



National Pro Bono Resource Centre

Information paper

Government lawyers and pro bono

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Government lawyers and pro bono

1. Introduction

Pro bono has long been a part of the professional practice of many Australian lawyers. The last decade, however, has seen a significant growth of pro bono through more structured and organised programs and through the creation and expansion of formalised pro bono schemes, including referral schemes. Pro bono is now being embraced not only by individual practitioners and smaller firms but by larger law firms and some corporations at an institutional level.

This paper aims to provide information and ideas to encourage similar developments within government departments and agencies. There is scope for the pro bono activities of government lawyers to be significantly enhanced through the institutional involvement of government agencies in pro bono as well as through the efforts of individual lawyers in those agencies. Those activities would bring benefits to the lawyers and agencies concerned as well as to the disadvantaged and marginalized people assisted through the pro bono work.

Former Commonwealth Attorney-General Daryl Williams in 2001 referred to the scope that exists for greater involvement by public sector lawyers in pro bono work. In 2002, when launching the National Pro Bono Resource Centre (the Centre), he again referred to this issue. He noted Australian Government Solicitor (AGS) guidelines about pro bono and the desirability of the Centre, the AGS and other government legal service providers working to address obstacles that can arise and finding ways 'to enhance the contribution of government lawyers and their employing agencies'.¹ More generally, the current Attorney-General Philip Ruddock at the opening of the 2nd National Pro Bono Conference in October 2003 stated that, like his predecessor, he is a strong supporter of the legal profession being involved in pro bono work.²

The Centre³ is charged with the functions of supporting and promoting pro bono work and with increasing access to pro bono services. The Centre is interested in hearing from and working with government agencies interested in developing or expanding their pro bono practices. The Centre would like to facilitate links being formed between government lawyers and appropriate projects and assist in the development of projects.

This paper is not exhaustive of all the issues and possibilities. It is intended to be a starting point for government lawyers and government agencies to think about the issues and, where there are barriers, about means of overcoming them.

2. Government lawyers

Definition of a Government Lawyer

The Centre is not aware of a precise definition of 'government lawyer'. Not all government lawyers have practising certificates. The ALRC described government lawyers as "legal aid

¹ Launch of the National Pro Bono Resource Centre and Opening of the Pro Bono Workshop, State Library, Sydney NSW, 10am, Thursday 15 August 2002, speech available at Commonwealth Attorney General's Web site: <http://www.ag.gov.au/www/attorneygeneralHome.nsf/AllDocs/EDF6FD62034F539BCA256C160009F122?OpenDocument&highlight=pro%20bono>

² see speech at <http://www.nationalprobono.org.au/conference/index.html>

³ Information about the Centre is available at: www.nationalprobono.org.au

practitioners and practitioners in prosecution agencies as well as other qualified practitioners employed in various agencies undertaking work ranging from litigation to research”.⁴ Available statistics on ‘government lawyers’ seem to adopt a similar definition.⁵

Lawyers employed by government may be employed in a range of roles, some of which are not purely legal. For example, some may be Managers, General Counsel, Legal Officers, Legal Policy Officers, Legal Research Officers or Policy Officers.⁶ Whilst some of these lawyers are not practising as such, they will often have useful legal policy and other skills and experience that could be usefully harnessed in pro bono work.

General statistics

According to the Australian Bureau of Statistics⁷, in 2001-2002 of the 36,124 solicitors and barristers in Australia, 770 (2%) were employed by 8 legal aid authorities and 1,935 (3.8%) were employed in 18 government solicitor⁸ and public prosecution agencies.

Clearly these statistics do not account for lawyers who work in other government departments, such as the Department of Prime Minister and Cabinet and agencies such as the ACCC, ASIC, ATO, defence organisations and Law Reform Commissions, who may or may not possess a practising certificate. There are a large number of in-house legal officers employed in government departments and agencies (as well as Government Business Enterprises) most of whom have their own legal staff. The number of such staff in some agencies is very large.⁹ In the NSW Police Department, for example, there are several hundred, many of whom are engaged in in-house advocacy in Local Courts to enforce the criminal law.¹⁰

Statistics on government lawyers at state and territory levels are difficult to obtain with analyses of government departments tending to focus categorisation of employees by public service level rather than academic history or job description. However, relevant statistics for NSW are available, and given their correlation with the ABS statistics, they may be regarded as a guide to figures in other states and territories.¹¹ In NSW, government practice accounts for 10.2% of solicitors’ employment—a figure that has remained relatively steady since 1988—representing 1,850 solicitors working in 135 organisations.¹² An

⁴ Australian Law Reform Commission, Review of the Federal Civil Justice System, Discussion Paper 62, August 1999 at 5.7. Australian Law Reform Commission, Review of the Federal Civil Justice System, Discussion Paper 62, August 1999 at 5.7, available at <http://www.austlii.edu.au/au/other/alrc/publications/dp/62/ch5.html>

⁵ See statistics in following sections. Although these surveys do not define a ‘government lawyer’, the statistics themselves suggest this definition.

⁶ See Law Institute of Victoria, ‘Government Lawyers’ Discussion Paper, February 2004, available at <http://www.liv.asn.au/news/events/special.html#gov>

⁷ Australian Bureau of Statistics, ‘Legal Practices, Australia, 2001-02 (cat. No. 8667.0) and see the summary of findings available at: <http://www.abs.gov.au/Ausstats/abs@.nsf/0/BBEE6F5171AF5C4BCA256942001553B1?Open>

⁸ Government solicitor is defined as the Office of the Solicitor General for each state and territory and the Australian Government Solicitor (AGS). The AGS employs 366 lawyers with 147 placed in Canberra.

⁹ Recent reports at the Commonwealth level suggest an increase in the number of government lawyers: see *Report of the Review of the Attorney-General’s Legal Practice*, AGPS, 1997 (‘the Logan Report’); *Report of the Impact of the Judiciary Amendment Act 1999 on the Capacity of Government Departments and Agencies to Obtain Legal Services and on the Office of Legal Services Coordination*, June 2003 (‘the Tongue Report’) available at: <http://www.ag.gov.au>

¹⁰ Law Society of NSW, ‘Guidance on Ethical Issues for Government Solicitors’, available at http://www.lawsociety.com.au/uploads/filelibrary/1063349218109_0.64875104020095606.pdf

¹¹ The only available statistics for other states included: South Australia – there are 180 legal services (non-executive) employees and Australian Government Solicitor – 366 lawyers with 147 placed in Canberra.

¹² New South Wales Law Society, Law Society Annual Profile – Final Report 4 November 2003 at 14, available at http://www.lawsociety.com.au/uploads/files/1067990055015_0.04542337998654683.pdf

overwhelming majority works in the city—83.7 % compared with 55.1% of the whole profession. The main practice areas are criminal law 24.1%, followed by administrative law 17.3%, civil litigation 11% and advocacy 9.6%.¹³

3. Defining pro bono

There is no single accepted definition of pro bono and different definitions may be appropriate in different contexts. Government agencies may choose to adopt or develop a definition that best encompasses the aims of their pro bono program – in the same way that law firms do. Several definitions are discussed in the *Australian Pro Bono Manual*.¹⁴ One that is commonly used, although far from universal, is that adopted by the Law Council of Australia in 1992. Under this definition, pro bono work is defined to include situations where:

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

The definition developed by the NSW Law Foundation¹⁵ similarly focuses on legal services, provided on a free or substantially reduced fee basis, to people unable to afford the full cost of a lawyer's services without financial hardship, or for non-profit organisations assisting disadvantaged or marginalised people or for public interest matters. The definition adopted by the Victorian Government in relation to its Government Legal Services Contracts¹⁶ is broader, focussing on the provision of services that enhance access to justice for disadvantaged persons or organisations and/or promote the public interest.

These definitions are limited in the main to the provision of legal services although the Victorian definition includes non-legal assistance where it will enhance access to justice and/or promote the public interest. The definitions would exclude free legal assistance rendered to family and friends, discount services rendered to commercial clients and also non-legal community service work such as volunteering with charities. Some organisations adopt definitions of pro bono that make clear the kinds of activities that are *not* considered to fall within the definition, for example, 'work performed for private schools, clubs or other organisations (such as arts and cultural organisations) with which a lawyer has an association'.¹⁷

One American definition of pro bono provides:

¹³ New South Wales Law Society, *Law Society Annual Profile – Final Report*, 4 November 2003 at 30, available at http://www.lawsociety.com.au/uploads/files/1067990055015_0.04542337998654683.pdf.

¹⁴ *Australian Pro Bono Manual*, and see in particular section 1.3 'Defining pro bono for the firm', available at: www.nationalprobono.org.au.

¹⁵ See *Australian Pro Bono Manual*, section 1.3 'Defining pro bono for the firm', available at: www.nationalprobono.org.au.

¹⁶ *Ibid.* The definition provides an inclusive list of examples of such services.

¹⁷ *Ibid.*

... pro bono work does not include non-legal volunteer activities; non-legal services as an officer or director of a non-profit organisation; business development and client maintenance activities; continuing legal education, speaking, writing or similar promotion activities when not associated with pro bono legal services; fee generating matters which have become uncollectible; unsuccessful contingency matters; legal services for firm employees; and bar association or legislative lobbying activities not associated with improving the availability of legal services to persons of limited means, or for charitable, religious, civil, educational, artistic or similar non-profit, public interests.

Given the finite nature of government legal resources, the Centre suggests that it would be appropriate for such agencies to limit their definitions of pro bono to activities that enhance access to justice for low income and disadvantaged people and organisations who assist such people, and to exclude activities which, although they might be provided for free, do not have this focus.

A government agency may wish to include within the scope of its definition, pro bono services provided outside Australia so as to include for example, work in developing countries. There are a number of volunteer organisations that have placed lawyers in developing countries, in particular Australian Volunteers International and AusAID. The Australian Government Solicitor currently has two of its lawyers on leave, undertaking such placements and other lawyers have participated in the past. Government lawyers would generally have skills highly appropriate for this kind of pro bono work.¹⁸

Definitions of pro bono commonly incorporate not only direct legal advice and representation but also law reform work and community education activities. This may raise a particular issue for government agencies whose business includes the provision of information to the community, including to low income and disadvantaged people within it. For example, such services are provided by the Commonwealth, State and Territory Attorney-General's Departments and by other government agencies in the ordinary course of carrying out their functions.¹⁹ However, it is suggested here that the provision of such information should not be considered to be 'pro bono' where it is part of the responsibility of the agency to make this information available. The focus of pro bono by agencies should be upon the provision of advice and assistance, to low income and disadvantaged individuals and groups, over and above the agency's statutory responsibility.

¹⁸ Such as public defender/prosecutor skills and experience, policy development and legislative drafting skills.

¹⁹ See for example the legal information and/or referral services provided at the following Commonwealth, State and Territory Government Websites:

Commonwealth, www.law.gov.au (Australian Law Online)

Australian Capital Territory, <http://www.canberraconnect.act.gov.au/laworder/laworder.html>

<http://www.jcs.act.gov.au/rights.html>

New South Wales, <http://www.lawaccess.nsw.gov.au/>

Northern Territory, <http://www.nt.gov.au/ntg/lawsafe.shtml> and <http://www.justice.nt.gov.au/>

Queensland, http://www.qld.gov.au/services_for_queenslanders/law_and_safety/index.html

South Australia, <http://www.service.sa.gov.au/DisplayServices.asp?Cat1=10>

http://www.sacentral.sa.gov.au/information/legal_services/index.jsp?MODE=advanced

Tasmania, <http://www.tas.gov.au/tasmaniaonline/> (see Law and public safety)

Victoria, <http://www.legalonline.vic.gov.au/CA2569020010C266/Homepage>

Western Australia, <http://www.justice.wa.gov.au/portal/server.pt>

It is important to recognise that pro bono work by government lawyers can be done in a personal capacity (for example, volunteering in the community) and/or in-house as part of an agency's pro bono program. This is discussed in sections 5 - 7 below.

4. Why pro bono?

*No one should be denied access to justice because of poverty. In a modern democracy that is dedicated to the rule of law, the justice system should be accessible to everyone.*²⁰

Lawyers are generally regarded as having a moral and professional responsibility to undertake work for the public good by assisting those in the community who would otherwise be unable to obtain access to justice. This responsibility arises because of lawyers' role and privileges as professionals and has been widely recognised.

The reasons or motivations for undertaking pro bono extend beyond moral and professional responsibility, however, and may include:

- Personal satisfaction experienced through assisting those who would not otherwise have access to the legal system, or from undertaking work (such as community legal education or law reform and policy work) that promotes access to justice for disadvantaged and marginalized people. For organisations, enhanced job satisfaction leads to greater staff retention;
- Enhancing professional skills, confidence and morale;
- Developing new contacts in the legal community;
- Becoming involved and developing new contacts with the non-legal community;
- Exposure to a wide range of legal, policy and social issues;
- Improving the public image and reputation of the agency and of the legal professional generally;
- For the organisation, pro bono assists in recruitment because new graduates and others perceive pro bono as offering interesting work, professional development and the opportunity to contribute something worthwhile to the community.

Specifically in relation to government lawyers, there is a close fit between the public interest objective of pro bono and the principle of promoting public service, identified as one of their responsibilities.

5 Current government pro bono work and policies

While government lawyers are presently undertaking some pro bono work, in the main pro bono is an individual pursuit rather than one that is part of the machinery of government departments or agencies (referred to here as 'agency pro bono'). A survey conducted by the Law Society of NSW in 1999-2000 elicited responses from 9,903 practitioners; a figure which represents 67% of the total number of all solicitors in NSW.²¹ Thirty-six per cent of practitioners stated that they were handling pro bono work at the time of the survey. Of those who were conducting pro bono work, only 5% were government lawyers. The Law Society's 2002-03 Practising Certificate Survey asked respondents how many hours they spent on pro bono work in an average month. The survey results revealed that 53.9% of

²⁰ Law Society of British Columbia and the Canadian Bar Association (BC Branch), 'Pro Bono Publico – lawyers serving the public good in British Columbia', 2002, available at: [http://www.lawsociety.bc.ca/library/report/docs/ProBono\(02-06\).pdf](http://www.lawsociety.bc.ca/library/report/docs/ProBono(02-06).pdf)

²¹ 'Pro Bono Work: Promoting Cultural Change,' Discussion Paper on the Review of Pro Bono Services by the NSW Legal Profession, Law Society of NSW, March 2001

respondents from private law firms reported conducting pro bono work each month²² and 17.8% of government lawyer respondents reported undertaking pro bono.²³

As noted, some government lawyers undertake pro bono work as a personal pursuit, after hours or while on leave from their jobs. One form of activity is volunteering at community legal centres (CLCs), most commonly in evening advice sessions. Some participate in human rights groups or projects. The Centre is also aware of some government lawyers participating in community legal education programs. For example, several lawyers from government departments as well as private practitioners recently participated in a community information session on planning law organised by Redfern Legal Centre. Some government lawyers contribute to community legal education in other ways, such as by writing material for the *Law Handbooks* produced by CLCs in each state.

The current Pro Bono Policy of the Australian Government Solicitor facilitates pro bono work in a personal capacity by AGS lawyers through its preparedness to consider funding practising certificates for the purpose of undertaking pro bono work. The Centre is not aware of any initiatives by other government agencies or departments to facilitate 'personal' pro bono work by government lawyers. Section 7 of this paper suggests a number of measures agencies could adopt to encourage and enable their lawyers to undertake such work.

The Centre's research thus far has revealed only a small number of examples of pro bono activity by agencies or departments at an institutional level (agency pro bono). The Brisbane office of the ACCC is a member of the Queensland Public Interest Law Clearing House (QPILCH) and recently TAC (Transport Accident Commission) Law²⁴ in Victoria has become the first non-for-profit law firm to join PILCH (Vic). The membership fees in themselves are a useful contribution to pro bono. In addition, the ACCC has offered QPILCH use of its library and is prepared to give favoured consideration to QPILCH using its videoconferencing facilities. TAC Law has agreed to second four lawyers to work at PILCH (Vic) over a 12 month period (for three months each) and is also seconding legal assistants to PILCH on an ad hoc basis. The AGS is currently investigating the feasibility of providing agency pro bono.

The Centre is aware of only one agency that has developed a formal pro bono policy document.²⁵ The Australian Government Solicitor (AGS) has a pro bono policy that currently deals with pro bono work carried out by lawyers in a personal capacity. The AGS is presently revising its policy with a view to enhancing its pro bono contributions. It appears that government pro bono policies, to the extent they exist, are not as well-developed as some of those in private commercial practice that set out the rationale and scope as well as guidelines and procedures of the firm's program.²⁶ The Centre would be interested to hear from any government agencies or departments that have developed a pro bono policy or any agency who wishes to do so.

²² 35.4% did an average of 1-4 hours each month; 13.2% 5-10 hours; 3.5% 11-20 hours; 1.8% more than 20 hours.

²³ 9.1% did an average of 1-4 hours; 3.7% 5-10 hours; 1.1% 11-20 hours; 3.9% more than 20 hours.

²⁴ TAC Law is a division of the Transport Accident Commission (TAC) and is the exclusive provider of personal injury legal services to the TAC. TAC Law is also a member of the Victorian WorkCover Authority legal panel.

²⁵ Research by way of accessing government and non-government internet sites at the Commonwealth level as well as in every State and Territory to find policies in relation to government lawyers and pro bono, did not reveal any such policies. This included visiting the Attorney-General, Crown Solicitor and Law Society web sites in each State and Territory (or their equivalent) as well as the PILCH and the Law Foundation of NSW web sites.

²⁶ See sample law firm pro bono policies in the *Australian Pro Bono Manual*, available at: www.nationalprobono.org.au

There is considerable scope for government agencies to expand their organisational involvement in pro bono. This is discussed further in section 7 and overseas initiatives in this regard are outlined in section 9. Barriers that may arise in particular in relation to agency pro bono, are discussed in section 8.

6. Models of pro bono: general

There are a number of models of pro bono that are employed in the private sector that could be considered for government lawyers. These are outlined in detail in the *Australian Pro Bono Manual*²⁷ and include:

In-house pro bono

The archetypal form of pro bono is a lawyer or firm accepting instructions to advise or represent an individual as part of their ordinary legal practice. The firm accepts the client's instructions in the same way it would accept a paying client's. It 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. Much in-house pro bono work, particularly of a 'transactional' kind, is also done for non-profit organisations. Work for pro bono clients can take a variety of forms, as with all legal work. It might involve initial advice only, or acting in an on-going capacity. It might involve representation in courts or tribunals, or mediations, or in negotiations. The advice or other assistance might be face to face or over the telephone or using other technology. For example, law firm Blake Dawson Waldron's Sydney office provides a telephone advice and minor assistance service for clients of the Far West CLC in Broken Hill, NSW.²⁸

Firms in the private sector also contribute pro bono to community legal education and law reform projects. For example, rather than advising individual community organisations about the effects of changes to tax laws, Freehills organised a number of well-attended seminars for representatives of affected community organisations. Firms also use their expertise to assist public advocacy organisations with law reform proposals or to comment on other proposals, including government proposals. For example, Clayton Utz and Minter Ellison researched and drafted law reform submissions for the PILCH (Public Interest Law Clearing House) (Vic.) Homeless Persons' Legal Clinic in Melbourne.

Some large firms employ one or more solicitors to do only pro bono work on behalf of the firm. While the specialist pro bono lawyer undertakes casework, much of the job is administrative, involving being the firm's contact person for outside agencies, screening pro bono cases, allocating, coordinating and supervising the pro bono work throughout the firm and organising training.

Outreach services

Outreach services involve lawyers providing legal advice, and sometimes ongoing assistance, at outreach locations, usually at the premises of a community organisation. The legal assistance may be part of a discrete project of limited duration, or a partnership

²⁷ *Australian Pro Bono Manual*, section 1.2 'Current models of law firm pro bono', National Pro Bono Resource Centre & Victoria Law Foundation: available at www.nationalprobono.org.au

²⁸ The CLC provides BDW with a list of clients and adverse parties in advance, and conflicts checks are undertaken by BDW. If there is no conflict, the CLC forwards any documents in the matter to BDW and BDW telephones the client directly to provide advice. The CLC reviews the advice and any letters or documents each week. The advice is covered by the CLC's professional indemnity insurance. There are certain subject areas where advice will not be provided such as in family and criminal law. BDW takes some matters back to be dealt with in-house where they become BDW files under BDW's insurance and supervision.

arrangement on an ongoing basis. For example, Blake Dawson Waldron (BDW) provides a weekly legal service at Lou's Place, a day centre in inner Sydney for women in crisis and their children. Some matters are referred back to BDW's offices for in-house pro bono assistance. BDW also provides assistance to Lou's Place on organisational issues such as privacy law compliance, occupational health and safety matters and tax itself and also non-legal assistance such as use of BDW's premises and transport. Law firm Gilbert + Tobin (G+T) provides an outreach service at Wyong. G+T sends a lawyer once a month to the Women's Health Centre and also sends a lawyer to the Wyong Neighbourhood Centre. These lawyers provide advice and ongoing casework assistance to clients.

The Public Interest Law Clearing Houses in Brisbane, Sydney and Melbourne each operate Homeless Persons' Legal Clinics which involve member law firms and one corporate legal department providing a roster of lawyers and administrative staff to attend and provide advice and assistance to homeless people at a number of community locations each week. Firms may take on cases in-house as ongoing pro bono matters.

Secondments

Secondments to community-based legal organisations are a popular and effective way for firms to involve themselves in pro bono activities in the community. While there may not always be a clear distinction between secondments and outreach services, secondments generally involve the secondee being supervised by a solicitor at the community legal organisation. In addition to providing a highly valuable resource to the community organisation, secondments bring real benefits to the seconding firm or agency. They contribute to the professional development of staff, improve employee morale in the firm, increase the visibility of law firm pro bono programs and serve to engender within a firm an improved sense of community and continuing commitment to pro bono work.

Secondments may be:

- Full-time or part-time and for a fixed period (for example, for three, six, or, exceptionally, twelve months). A fixed period secondment may be part of a single firm or multi-firm rotation that ensures the position is always available to the community legal organisation.
- Sessional (for example, a firm solicitor attends a community legal organisation to operate an advice clinic one afternoon each week).
- Short-term secondments for particular cases or projects or to act as locums to cover staff shortages or absences.

Secondments may be for specific purposes, such as to run a prison visiting service for juveniles in detention, or to undertake a discrete project, for example Minter Ellison's secondment to PIAC of a solicitor to develop the model for the homeless person's legal clinic in Sydney. Some members of Public Interest Law Clearing Houses (PILCH) second lawyers and/or vacation clerks to PILCH offices for certain periods to assist with, amongst other things, the administration of referral schemes and assessment of matters.

The Pro Bono Secondment Scheme in Victoria is a coordinated scheme offering a formal process for law firms to second lawyers to the 'legal aid sector'. It is a joint initiative of the Victorian Attorney General, Victoria Legal Aid, the Federation of Community Legal Centres (Vic.), the Department of Justice and the Law Institute of Victoria. In the 12 month pilot project, six law firms provided ten lawyer secondees to eight community legal centres

and to one section of Victoria Legal Aid.²⁹ These secondments were, in the main, full-time positions for six month periods.³⁰ Following a positive evaluation,³¹ the Scheme will be ongoing and may include some sessional secondments. The Attorney General has written to the 100 largest law firms and to CLCs seeking expressions of interest for involvement in the Scheme.

Further information about secondments as well as sample secondment agreements, is contained in the *Australian Pro Bono Manual*.³²

Specialist services

Some firms have individually, or in partnership with other organisations, created or contributed to a new specialist legal service.

In the case of an individual firm's approach, the firm typically contributes funds, resources and staff to establish and/or maintain a community-based service. Examples of this kind of specialist service include the Shopfront Youth Legal Service (Shopfront) in Sydney and the Youth Legal Service in Victoria.

Shopfront is a legal service for homeless and disadvantaged young people established as a partnership between Freehills, Mission Australia and The Salvation Army. Shopfront's staff (two permanent solicitors and a permanent paralegal as well as a seconded solicitor and a legal assistant) are all employees of Freehills, but its premises, practice and profile are independent of Freehills. The Youth Legal Service is a shopfront legal service in central Melbourne, employing four staff. One of them is a secondee from Blake Dawson Waldron (BDW). BDW pays the salary of two other staff members while the fourth is supported by a grant from the Commonwealth Community Legal Centre funding program. Other costs are met from this grant, by BDW and a third partner, a major charity.

Another specialist service is the First Stop Legal and Referral Service for Young People in the Australian Capital Territory (First Stop). First Stop provides legal advice, assistance and referrals for people aged 12-25. It was created as a partnership between Clayton Utz, the Legal Aid Commission (ACT) (LAC), the Youth Coalition of the Australian Capital Territory and the Australian National University Law Students Society. The Service is staffed every afternoon, five days per week, by one Clayton Utz lawyer and one LAC lawyer and with two Australian National University law students on the front desk.

A variation on this kind of approach to specialist services occurs where a number of firms provide pro bono assistance for a sessional specialist clinic or provide specialist legal assistance within, or in partnership with, an existing community organisation. An example of this multi-firm approach is the Temporary Protection Visa (TPV) project, initiated by the TPV Working group and administered by the Refugee Advice and Casework Service (RACS). The project involves lawyers from a number of firms undertaking training by RACS lawyers, and then participating in a weekly service to assist clients to prepare

²⁹ One secondee worked 4 days per week at a CLC and one day per week in the refugee and immigration law section of Victoria Legal Aid.

³⁰ As noted above, one secondment was split between two organisations. While most of the secondments were for 6 months, one was for 4 months and another was for 13 months. The scheme's facilitator also explored interest in 'sessional' (part-time) secondments. One such secondment resulted and several smaller firms have expressed interest.

³¹ See *Pro Bono Secondment Scheme: Report on the 2002-2003 Pilot Scheme* (April 2004) for the report on the 12 month pilot project undertaken from March 2002 to December 2003, at: <http://www.justice.vic.gov.au>

³² at <http://www.nationalprobono.org.au>

information, statements and submissions for reapplication for temporary protection visas to the Department of Immigration, Multicultural and Indigenous Affairs.

The second approach is where a number of firms work together to establish a new service. To date such efforts have been mostly coordinated by the various PILCHs—in particular, the Homeless Persons’ Legal Clinics referred to above. Interestingly, in-house lawyers from the National Australia Bank participate in the program in Victoria.

Volunteering

Many lawyers, including government lawyers, choose to volunteer at advice sessions at community legal centres (CLCs) or other community organisations. CLCs are independent, non-profit organisations that provide referral, advice and assistance to more than 350 000 people each year, free of charge. They also engage in community legal education and in law reform and policy work. Many CLCs operate advice clinics, often in the evenings. Advice is frequently provided by volunteer lawyers from private practice and government, supervised by CLC staff solicitors.

It is important that agencies, when encouraging their lawyers to volunteer, be aware of the infrastructure costs that are borne by CLCs when training, supporting and supervising volunteers. Agencies might consider how they can share in meeting these costs – for example, organising rosters and/or training.

There is also anecdotal evidence that CLCs in outer metropolitan areas of major cities are under-resourced in volunteers compared to their inner-city counterparts. Agencies could consider means by which they could encourage lawyers to attend the outer city CLCs or regional CLCs in their state.

Multi-tiered relationships

Pro bono assistance need not be restricted to the provision of legal advice, assistance and representation of clients. Another approach is to form a ‘multi-tiered’ relationship with a community legal organisation whereby pro bono assistance involves a variety of forms of legal assistance and also non-legal assistance that facilitates access to justice. For example, agencies can assist community organisations with their own legal issues, or undertake research or assist in cases that the organisation is running or provide training to the organisation’s staff or its clients. Non-legal assistance can range from allowing use of library resources or meeting rooms to donations or administrative support.³³

Partnering with other organisations

A number of the projects and activities listed above involve partnerships between pro bono service providers. There is potential for government agencies to work together on particular pro bono projects and/or to work with law firms to provide a service.

In the United States, firms are developing pro bono projects with the in-house counsel of their corporate clients. The notion has taken off to such an extent that the American Corporate Counsel Association (ACCA) designed a Law Firm Partnership Program model. They also developed a comprehensive information pack to assist in-house counsel develop pro bono opportunities. More recently the ACCA and the Pro Bono Institute have

³³ For a detailed discussion and case studies of multi-tiered relationships, see National Pro Bono Resource Centre, ‘Working Together: multi-tiered pro bono relationships between law firms and community legal organisations’: available at: www.nationalprobono.org.au/publications

established CorporateProBono.Org which, amongst other things, assists firms to partner with in-house law departments on pro bono projects.

7. Pro bono in a government context

Two kinds of pro bono involvement can be considered.

- Pro bono work by government lawyers in a personal capacity.
- Pro bono undertaken by the agency.

Pro bono by government lawyers in a personal capacity

Individual government lawyers can, and do, undertake pro bono work with community organisations, Indigenous legal organisations and public interest groups. There are a number of measures that Government departments, agencies and portfolio Ministers can take to encourage and facilitate this pro bono activity, including:

- Developing an agency pro bono policy which could, for example, include an aspirational target for each government lawyer (see for example the US policies discussed at Section 8);
- Forming a pro bono committee³⁴ that, amongst other things, can gather and circulate information in the agency about pro bono opportunities;
- Paying for practising certificates (where relevant);
- Allowing flexible work arrangements, leave and the like to enable activities to be undertaken during business hours (for example, to appear in court) or to leave work in sufficient time to attend a community advice clinic;
- Allowing reasonable use of agency resources, such as library, telephone, photocopying;
- Establishing a process for clarifying issues concerning conflicts of interest;
- Other measures to facilitate volunteering, such as taxi vouchers or travel allowance³⁵, promoting volunteering in internal newsletters and emails, or entering into a relationship with a particular community agency in which the agency takes over the responsibility for ‘staffing’ particular advice sessions.

Agency pro bono

Government departments and agencies could consider the extent to which they are able, and wish to, undertake pro bono as an agency activity and to devote agency resources to it. The major relevant resource is the time of their lawyers but other resources could also be allocated, such as funding, administrative support and secretarial services.

In the private sector, it has long been the case that small legal practices have committed resources of the firm to pro bono. It is now increasingly the case that larger firms are doing so. Thus, pro bono work is done by lawyers during business hours, there is an approval process for the work, files are opened, pro bono budgets may be set and pro bono work

³⁴ The Minnesota State Bar Association’s ‘Model Pro Bono Policy and Procedures for Government Attorneys’ encourages agencies or offices to identify a ‘pro bono coordinator’ or ‘committee’ to facilitate administration of their pro bono policy or plan. It states: ‘The Coordinator would be responsible for administration of the pro bono policy, and could assist in identifying possible pro bono opportunities, in identifying and responding to conflicts of interest and resource problems and issues, and in identifying resources when an attorney needs assistance, as well as resolving concerns directly related to the administration of the policy’: see http://www.abanet.org/legalservices/probono/government_attorneys.html

³⁵ In the private sector, for example, the law firm Baker & McKenzie seeks to encourage its lawyers to volunteer at CLCs outside the city area by providing a travel allowance and paying for city parking.

offset against them. Increasingly, the lawyers undertaking the work are being given billable hours credit for it, or the work is otherwise recognised and credited by the firm.

Subject to the considerations outlined in the next section, government agencies may be able to commit agency resources to pro bono in a similar way. The agency could, for example, set a budget for pro bono or set aside for each lawyer a certain number of hours or give fee relief (if relevant) for pro bono work. The kinds of pro bono work that could be undertaken by the agency might include some or all of the activities noted in section 6 above. Thus an agency might be able to second lawyers to community legal organisations, participate in a clinic such as the Homeless Persons Legal Clinic or provide some other outreach service either alone or in conjunction with lawyers from private practice or community legal centres; it could be a member of PILCH and receive referrals from this source or organise with one or more community organisations to receive referrals for certain kinds of matters and conduct those matters in-house. It could participate in a court assistance or support scheme or join with community agencies in providing community legal education programs and materials.

A policy can be tailored to support specific activities only.³⁶

An agency wishing to commit its own resources to pro bono work could explore a number of avenues in deciding on or developing a project, or other work to take on. It could:

- consult with the lawyers in the agency to explore their areas of interest and community contacts. Those lawyers may have ideas for projects and/or relationships with community organisations that the agency could build upon in developing its pro bono program.
- consult with CLCs and other community agencies to explore areas of need and possibilities for developing pro bono relationships.

These matters are discussed in more detail in the *Australian Pro Bono Manual*.³⁷

8. Barriers to government pro bono activities

Legislation

Government lawyers are subject to the restrictions of relevant legislation in their particular jurisdiction governing public sector employment and, in some instances, Codes of Conduct made under those Acts. General principles of professional conduct are also laid down in legislation regulating the legal profession.

For example, in the ACT, section 9 of the *Public Sector Management Act 1994* (ACT) provides, amongst other things, that a public employee shall avoid conflicts of interest, must not take improper advantage of his or her position to obtain a benefit for the employee or any other person and must not make improper use of Territory property. In Victoria, section 40 of the *Public Sector Management Act 1992* (Vic) states that except with express permission, a public servant must not, amongst other things, accept or continue to hold or

³⁶ For example, the Connecticut Attorney General's office policy explains that due to insurmountable ethical and logistical problems, the representation of individual clients cannot be absorbed into the everyday practice of the office. Therefore the policy authorized the following activities: (1) training programs for legal services and pro bono attorneys, (2) recruitment of attorneys for pro bono programs, (3) writing educational pamphlets on areas of poverty law, and (4) community legal education for low-income groups: American Bar Association, Government and Public Sector Lawyers Division and the Standing Committee on Pro Bono and Public Service, *Pro Bono Project Development: A Deskbook for Government and Public Sector Lawyers*, 1998, p.7. Available from American Bar Association Web site: <http://www.abanet.org/legal/services/downloads/probono/gvtattylowresfnl.pdf>.

³⁷ See in particular: section 2.1, 'Identifying needs and sources of work': available at: www.nationalprobono.org.au.

discharge the duties of or be employed in any paid office in connection with any business; engage in or continue in the private practice of any profession or trade; or accept or engage in any employment other than in connection with the duties of his or her position in the public service. They must, amongst other things, act with integrity including avoiding real or apparent conflicts of interest. Conflicts of interest must also be disclosed in both Queensland and South Australia.³⁸ Again, in Tasmania, a public servant must disclose a conflict of interest, use resources in a proper manner and must not make improper use of information gained during the course of employment.³⁹ At the Federal level, section 13(7) of the *Public Service Act 1999* (Cth), for example, provides that a public servant must take reasonable steps to avoid conflicts of interest in connection with APS employment. Commonwealth resources must be used in a proper manner.⁴⁰

The provisions listed above are examples only and each government agency should check the relevant provisions in their jurisdiction. Of course, government agencies must operate within relevant constitutional powers. There may also be legislation that prescribes the work of particular government legal practices, for example, relevant provisions of the *Judiciary Act 1903* (Cth) in relation to the Australia Government Solicitor.

Government agencies wishing to participate in pro bono activities should consider the relevant legislation conferring power and regulating their legal practice and the extent to which it might place limitations on the nature of work that may be undertaken. This will vary between different agencies.

In the United States, for example, statute precludes federal employees from engaging in representation in matters where the United States is a party or has a direct or substantial interest. It has been noted, however that whilst this precludes some sorts of pro bono services, such as involvement in immigration proceedings, it does not bar involvement in most family law or landlord/tenant cases.⁴¹

Some states in the US have passed laws relating to pro bono involvement by the attorney general's office to facilitate pro bono work by government lawyers. For example in 1993 the Texas Legislature passed legislation that authorised pro bono participation by all district and county attorneys and their assistants provided those services do not interfere with their official duties.⁴²

Practising certificates

Not all government lawyers have practising certificates and few have unrestricted practising certificates. Whilst the lack of a practising certificate will preclude some types of pro bono work, it by no means excludes all. For example, lawyers without practising certificates volunteer at community legal centres, where their work is always supervised by lawyers with unrestricted practising certificates. Some other services that are or could be provided by CLCs and other agencies can also utilise lawyers without practising certificates, for example, participation in court support and information schemes or a domestic violence

³⁸ *Public Service Act 1996* (Qld), s 84 and *Public Sector Management Act 1995* (SA), s 56.

³⁹ *State Service Act 2000* (Tas), ss 9(8), (9) and (11).

⁴⁰ *Public Service Act 1999* (Cth), s 13(8).

⁴¹ American Bar Association, Government and Public Sector Lawyers Division and the Standing Committee on Pro Bono and Public Service, *Pro Bono Project Development: A Deskbook for Government and Public Sector Lawyers*, 1998, p. 12. Available from American Bar Association Web site: <http://www.abanet.org/legalservices/downloads/probono/gvtattylowresfnl.pdf>

⁴² *Ibid*, p. 8.

court assistance scheme or, in some jurisdictions, participation in tenancy advice services. In addition, lawyers without practising certificates can participate in law reform and community legal education activities. Government agencies and/or individual government lawyers could consult with CLCs, Indigenous legal organisations and other community agencies to explore the kinds of services that are required and consider the capacity of their employees to meet such services.

Agencies could also consider funding practising certificates to enable participation in pro bono activities where they are necessary. As noted above, the current AGS pro bono policy contemplates such a measure.

Conflicts of interest

Some government lawyers and agencies are concerned about conflicts of interest arising from pro bono practice. Conflicts of interest are not unique to government agencies, however. Private firms regularly take steps to avoid conflicts. All pro bono matters undertaken in the firm are subject to the usual conflicts checks and matters declined where a conflict is or may become apparent. Private lawyers volunteering in CLCs excuse themselves from advising or assisting in matters that may present a conflict of interest. Some firms choose to target areas of pro bono work where conflicts are unlikely and decline to work in particular areas of law where conflicts are more likely. Similarly government agencies can fashion the nature of the pro bono work they do in such a way as to avoid conflicts. If necessary an institutional screening mechanism could be considered to guard against conflicts.

In the US, several state pro bono projects have created committees that determine whether any conflicts exist. These committees often recommend the delivery of pro bono services that normally do not present conflicts, such as bankruptcies, consumer counselling, domestic violence cases, wills, powers of attorney, landlord-tenant cases and mediation programs. Another mechanism used is the pre-selection of certain approved areas of practice, for example, authorising lawyers to accept pro bono cases in child advocacy, homeless projects, domestic violence. Some projects involve screening by the referring agency. For example under an arrangement between the Department of Justice (DOJ) and the District of Columbia Bar's Pro Bono Clinic, when the clinic is staffed by DOJ lawyers, they will receive only landlord-tenant, family law and consumer benefits. Cases involving federal benefits are screened out.⁴³

In Australia, a State government lawyer could act against a Commonwealth agency without there being a conflict and vice versa. Conflicts will arise that prevent government lawyers doing certain pro bono work but each opportunity should be evaluated on its facts to see whether there is an irreconcilable conflict.

Use of public resources

One issue that might arise in relation to pro bono work by government agencies is the extent to which it is permissible and/or appropriate to use public funds, appropriated to agencies to fulfil their statutory functions, for the purpose of pro bono work. Several points might be made in this regard:

- the professional development aspect of pro bono work should also be considered: pro bono work enhances the skills, competence and confidence of participating lawyers and can legitimately be seen to form part of an agency's professional

⁴³ *Op. cit.*, n 49 at p 11.

development activities. These activities, well managed, enhance employee satisfaction and reduce employee attrition rates;

- this consideration does not prevent agencies from encouraging government lawyers to undertake pro bono in a personal capacity; and
- not all government agencies employing lawyers are wholly funded by way of direct government funding allocations. For example, some operate on a user pays basis and in this regard compete with private firms for government work. Almost all government departments, to some extent, now use private law firms to do legal work. These firms generally have pro bono initiatives and the money the firms earn from the government no doubt supports these. This suggests that government organisations competing in this market should also be able to apply some of the monies so earned to pro bono activities.

Expertise and training

Some government lawyers may lack expertise in areas of law which have a high demand for pro bono services. Again, this is not an issue that is unique to government lawyers. There are a number of responses to it. Clearly the nature of expertise required depends upon the kinds of work undertaken. Some private legal practices restrict their pro bono work to areas of existing competency and to related areas where competence can be readily acquired. Some firms organise training to enable them to take on particular kinds of work—for example, BDW has conducted domestic violence advocacy training, Clayton Utz has trained lawyers in preparing victims' compensation applications, Mallesons trains its lawyers to participate in a duty solicitor scheme at Sydney's Downing Centre and in apprehended violence hearings, child support. Experienced lawyers from the community legal sector and legal aid have shown themselves to be very willing to train lawyers from law firms to equip them with the skills necessary to take on particular kinds of pro bono work.

There are particular pro bono projects where organising agencies train lawyers to participate. For example, the Homeless Persons Legal Clinics operated by the Public Interest Law Clearing Houses provide significant training to lawyers from participating law firms not only on relevant legal issues but also on matters such as communicating with homeless people and social issues concerning homelessness.⁴⁴ The Clinic supervisors also monitor progress of clinics and matters and liaise with team leaders from each firm about relevant matters. Note also the Temporary Protection Visa project referred to above.

CLCs organise induction programs for new volunteers who are also trained on the job by the supervising solicitor and other participating lawyers. One law firm, Gilbert + Tobin, organises a roster of its lawyers to staff two evening advice sessions at Marrickville Legal Centre (MLC) and has, with MLC, provided training to those lawyers.

Government agencies that wish to develop pro bono activities for its lawyers could explore these kinds of projects and training initiatives. They could decide to focus on particular areas or projects and acquire the skills necessary for this purpose.

Insurance

It is important to ensure that there is professional indemnity insurance coverage in respect of pro bono work.

⁴⁴ See for example the training programs listed at: www.pilch.org.au

A distinction should be made between the liability of an individual government lawyer taking on pro bono work in a personal capacity and the liability of a government agency itself taking on pro bono work.

Individuals undertaking a pro bono project or work with a community legal organisation may come under the cover of that organisation's insurance. For example, CLCs generally have professional indemnity insurance that covers work done by volunteers and secondees and supervised by centre staff. As another example, lawyers participating in the Homeless Persons Legal Clinics in Victoria and Queensland are covered by PILCHs' insurance and those participating in the Homeless Persons Legal Service in Sydney, by PIAC's insurance.

Lawyers undertaking pro bono work in a personal capacity in other circumstances should consider if they have adequate insurance coverage.

With a government agency providing pro bono services, an existing insurance policy may cover such services but also may need adjustment to provide appropriate cover. For example the Australian Government Solicitor carries professional indemnity insurance which may cover pro bono work. However other agencies 'self-insure' and in such cases a risk assessment would need to be done and a risk management strategy developed.

Government agencies wishing to enable their lawyers to participate in pro bono work in-house, as part of their work with the agency, should check to see whether their existing professional indemnity insurance would cover this work. It might be necessary to make some adjustments to the insurance.

See also the discussion in section 9 below.

9. Other Jurisdictions

USA⁴⁵

There is widespread recognition and support from both lawyers' associations and government departments for the issues that government lawyers in the USA face in relation to pro bono. The American Bar Association provides a guide for government lawyers, 'Pro Bono Project Development: A Deskbook For Government and Public Sector Lawyers', while also addressing the issue within Model Rule 6.1 which establishes the voluntary target for all lawyers to undertake at least 50 hours per year pro bono work.⁴⁶ The New York State Bar Association has a brochure for government attorneys addressing questions and concerns. The Minnesota State Bar Association has produced a document: 'Model Pro Bono Policy and Procedures for Government Attorneys'. Developed in 1994, this suggests that government agencies and offices formally recognise and approve participation in pro bono activities. This includes pre-approving certain activities so that approval is not required on a case-by-case basis. The Model Policy also recognises that because of statutory and regulatory prohibitions, both litigation and non-litigation services should be available.⁴⁷ A non-exhaustive list of possible activities include:

⁴⁵Unless otherwise stated, all references in the following section can be found via links on http://www.abanet.org/legalservices/probono/government_attorneys.html.

⁴⁶ American Bar Association Standing Committee Pro Bono and Public Service, Policies, Voluntary Pro Bono Publico Service – Rule 6.1 Voluntary Pro Bono Publico Service, available via <http://www.abanet.org/legalservices/probono/rule61.html>.

⁴⁷ Minnesota Bar Association, Model Pro Bono Policy and Procedures for Government Attorneys, at 2-3, available via link on http://www.abanet.org/legalservices/probono/government_attorneys.html.

- representation of individual clients in domestic abuse cases or with AIDS or other disabilities
- serving as a guardian ad litem
- providing representation to non profit organisations which provide services falling within the definition of pro bono services
- providing advice in landlord-tenant or consumer matters, or on wills, powers of attorney and private guardianships
- providing research assistance or expert advice to providers of legal services to the low-income and disadvantaged
- participating on the board of a legal services organisation
- providing training or preparing materials for seminars or other educational activities involving poverty law issues
- participating on bar committees and projects relating to the delivery of legal services and pro bono legal services.⁴⁸

Additionally, a number of federal and state agencies have established pro bono policies including the United States Department of Justice, Washington State Office of the Attorney General⁴⁹, New York Attorney General and the Texas Office of the Attorney General. The US Department of Justice's Policy Statement⁵⁰ from the Office of the Attorney General sets the parameters for pro bono services in an effort to achieve the goal of 50 hours of pro bono and volunteer work per employee per year. The main limitation is the requirement for approval for any work undertaken and it should be noted that a more extensive approval process applies if the work is to involve representational activities. The person from whom approval is sought is responsible for undertaking a conflicts check for the work. The other significant restriction is that Department employees are restricted from participating in work that involves criminal or *habeas corpus* matters in any jurisdiction. Pro bono activities can, where feasible, occur during scheduled working hours although annual leave or leave without pay must be used. In limited circumstances 'administrative leave' may be granted, for example, where the service is officially sponsored or sanctioned by the Attorney-General or where it will enhance the professional development or skills of the employee in his or her current position. There are also extensive guidelines on the use of government resources.

The policy of the Office of the Attorney General of the State of Washington provides that where the performance of pro bono work is required during regular work hours, attorneys should be allowed to take advantage of flexible work schedule arrangements rather than being required to take leave.

In the US federal bureaucracy, the Office of Personnel Management has sought to overcome the problem of balancing work and pro bono commitments during working hours by preparing a guidance memorandum to give agencies maximum flexibility in relation to granting leave when responding to an employee's request to engage in volunteer work.⁵¹ A

⁴⁸ Minnesota Bar Association, Model Pro Bono Policy and Procedures for Government Attorneys at 3, available via link on http://www.abanet.org/legalservices/probono/government_attorneys.html.

⁴⁹ The Office of the Attorney General State of Washington, Administrative Policy, available via <http://www.wsba.org/atj/publications/adminpolicy.htm>.

⁵⁰ Office of the Attorney General, Department of Justice Policy Statement on Pro Bono Legal and Volunteer Services at 1, available via http://www.usdoj.gov/jmd/ethics/docs/probonopol_pol.htm.

⁵¹ American Bar Association, Government and Public Sector Lawyers Division and the Standing Committee on Pro Bono and Public Service, *Pro Bono Project Development: A Deskbook for Government and Public Sector Lawyers*, 1998, pp. 6-

number of departments have committees to determine whether conflicts exist, although generally, many common areas of pro bono work, such as bankruptcies, consumer counselling, domestic violence cases, wills, power of attorney and tenancy cases, do not present conflicts.⁵²

The American Bar Association Web site lists examples of pro bono programs conducted by US government lawyers.⁵³ For example, the Ohio Attorney General's Office implemented a pro bono initiative aimed at providing legal assistance to senior citizens and hospice patients. The lawyers are trained to draft wills, general powers of attorney, durable powers of attorney for health care and other related documents. Once training is completed, lawyers may provide up to 40 hours of free services per year. Paralegals and secretaries from the Office also participate. The Office has set up small temporary offices at senior centres where clients are interviewed and documents are drafted, printed and executed on-site all in the same day.

The Office of the Broward County Attorney in Florida handled cases in areas such as housing disputes between landlords and tenants, social security benefits, bankruptcy, and domestic relations. In addition, a program was established to provide government lawyers to residents in nursing homes and to veterans. In relation to veterans, government lawyers provided advice and representation in cases involving veteran's benefits. Because of resource limitations, the Office's pro bono activities have been scaled back in more recent times.

Legal centres and organisations in the USA have also worked together with government departments to tailor pro bono programs to suit the particular department's needs. For example, the King County Bar Association has worked with the Washington Department of Labor to provide legal advice on wage claims through a day labourer's organisation called *Casa Latina*. The Association also encourages local prosecutors to provide clinics during their lunch hour at homeless shelters and women's shelters. The Legal Services of North Florida has sought to involve government attorneys in a homeless project, a senior citizens advice clinic and a telephone hotline. The telephone hotline is sponsored by agencies such as the Florida Attorney Generals Office, Florida Department of Transportation, Florida Department of Community Affairs, and the City of Tallahassee Attorney's Office.

The New York State Bar Association has produced a brochure to encourage government lawyers to do pro bono work.⁵⁴ The brochure notes that government lawyers seeking non-litigation work can engage in a variety of activities, such as mediation, legal education, legal research and publications.

Canada

Government lawyers in Canada traditionally face restrictions in relation to pro bono work because of professional indemnity insurance requirements. Government lawyers are covered and exempt from paying the insurance premium levy but only if they are providing

7. Available from American Bar Association Web site:
<http://www.abanet.org/legalservices/downloads/probono/gvtattylowresfnl.pdf>

⁵² *ibid.*, p.11

⁵³ See: http://www.abanet.org/legalservices/probono/government_attorneys.html#projects.

⁵⁴ New York State Bar Association, *Do the Public Good: Volunteer for Pro Bono*, available from the American Bar Association Web site at :
http://www.nysba.org/Content/Microsites74/Committee_on_Attorneys_in_Public_Service/General_Information30/Pro_Bono_for_Government_Atty/GovtBrochure.pdf

legal services solely to their employer. If they provide services to others, even pro bono, traditionally they lose the exemption and must pay the insurance premium. However, changes made to insurance coverage, notably by the lawyers' associations and insurers rather than government, in British Columbia and Ontario since 2002 means that government lawyers can now be covered, and still exempt from paying the premium, when they perform approved pro bono services.

In both provinces the services must be provided through approved programs. The Ontario indemnity company requires that these services be 'provided through approved programs associated with Pro Bono Law Ontario' and must be services

- rendered to low income persons in civil or criminal matters where there is no government obligation to provide counsel;
- that simplify the legal process for, or increase the availability and quality of legal services rendered to persons of limited means; and/or
- rendered to charitable, non-profit and public interests organisations for matters or projects to address the needs of low-income and disadvantaged individuals.⁵⁵

British Columbia provides more detailed guidance on the services a government lawyer can provide. They include contract, constitutional law, criminal, defamation, debts and collections, employment law, family and child law, health, disability and social assistance, human rights, immigration, taxation and GST, insolvency/bankruptcy, insurance, housing, pensions and benefits, torts/negligence, wills and estates as well as professional services complaints and name changes unless they relate to estate planning, environmental law, native property, class/ representative actions. This work can be advice, transactional or litigious work but cannot be for someone previously known to the lawyer. Additionally, it must be for an individual while the services and the program through which they are administered must be approved by the British Columbia Law Society.⁵⁶

The Canadian Bar Association has produced a resolution stating that they will develop model policies for all bar associations that would permit insurance coverage for government lawyers and encourage all law societies and their respective insurers to implement such insurance coverage to allow government lawyers to do pro bono. This is part of a wider aim of assisting all lawyers, including public sector lawyers, to reach the goal of 50 hours or 3% of billings of pro bono work per year.⁵⁷

The Ontario Attorney General has recently announced⁵⁸ the formation of a pro bono task force to find ways for lawyers employed in his ministry to participate in pro bono work. He stated that there is a 'huge role' for crown lawyers to play and his intention that his Ministry will lead by example in the area of pro bono work. The Attorney noted in particular the great demand for legal services in rural or northern communities and the need to form urban to rural partnerships. He has stated that whilst there may be some constraints on the legal services that the state's 1,460 crown lawyers can provide, they could, for example, provide community education online or via videoconferencing about matters such as wills, issues surrounding wrongful dismissal and the legal implications of being on the

⁵⁵ LAWPRO – Insurance: Pro bono legal services, available at <http://www.lawpro.ca/insurance/ProBono.asp>.

⁵⁶ Best Practices Protocols for Pro Bono Delivery Programs in British Columbia at 7-10 available at <http://starscream.netnation.com/probononet/probono2/BC/index.cfm>.

⁵⁷ Canadian Bar Association, Pro Bono Working Group Report Resolution 03-04-M, available at <http://www.cba.org/cba/resolutions/2003res/03-04-M.asp>.

⁵⁸ 'Crown lawyers to provide legal services for free', Toronto Star p. A17, May 7 2004; Notes for Remarks by Michael J Bryant, Attorney General of Ontario, Pro Bono Law Ontario Awards Dinner, May 6 2004.

board of a charity or non-profit organisation. The Attorney charged the new task force, which includes officials from his ministry and representatives from Pro Bono Law Ontario (PBLO), to examine innovative ideas and put them into action.

The ideas referred to by the Attorney form part of a proposal for a 'Telejustice Project' developed by PBLO, under which lawyers from the Ministry of the Attorney General's Office would provide brief legal services, online, to a rural community by way of:

- Public legal education (PLE) sessions: government lawyers volunteer to present public legal education sessions, via the web or videoconferencing, on a variety of topics identified as relevant by the community.
- Anonymous summary advice: lawyers volunteer to join an anonymous summary advice listserv. Individuals would submit questions about a legal issue, which would be screened and edited by a coordinator into summaries that remove identifying information and which would then be posted on the listserv. Each lawyer would be asked to answer a minimum of 4 questions per year (8-12 hours).

The proposal contemplates a number of different roles and responsibilities for PBLO, such as identifying and recruiting a rural project partner, as well as for the Ministry of the Attorney General (such as endorsing the project, promoting it to its lawyers, recruiting volunteers). PBLO is presently drafting a funding proposal for this project.

England and Wales

The current UK Attorney General, Lord Goldsmith QC has taken an active interest in pro bono. In 2002 he appointed a Pro Bono Envoy⁵⁹ and, at the request of pro bono legal groups, established the Attorney General's Pro Bono Co-ordinating Committee⁶⁰ to help facilitate pro bono co-ordination. The membership includes the main pro bono providers and the Law Society and Bar Council. The aim of the Committee is to develop ways of coordinating at a national level the delivery of pro bono legal services by various providers and to develop a strategy for promoting coordination at a regional level. One of the early activities of the Committee was to progress a website to coordinate, support and inform the pro bono community: see now www.probonouk.net

Government lawyers in England have an involvement in pro bono work. For example, in October 2000 the Government Legal Service (GLS)⁶¹ launched the GLS Pro Bono Network (the Network) to support lawyers in the GLS who are interested in pro bono work and to assist placing government employed lawyers with voluntary and non-profit making organisations. Recognising that GLS lawyers are restricted as to when and how they can provide pro bono legal assistance for reasons largely associated with conflicts of interest and sometimes restrictions on practising certificates, help provided through the Network relates largely to the provision of secondary services such as:

- the provision of training to community legal groups, such as LawWorks (a partnership between the Solicitors Pro Bono Group and the Law Centres Federation)⁶² on areas of law including welfare benefits law, disability discrimination, consumer law, employment law and human rights;

⁵⁹ The Attorney General's pro bono envoy is Michael Napier who is a senior partner at law firm Irwin Mitchell.

⁶⁰ See: <http://www.probonouk.net/public/agcommittee/>

⁶¹ The GLS joins together almost 1900 Government lawyers working in approximately 40 Government organisations, from Departments such as the Home Office to bodies such as the Office of Fair Trading: see <http://www.gls.gov.uk/about-the-gls.htm>

⁶² see <http://www.clinics.probonogroup.org.uk/history.htm>

- volunteering at legal centres and citizens advice bureaux (CABs);
- taking up posts on the management boards of charitable organizations. Here the Network will assist in an advisory capacity on issues relating to conflicts and insurance;
- organising in-house training of government lawyers on areas of law relevant to advice work at legal centres including housing, employment, welfare and consumer law. There is an emphasis on high standards and professionalism. To this end, all GLS volunteers are made aware of the Pro Bono Protocol⁶³

The Network uses cross-departmental IT systems to publicize its activities on government departmental intranet sites. It produces a newsletter which advertises opportunities for volunteering in local legal advice centres and community organisations. It also provides policies, procedures and guidelines for GLS lawyers who wish to undertake pro bono work, for example, advice and clarification of the insurance position of GLS lawyers, and promulgation of the Pro Bono Protocol referred to above.

The Network's key role is to assist GLS lawyers to take up volunteering opportunities, and recruitment is therefore an important aspect of its work. The this end, the Network is planning a series of 'roadshows' for early 2005 where it intends to visit a number of GLS departments to give talks about the benefits of pro bono. To date it appears that the pro bono involvement of government lawyers has been in their individual capacity, rather than as part of any government agency initiative.

The Network is also developing a proposal seeking agreement from government departments for an individual allowance for all GLS pro bono volunteers of 3 days per year special leave (paid) for the purposes of undertaking pro bono work.

10. Steps forward

This paper is designed to raise awareness of relevant issues and developments concerning pro bono work by government agencies and lawyers. The Centre is sending the paper to Commonwealth, State and Territory Attorneys-General, Law Societies, the Commonwealth Association of Public Sector Lawyers, the Australian Corporate Lawyers Association and others in order to facilitate discussion and provide ideas.

The Centre encourages the Attorneys-General and their Departments to consider developing a pro bono policy to cover their agencies and staff. The Centre also encourages the professional associations and their individual government lawyer members to take up and develop the issues and ideas raised in the paper. The Centre will continue to work to identify possible projects and activities that might be appropriate for government lawyers to participate in. The Centre is interested in hearing from government agencies who would like to develop their pro bono policies and practices and encourages them to contact the Centre at:

info@nationalprobono.org.au

or telephone: (02) 9385 7381.

⁶³ for information on the Pro Bono Protocol, see <http://www.probonogroup.org.uk/spbg/protocol.htm>