with the applicable privacy laws.

Visit www.[*insert website name*].com to obtain a copy of our Privacy Policy. If you need a copy sent to you, please contact us.

CONFIDENTIALITY AND PUBLICITY

We will keep information about your matter confidential unless one or more of the following apply:

- You agree to us disclosing it.
- We are legally compelled to disclose it.
- We are required to disclose it to auditors or our professional advisors.

If you are an individual, you consent to us publishing the fact that we have acted in your matter, without disclosing your identity. For example, we may disclose in a tender document, brochure or other publication that we have acted on a pro bono basis for an individual in relation to a victims' compensation claim arising from an armed robbery.

LIMITATION OF LIABILITY

General

Where we are permitted by law, our liability for any work performed for you, whether it arises in tort (including negligence), contract or otherwise, is limited to a maximum of [*insert amount*] for the work.

We will not be liable for any incidental, special, punitive, or consequential damages of any kind relating to any work performed for you. In any event, we will not be liable for any loss to the extent that it is caused or contributed to by your conduct, or the conduct of your officers, employees or agents.

Electronic communication

We have various electronic means of communicating. These may involve some special risks – for example, the risks of interception, transmission of computer viruses and unauthorised amendment.

You accept those risks and you release us from any liability, loss (including consequential and economic loss), damage or expense caused by those risks.

ARCHIVING AND DESTROYING FILES

When work on your matter ends, we usually provide you with any original signed documents we have relating to your matter, unless you contact us to make other arrangements.

For other documents, if the law permits us to do so, we may make an electronic file of the documents relating to your matter and destroy the hardcopies. We will archive the electronic or hardcopy file for seven years after the date of the last recorded correspondence. We may then destroy the file, unless you have given us specific instructions to the contrary.

COPYRIGHT

We keep copyright in all documents prepared by us while working on your matter. If literary and other works are made by us for or under the direction or control of the Commonwealth or a state, all copyright vests in us, despite sections 176 and 177 of the Copyright Act 1968 (Cth).

GOVERNING LAW AND JURISDICTION

All aspects of our work and the client agreement with you are governed by the laws of the state or territory of the office shown on the letterhead of the client agreement letter. You submit to the non-exclusive jurisdiction of the courts of that place.

KEY CONTACT

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