

WESTERN AUSTRALIAN PRO BONO SERVICES MODEL

INTRODUCTION

The provision of pro bono legal services contributes to the administration of justice in an important way. These services complement, rather than substitute, government funded legal aid and legal assistant services.

The WA Pro Bono Legal Services Model seeks to build strong pro bono practices with law firms who provide legal services to Government, and contains the following elements:

1. A commitment by law firms to:
 - be a signatory to the National Pro Bono Target; and
 - provide pro bono legal services in "approved causes" to the value of at least 10% of each firm's Government legal work.
2. Reporting requirements.
3. Managing conflicts of interest.
4. Coordination of referrals.
5. Evaluation.

It is anticipated that law firms will work with the broader legal assistance sector to achieve their WA Pro Bono Legal Services Model commitments.

Commitment and Definition

National Pro Bono Target

Law firms who provide legal services to Government must be a signatory to the Australian Pro Bono Centre's National Pro Bono Target (www.probonocentre.org.au/provide-pro-bono/target/). The Target is aspirational, and signatories to the Target agree to use their best efforts to provide at least 35 hours of "pro bono legal services" per lawyer per year.

The WA Pro Bono Legal Services Model adopts the Australian Pro Bono Centre (APBC)'s definition of "pro bono legal services":

1. Giving **legal assistance for free or at a substantially reduced fee** to:-
 - a. individuals who can demonstrate a need for legal assistance but cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial hardship; or
 - b. individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
 - c. charities, other not-for-profit organisations or social enterprises, in each case where their sole or primary purpose is to work in the interests of low income or disadvantaged members of the community, or for the public good.

2. Conducting **law reform and policy work** on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
3. Participating in the provision of **free community legal education** on issues affecting low income or disadvantaged members of the community or on issues of public interest; or
4. Providing a **lawyer on secondment** at a community organisation (including a community legal organisation) or at a referral service provider such as a Public Interest Law Clearing House.

The following is **NOT** regarded as pro bono work for the purposes of this statement:

1. Giving legal assistance to any person for free, or at a reduced fee, without reference to whether he/she can afford to pay for that legal assistance or whether his/her case raises an issue of public interest;
2. Free first consultations with clients who are otherwise billed at a firm's normal rates;
3. Legal assistance provided under a grant of legal assistance from Legal Aid;
4. Contingency fee arrangements, or other speculative work, which is undertaken with a commercial expectation of a fee;
5. The sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities; or
6. Time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

Approved Causes

Law firms who provide legal services to Government are required to commit to undertake pro bono work for "approved causes" in Western Australia, to the value of at least 10% of the value of each firm's Government legal work.

That is, if in a financial year a law firm bills Government Departments and agencies a total of \$200,000 in legal fees, that firm must have also undertaken at least \$20,000 in pro bono work for "approved causes" in Western Australia during that financial year.

Approved causes are defined to mean the provision of pro bono legal services:

- a) to people in Western Australia who cannot obtain Legal Aid or otherwise access the legal system without incurring significant financial or other hardship;
- b) which will enhance access to justice for disadvantaged people in Western Australia;
- c) to Law Access, a community legal centre, the Aboriginal Legal Services of Western Australia, and to bodies whose primary focus is representation of Aboriginal people; or
- d) by way of secondment of legal staff to Law Access, a community legal centre, the Aboriginal Legal Services of Western Australia, or bodies whose primary focus is representation of Aboriginal people.

Reporting requirements

Law firms will report the following to the Contract Manager within 12 weeks of the completion of the financial year:

1. Confirmation that the firm is a signatory to the National Pro Bono Target.
2. The total amount of legal fees charged by the firm to the Government during the completed financial year.

3. The total amount of pro bono legal services provided by the firm for "approved causes" during the completed financial year broken down into the total dollar amount of work provided for individual pro bono clients and for organisation clients.

Law firms are not required to disclose the names of their pro bono clients in the reporting. Reports using disaggregated data will be tabled in Parliament by the Attorney General annually and published by the State Solicitor's Office.

Initial contract period

It is expected that all firms will achieve the 10% target of the value of Government legal work performed in pro bono work for "approved causes", within 36 months of the commencement of the Model.

That is, although firms are expected to use their best efforts to have reached the 10% figure in each of the first two financial years under the Model, they will not have to reach the 10% figure until the third financial year of implementation of the Model.

Managing conflicts of interest

A Pro Bono Coordinator will be located at the State Solicitor's Office to manage conflicts of interests that may arise for firms undertaking pro bono work where the State is the counter-party. In addition, guidelines will make it clear that:

- law firms are able to provide pro bono services against the State and its agencies in pro bono matters as long as it does not give rise to a legal conflict of interest; and
- departments and agencies cannot adversely discriminate against firms that act, or may act, against the State in pro bono matters.

Co-ordination of referrals

The legal assistance sector plays a key role in matching those who need pro bono assistance with those who can provide it. The Department of Justice will provide funding for a partnership between Law Access and the Community Legal Centres Association to co-ordinate referrals into the future. Funding for the Model will strengthen the referral process.

Evaluation

The WA Pro Bono Services Model will be evaluated within 30 months of commencement to ascertain its effectiveness in increasing access to justice for individuals.