

PRACTICE BRIEFING

Guidance for lawyers undertaking pro bono work

This practice briefing provides guidance for lawyers and law firms about the structuring of pro bono service arrangements.

The information contained here is also relevant to lawyers wishing to undertake private work outside their employment (for example, work for friends or organisations that a lawyer may be personally associated with).

PRO BONO LEGAL SERVICES

The legal phrase “Pro Bono” comes from the Latin phrase, “Pro bono publico” or “for the public good”. It refers specifically to legal professional services which are provided free of charge if an individual who requires legal advice or services, either cannot afford legal services or does not qualify for legal aid. It can also capture services provided at a reduced rate – “low bono” work.

Pro bono work can be a rewarding experience for both legal consumers and lawyers and is encouraged by the Law Society. For lawyers, it can be an effective and practical way to address concerns about access to justice. Under the Lawyers and Conveyancers Act 2006 (LCA) no differentiation is made between fee paying or pro-bono work. Care needs to be taken to ensure that the provision of services is compliant with the LCA. This will ensure lawyers are able to meet their ethical and regulatory obligations and legal consumers receive the regulatory protections provided for under the LCA.

LAWYERS AND CONVEYANCERS ACT 2006

Providing legal services to the public

The starting point for structuring any arrangement is familiarity with the regulatory requirements under the LCA regulatory regime. Under the LCA there are two established modes of practice. A lawyer may either practise as an ‘employed’ lawyer or on their own account, once approved to do so. An ‘employed’ lawyer may be working in private practice or as an in-house lawyer.

An employed lawyer may only provide services to the public through their employment by a lawyer practising on his or her own account or a law firm. If a lawyer is employed by an entity other than a lawyer or law firm, the lawyer will be an ‘in-house’ lawyer for the purposes of the

regulatory regime.

An in-house lawyer may only provide regulated services to their employer. An in-house lawyer is unable to provide regulated services to members of the public, which includes customers or clients of their employer. These requirements are found in sections 9 of the LCA (there are certain limited exceptions not relevant to the subject of this guidance).

Sections 10(5) and 31(4) of the LCA provide an exception to the restrictions referred to above in relation to the provision of legal services as a volunteer. The effect of these provisions is that outside of employment by a lawyer practising on own account or law firm, an employed lawyer may provide legal services as a volunteer directly to the public through a:

- » Community Law Centre (CLC) or a
- » Citizen's Advice Bureau (CAB).

Legal services

What are 'legal services' and will I be expected to provide these? These questions will be key for any lawyer considering undertaking a voluntary role.

'Regulated services', which incorporates 'legal services' in s6 of LCA:

- » Advice relating to any equitable or legal right or obligation and work incidental to those matters.
- » Where an employed lawyer provides **legal** expertise, this may trigger regulatory concerns.

No regulatory concerns (provided 'legal services' are not provided. Many law firms will provide such advice on a pro bono or low bono basis):

- » Offering commercial or business advice – if specialist advice is required, the employed lawyer should suggest that legal advice be obtained.
- » Sitting on school boards of trustees or sports club committees.
- » Friends and family may ask for advice often on matters outside the lawyer's legal expertise. An employed lawyer can provide their personal views and suggest some avenues for further information and advice. Care should be taken by the lawyer, however, to stress that they are not providing any legal advice.

ALTERNATIVE WAYS TO PROVIDE PRO BONO SERVICES.

Many lawyers volunteer their time and skill through CLCs and CABs. This is the traditional pathway for providing pro bono assistance which has provided a rewarding experience for law students and lawyers over many years.

There are, however, potentially other models which may provide invaluable opportunities for undertaking pro-bono legal services, within the regulatory requirements. For example, lawyers exploring avenues to volunteer may consider:

- » Providing pro-bono legal services through a law firm employer. Many law firms are keen

to offer to undertake pro bono work or projects. This may be something to discuss with an employer;

- » Working part time as an in-house lawyer for an NGO or charity on a volunteer basis. Care needs to be taken in such an arrangement to ensure that the requirements of ss9-10 of the LCA are met and legal services are not provided directly to the clients or customers of the organisation;
- » Law firms could also provide pro bono services using in-house lawyers with whom they have an association on a limited employment basis for the purposes of undertaking pro-bono work (for example, providing commercial legal work to an NGO or charitable project);
- » Services provided by a new model law firm which is formed specifically to provide pro bono services funded by other income;
- » Employed lawyers volunteering their time for the purpose of junioring on pro bono matters (provided that the supervising and junioring lawyer both hold the same category of practising certificate as either 'barristers' or 'barristers and solicitors');
- » An employed lawyer who holds a barrister and solicitor's practising certificate may junior for a barrister sole under the umbrella of their employing law firm as instructing solicitor.

There may be other structures which are compliant with the LCA and also provide rewarding opportunities which are yet to be explored.

PRACTICAL CONSIDERATIONS

The Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (RCCC) and related professional and ethical obligations apply equally to paid work and to legal services provided via pro-bono arrangements. There are some practical steps which must be taken for the protection of both the lawyer and clients involved in a pro-bono arrangement to ensure that obligations are met.

These steps include:

- » Ensuring all clients receive client care information in accordance with r3.4 of the RCCC. This applies regardless of work being provided on a pro-bono basis.
- » Taking care to ensure that everyone involved is not misled and understands who is responsible for the services that are provided and what happens if something goes wrong. This includes the employed lawyer, supervising lawyer and the clients being clear about matters such as supervision and responsibility.
- » Obtaining the consent of employers to any arrangement and checking that there are no potential conflict of interest concerns.
- » Ensuring the scope of any limited retainer is clearly understood (see Practice Briefing on *Guidance to Lawyers acting under a limited retainer* <http://www.lawsociety.org.nz/practice-resources/practice-briefings/Guidance-to-lawyers-acting-under-a-limited-retainer.pdf>.)
- » Considering the risks of providing pro-bono legal services if there is no (or limited) professional indemnity insurance in place to cover the retainer.

- » Consider whether the work triggers obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act regime, such as conducting customer due diligence. ‘Captured activities’ under the AML regime, for example, include acting as a formation agent of any legal person or arrangement (see information about this on the Law Society’s website <http://www.lawsociety.org.nz/practice-resources/practice-areas/aml-cft.>)

CONCLUSION

If structured and managed correctly, pro bono work can provide many advantages for lawyers by providing an opportunity to gain experience and to contribute to the community. The provision of pro-bono legal services can also make a significant impact in people’s lives on an individual level at the same time as contributing to a fair, strong and efficient justice system.

The involvement of all lawyers in pro bono work (both legal and non-legal pro bono service) is supported by the Law Society. Our Regulatory Team is always happy and available to provide guidance. They can be contacted on 0800 22 30 30.

NEW ZEALAND LAW SOCIETY

Law Society Building
26 Waring Taylor Street
WELLINGTON 6011

PO Box 5041
Lambton Quay
WELLINGTON 6145

(04) 472 7837

Information in the Practice Briefing series is provided by the Law Society as a service to members. This briefing is intended to provide guidance and information on best practices. Some of the information and requirements may change over time and should be checked before any action is taken.

July 2018