



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

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# Lawyers and Conveyancers (Employed Lawyers Providing Free Legal Services) Amendment Bill

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*05/05/2021*

## **Submission on the Lawyers and Conveyancers (Employed Lawyers Providing Free Legal Services) Amendment Bill**

### **1 Introduction**

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Lawyers and Conveyancers (Employed Lawyers Providing Free Legal Services) Amendment Bill (**Bill**).
- 1.2 The purpose of the Bill is to amend the Lawyers and Conveyancers Act 2006 (the **Act**) to allow a lawyer who is an employee to do free legal work other than for the lawyer's employer, on conditions set by the New Zealand Law Society. The aim of the Bill and associated anticipated amendments to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **Rules**) is to improve access to justice, without compromising the standards of professional conduct and client care required under the Rules.
- 1.3 Currently, under the Act, an employed lawyer is potentially guilty of misconduct if they do legal work outside of the lawyer's employment. In conjunction with amendments to the Rules, the Bill will enable an employed lawyer, with the permission of their employer, to do free legal work outside of the lawyer's employment.
- 1.4 In preparing this submission, the Law Society canvassed the profession and, in particular, in-house lawyers and the In-house Lawyers Association of New Zealand (ILANZ). The Law Society also obtained extensive input from its Regulatory division. A glossary of key terms used in this submission is found at **Appendix A**.
- 1.5 The Law Society wishes to be heard.

### **2 Executive summary**

- 2.1 The Law Society supports this initiative to improve access to pro bono legal services and access to justice, while ensuring that consumers receive adequate protection. However, there are some issues that need to be addressed in the select committee's scrutiny of the Bill.

#### *Amendments to drafting*

- 2.2 The Bill proposes to amend sections 9 and 10 of the Act and to insert a new section 10A. The Law Society proposes the recasting of the Bill's provisions to improve their workability and interaction with the rest of the Act. The Bill should also include a definition of 'pro bono legal services' to avoid uncertainty regarding the extent of the proposed regime, and to clarify whether 'pro bono legal services' are provided free of charge rather than for a reduced fee.

#### *Consumer protection and supervision of lawyers*

- 2.3 The Act currently has mechanisms to ensure consumers of legal services are adequately protected. Pro bono legal services provided by lawyers employed by a law firm are currently provided under the supervision of the partners in the firm. The new regime would need to have similar mechanisms to ensure the pro bono services meet the same standards that apply to legal services provided for a fee, to ensure consumers are adequately protected.
- 2.4 The Law Society suggests amending the Act to clarify that any employed lawyer who wishes to provide pro bono legal services under the proposed regime must be a lawyer who is approved by the Law Society (and subject to any necessary conditions, such as a requirement to be supervised by a lawyer who is authorised to practice on their own account).

- 2.5 This would require a new process to be established for the Law Society to consider applications for approval. Further amendments to the Act and Rules will be required to support this approval process, and the Law Society is able to assist with drafting relevant amendments to the Rules.

*Additional resources and increased costs*

- 2.6 Additional resources would be required for the Law Society to assist with drafting any Rules amendments. Additional long-term resources would also be required to administer the new approval process. These additional resources would likely need to be covered by an increase in the practising fee.

**3 Current restriction on the provision of legal services – consumer protection**

*Overview*

- 3.1 In the interests of access to justice, the Law Society supports employed lawyers having opportunities to undertake pro bono legal work outside of their employment. However, this should not be at the expense of the consumer focus of the legislative regime.

- 3.2 The purposes of the Act as set out in section 3(1) include -

(a) *to maintain public confidence in the provision of legal services and conveyancing services:*

(b) *to protect the consumers of legal services and conveyancing services:*

- 3.3 And at subsection (2) –

*To achieve those purposes, this Act, among other things, –*

(a) *reforms the law relating to lawyers:*

(b) *provides for a more responsive regulatory regime in relation to lawyers:*

...

(d) *states the fundamental obligations with which, in the public interest, all lawyers ... must comply in providing regulated services:*

- 3.4 A balance needs to be struck between having necessary protections in place to ensure that professional standards are met, and not creating an overly heavy administrative burden for the Law Society and for employed lawyers (who are not approved to practise on their own account) wishing to undertake pro bono legal services.

- 3.5 The Act and the Rules do not currently differentiate between fee paying and pro bono work: lawyers' professional and ethical obligations apply equally to both paid and pro bono legal services. Care needs to be taken to ensure that a legislative framework facilitating the provision of pro bono legal services does not undermine the existing regulatory framework governing the legal profession. This will ensure lawyers are able to meet their ethical and regulatory obligations and consumers receive the regulatory protections provided for under the Act and the Rules.

*Regulation of employed lawyers*

- 3.6 Section 9 of the Act prohibits an employed lawyer (i.e., a lawyer not practising on their own account) from providing regulated services to the public other than in the course of their employment. An in-house lawyer (i.e., a lawyer employed by a non-lawyer – r 15.1 of the Rules) is also prohibited under section 9 from providing legal services to anyone other than their employer.

- 3.7 These restrictions are for the protection of the public. Lawyers who are not yet approved to practise on own account are required to be supervised by lawyers who have been approved. In-house lawyers need not be supervised by a lawyer practising on their own account, but the public is protected by the restriction that they may only provide legal services to their employer.
- 3.8 Section 10 contains a number of exceptions to the requirements of section 9. Currently, the only exception that allows employed lawyers (including in-house lawyers) to provide legal services to the public other than through their employment, is under section 10(5) of the Act, as a volunteer at a community law centre or citizens advice bureau.
- 3.9 The Bill proposes to add a further exception that enables employed lawyers to do free legal work other than for the lawyer's employer, on conditions set by the New Zealand Law Society.

#### **4 NZLS comments on the proposed amendments**

##### **Allowing employed lawyers to provide free legal services – proposed new section 10A**

- 4.1 The Law Society offers the following suggestions for improving the drafting of clauses 4 to 6 of the Bill.

##### *Clause 5: exceptions to section 9*

- 4.2 Clause 5 of the Bill inserts a new subsection (7) in section 10 of the Act, stating:

(7) This section is subject to section 10A.

- 4.3 Section 10 contains the current exceptions to section 9 of the Act. These exceptions should not be "subject to" the proposed new section 10A, as proposed by clause 5. Rather than having a new section 10A, the intended reform could be dealt with as a further exception to section 9, by inserting the text of clause 6 as an additional subsection in section 10 (as either (5A) or (7)). There would then be no need for the additional proposed amendments to be made to sections 9 and 10. Clause 5 could read:

##### **5 Section 10 amended (Exceptions to section 9)**

After subsection (5)/ (6), insert:

[(5A) or (7)] Nothing in ...

##### *Clause 6: Lawyer providing legal services to person other than employer*

- 4.4 The wording in the proposed section 10A "*Nothing in this Act*" is too wide. It could lead to unintended consequences, such as negating lawyers' obligations and the offences elsewhere in the Act that should continue to apply as part of the regulatory regime.
- 4.5 If inserted as a new subsection in section 10, the wording should be amended to "*Nothing in section 9 prevents ...*".
- 4.6 To ensure the amendments meet the purpose for which they are intended, the Law Society suggests "free legal services" be amended to "pro bono legal services" and that a definition of "pro bono legal services" be inserted in section 6 of the Act.

##### **Definition of "pro bono legal services"**

- 4.7 The definition of "pro bono legal services" will be key. The definition will need to be included in the legislation to avoid any confusion and uncertainty as to the breadth of the exception.

- 4.8 The Law Society has undertaken initial research into international definitions of “pro bono legal services” in different contexts. A schedule is attached (**Appendix B**) of some varying definitions for consideration.
- 4.9 Common themes that emerge are:
- Definitions all include an element of *meeting unmet legal needs* (expressed as assisting people of limited means or people who are recognised as disadvantaged in the community). Whether the legal matter raises any public interest issue is generally not a pre-requisite under this limb of the definition. Public interest may be a separate standalone criterion.
  - Definitions also often include assistance in the furtherance of *a social or public interest cause* (some definitions include the qualifier that the cause ‘would not otherwise be pursued’).
  - Definitions can also include *assisting charities and NGOs* whose work is on behalf of disadvantaged members of the community and/or people of limited means.
  - Community legal education and legal reform are frequently included. (Note, however, that in New Zealand these activities are technically not within the definition of “regulated services” and as such any lawyer may engage in these activities now on a voluntary basis.)
- 4.10 The Australian Pro Bono Centre’s characterisation of what is *not* considered pro bono is informative. It includes:
- (a) Work undertaken without reference to whether the client can pay or whether the matter raises issues of public interest.
  - (b) The sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities.
  - (c) Time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

#### *Client moneys*

- 4.11 A prohibition against receiving or handling moneys could be imposed by the Law Society as a term of its approval of a lawyer providing pro bono services. Further details on a proposed approval process are set out below. A practical implication of this will be that clients would need to pay any required disbursements (e.g., filing fees) and court costs directly.

#### **Proposed new section 10A(a): “with the agreement of the employer”**

- 4.12 In the Law Society’s view, it is important this requirement is retained, especially in relation to employed lawyers of a legal practice, because of the obligations the employer lawyer has under the Rules.
- 4.13 Under r 11.2 (currently r 11.3) of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Amendment Rules 2021 (**Amendment Rules**), which come into force on 1 July 2021, a lawyer practising on their own account must take all reasonable steps to ensure that—
- (a) the operation of the law practice (including separate places of business) is at all times competently supervised and managed by a lawyer who is practising on their own account; and
  - (b) the conduct of all persons engaged or employed by the law practice is at all times competently supervised and managed by a lawyer who is practising on their own account.

- 4.14 A lawyer practising on their own account, who is responsible for the supervision and management of the legal practice and staff, may be the subject of a complaint for a breach of this rule.
- 4.15 In addition, obtaining the employer’s consent to any arrangement is necessary in order to check there are no potential conflict of interest concerns.
- 4.16 Although the Bill envisages pro bono work undertaken outside of the lawyer’s employment, consideration will need to be given to how this will work in practice. If there are implications for employers, this may need to be addressed in employment contracts.

**Proposed new section 10A(b): “In accordance with practice rules made under section 94 by the New Zealand Law Society”**

Under section 94 of the Act, the Law Society is required to have rules that include or provide for –

(e) *standards of professional conduct and client care:*

...

(j) *a requirement for practitioners and incorporated firms to provide clients in advance with information on the principal aspects of client service, including—*

(i) *the basis on which fees will be charged; and*

(ii) *indemnity insurance arrangements or other arrangements in respect of professional indemnity; and*

(iii) *the coverage provided by any fidelity fund; and*

(iv) *complaints mechanisms:*

- 4.17 These matters are covered in the Rules. If the Bill is passed, new rules will need to be added (presumably as a new chapter 17 – Pro bono Legal Services) and some of the current rules amended. That process would involve consultation with the profession and approval of the Minister pursuant to section 100. Section 101 sets out the criteria the Minister must have regard to in deciding whether to approve any practice rules –

(a) *the fundamental obligations of the practitioners to whom the practice rules relate:*

(b) *the principle that it may be necessary or expedient to impose duties or restrictions on practitioners in order to protect the interests of consumers:*

(c) *the principle that the burden of a duty or restriction should be proportionate to the benefits that are expected to result from the imposition of the duty or restriction:*

(d) *the consistency of the rules with New Zealand’s international obligations:*

(e) *the provisions of this Act and all rights and obligations of practitioners under the law.*

**5 New Rules**

- 5.1 As noted above, lawyers who currently carry out pro bono work are subject to the same requirements of the Act and the Rules as when they are undertaking legal work for a fee (except of course for the provisions relating to fees). Therefore, the following matters will need to be addressed.

**Client care and service information (Preface and Rules 3.4 – 3.6)**

- 5.2 Regardless of the legal services being provided, all lawyers are required to –

- (a) act competently, in a timely way, and in accordance with instructions received and arrangements made:
- (b) protect and promote their clients' interests and act free from compromising influences or loyalties:
- (c) discuss with clients their objectives and how they should best be achieved:
- (d) provide clients with information about the work to be done, who will do it and the way the services will be provided:
- (e) give clear information and advice:
- (f) protect clients' privacy and ensure appropriate confidentiality:
- (g) treat clients fairly, respectfully, and without discrimination:
- (h) keep clients informed about the work being done and advise them when it is completed:
- (i) let clients know how to make a complaint and deal with any complaint promptly and fairly.

5.3 In addition to these matters, the client information that must be provided in writing to the client must include the following principal aspects of client service –

- (a) The professional indemnity arrangements of the lawyer. (Although Professional Indemnity (PI) insurance is not mandatory in New Zealand, it is recommended by the Law Society, and lawyers providing pro bono legal services should consider effecting PI insurance cover, particularly if they are providing significant pro bono legal services to community organisations or charities.)
- (b) The fact that the Lawyers' Fidelity Fund does not provide any cover in relation to the lawyer, as they will not hold client funds.
- (c) Advice on the existence and availability of the Law Society's complaints service and how the Law Society may be contacted in order to make a complaint.

5.4 If the Bill is passed, the Law Society will provide a client care and information template on its website for lawyers providing pro bono legal services.

### **Complaints mechanism in Rule 3.8**

5.5 In the 2021 Amendment Rules, the following complaints mechanism rules have been moved to chapter 11, which relates to lawyers practising on own account who are responsible for the law practice –

#### ***Complaints mechanisms***

*11.5 A lawyer practising on their own account must ensure that the lawyer's law practice establishes and maintains appropriate procedures for handling complaints by clients with a view to ensuring that each complaint is dealt with promptly and fairly by the law practice.*

*11.5.1 When a lawyer owns a sole law practice, the complaints procedure may include the reference of complaints to an independent lawyer for consideration.*

*11.5.2 This rule does not bind a lawyer whose status in a law practice is solely that of an employee.*

- 5.6 As an employed lawyer is not practising on own account and operating their own law practice, they will not be required to have their own complaints process. However, the following matters will need to be considered –
- (a) Provision of advice on the existence and availability of the Law Society’s complaints service and how the Law Society may be contacted in order to make a complaint (to be included in client information).
  - (b) If the lawyer is acting under the supervision of a lawyer practising on own account, the liability position of the supervising lawyer’s liability.

#### **Availability of lawyers to the public, and retainers (Chapter 4)**

- 5.7 Chapter 4 of the Rules deals with the obligation of lawyers as professional people to be available to the public and not, without good cause, refuse to accept instructions.
- 5.8 Currently, chapter 4 of the Rules does not apply to employed in-house lawyers (r 15.3 of the Rules) as they are prohibited from providing legal services to the public. Consideration will need to be given to the following matters –
- (a) The application of chapter 4 to lawyers providing pro bono legal services:
    - What is good cause to refuse instructions? How does willingness to carry out pro bono work interact with the entitlement to refuse instructions if the client is not prepared to pay the lawyer’s normal fee?
    - Are lawyers required to give reasonable assistance to the person concerned to find another lawyer?
    - Is amendment needed to r 15.3 of the Rules?
  - (b) Ensuring the scope of any limited retainer is clearly understood (see Practice Briefing on *Guidance to Lawyers acting under a limited retainer*: <https://www.lawsociety.org.nz/professional-practice/practice-briefings/guidance-to-lawyers-considering-acting-under-a-limited-retainer/>)

#### **Possible prohibitions and Rules that do not apply**

- 5.9 The chapter dealing with the provision of pro bono legal services will also need to state any prohibitions that apply and consequently any of the current Rules that will not be applicable. For example–
- It would be appropriate to have a prohibition against receiving or handling moneys on behalf of clients.
  - Chapter 9 of the Rules relating to fees will not apply.
  - If there is a prohibition on the provision of real estate services, chapter 16 of the Rules will not apply.

#### **Regulatory powers and functions of the Law Society**

- 5.10 All legal work carried out for any other person by a lawyer are “regulated services” under the Act, and therefore the Law Society would need to be able to monitor and regulate the lawyers providing pro bono legal services in accordance with its regulatory functions under section 65 of the Act.

5.11 Given the additional regulatory responsibility for the Law Society, additional resources will be required.

## **6 Approval process**

6.1 As part of monitoring and regulating employed lawyers providing pro bono services, there would need to be an approval process in place. The Rules should also enable the Law Society, at its discretion, to –

- (a) impose such requirements as it determines need to be met prior to giving its approval;
- (b) impose such ongoing conditions and restrictions as it determines, either generally or in particular cases; and
- (c) revoke any approval it has given.

6.2 There is precedent for approvals of this type, such as the current process to approve barristers to take direct instructions. (Under r14.7.2 of the Rules, applicants are required to complete prescribed training (either a webinar or a module which is part of the *Stepping Up* course required for practice on own account) and to satisfy the Law Society they are a suitable person to accept direct instructions from clients.)

6.3 An application to the Law Society could include:

- (a) information about the type of pro bono work intended to be carried out and relevant legal experience,
- (b) references to support relevant experience and supervision/mentoring arrangements where appropriate,
- (c) relevant CPD (Continuing Professional Development) undertaken,
- (d) identification of further training required (such as a webinar on pro bono legal work and some of the challenges that might be faced),
- (e) access to Professional Indemnity cover,
- (f) a prohibition against receiving or handling moneys, and
- (g) nomination of a lawyer who would take over the work in the event the lawyer became indisposed.

6.4 A panel of experienced lawyers, entitled to practise on their own account, who are interested in pro bono work could be established to provide mentoring or supervision, similar to the National Friends Panel.<sup>1</sup>

## **7 Consequential amendments to the Act**

7.1 It is likely there will need to be other amendments to sections of the Act. One example is identified below.

7.2 As already noted, a lawyer who has not been approved to practise on their own account is required to be supervised by a lawyer who is practising on own account (their employer). Currently, if an employed lawyer were to provide legal services other than through their employment, they would in

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<sup>1</sup> <https://www.lawsociety.org.nz/professional-practice/practising-well/national-friends-panel/>.

effect be doing so on their own account, which, without approval, is an offence under section 30(6) of the Act.

- 7.3 In order to avoid this, the Law Society suggests an amendment be made to section 31 (*Exceptions to section 30*) by inserting an additional subsection that says an employed lawyer is not deemed to be practising on own account where they are providing pro bono legal services in accordance with section 10 [new subsection (5A) or (7)].

**6 Section 31 amended (Exceptions to section 30)**

After subsection (4) insert:

- (5) Section 30 does not restrict the right of a lawyer who is not entitled to practise on his or her own account from providing pro bono legal services in accordance with the requirements<sup>2</sup> under s10 ( ) of this Act.

**8 Practical Considerations**

- 8.1 There are some practical steps which will need to be taken for the protection of both the lawyer and client involved in a pro bono arrangement, to ensure that obligations are met.
- 8.2 These steps include:
- Ensuring all clients receive client care information, in accordance with r3.4 of the Rules. (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 provided and what happens if something goes wrong. This includes the employed lawyer, supervising lawyer and the client being clear about matters such as supervision and responsibility.
  - Obtaining the consent of employers to any arrangement and checking there are no potential conflict of interest concerns.
  - Ensuring the scope of any limited retainer is clearly understood.<sup>3</sup>
  - Considering the risks of providing pro bono legal services if there is no (or limited) professional indemnity insurance in place to cover the retainer.



Tiana Epati  
**President**

5 May 2021

**Appendix A, Glossary of key terms**

**Appendix B, Definitions of 'pro bono legal services'**

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<sup>2</sup> The requirements are to include prior approval by the Law Society.

<sup>3</sup> See NZLS Practice Briefing on *Guidance to Lawyers acting under a limited retainer*: <https://www.lawsociety.org.nz/professional-practice/practice-briefings/guidance-to-lawyers-considering-acting-under-a-limited-retainer/>, and Appendix A (Glossary) to this submission.

## Appendix A, Glossary of key terms

- **Lawyer:**

A practising certificate issued by NZLS certifies that the holder is a fit and proper person to practise law and allows them to describe themselves as a 'lawyer'.

See <https://www.lawsociety.org.nz/professional-practice/legal-practice/practising-certificates/>.

- **Employed lawyer:**

A lawyer not authorised to practise on own account (see below).

- **In-house lawyer:**

A lawyer employed by a non-lawyer.

See r15.1 of the Rules,

[https://legislation.govt.nz/regulation/public/2008/0214/latest/DLM1437964.html?search=ts\\_act%40bill%40regulation%40deemedreg\\_conveyancer\\_reselel\\_25\\_a&p=1](https://legislation.govt.nz/regulation/public/2008/0214/latest/DLM1437964.html?search=ts_act%40bill%40regulation%40deemedreg_conveyancer_reselel_25_a&p=1)

- **Practising on own account:**

Lawyers who want to 'practise on own account' must meet several requirements – including a minimum of 3 years' legal experience in NZ in the last 5 years, completion of the *Stepping Up* course, and satisfying NZLS they are suitable to practise on own account (taking into account considerations such as the nature and extent of their legal experience, and the areas of law they intend to practise in) – in order to be approved by NZLS.

Approval to practise on own account allows the lawyer to provide legal services without supervision while also ensuring consumers are adequately protected.

For the full list of requirements, see <https://www.lawsociety.org.nz/professional-practice/legal-practice/practising-on-own-account-as-a-barrister-and-solicitor/>.

- **'Limited retainer':**

A recent amendment to the High Court Rules 2016 helps lawyers to provide legal services under a 'limited retainer' to lay litigants (this is an important means of bridging the 'justice gap' for litigants unable to afford traditional full-service legal representation). A limited retainer (also known as 'unbundled' legal services) allows a lawyer to perform one or more tasks for a client, while the client handles other matters that would be provided by a lawyer in a traditional 'full service' retainer.

See <https://www.lawsociety.org.nz/news/legal-news/recent-rules-amendment-encourages-provision-of-legal-services-under-a-limited-retainer/>.

## Appendix B, Definitions of 'pro bono legal services'

### American Bar Association – Model Rules of Professional Conduct

#### Rule 6.1: Voluntary Pro Bono Publico Service

##### **Public Service**

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
  - (1) persons of limited means, or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
  - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;
  - (2) delivery of legal services at a substantially reduced fee to persons of limited means; or
  - (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

### Australia

#### **Australian Pro Bono Centre**

The Centre is an independent centre of expertise that aims to grow the capacity of the Australian legal profession to provide pro bono legal services that are focused on increasing access to justice for socially disadvantaged and/or marginalised people and furthering the public interest. The Australian Pro Bono Centre's National Pro Bono Aspirational Target, established in 2007, is now a widely accepted benchmark for measuring pro bono legal services

The definition of 'pro bono legal services' included in the Centre's Target Statement of Principles is:

*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 or other non-profit organisations which work on behalf 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 legal 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.*

#### **Law Council of Australia**

In 1992 the Law Council of Australia developed the following definition of pro bono legal work:

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.*

#### **Victorian Government Legal Services Panel**

For the purposes of a Panel Contract an 'Approved Cause' is the provision of any services by lawyers or other staff based in Victoria or other financial or in kind assistance which will enhance access to justice for disadvantaged persons or organisations and/or promote the public interest including circumstances where a Panel Firm:

- i. without fee or without expectation of a fee or at a reduced fee, advises and/or represents a client in cases where:
  - A. a 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. undertakes the following, provided the provision of these services or financial or in kind assistance will enhance access to justice for disadvantaged persons or organisations and/or promote public interest:
  - A. is involved in free community legal education and/or law reform;
  - B. is involved in the giving of free legal advice and/or representation to charitable and community organisations;
  - C. provides staff (legal or other) on secondment to a CLC or other community organisation; or
  - D. provides financial or in-kind assistance (eg equipment, sponsorship etc.) to a CLC or other community organisation.

### Singapore

Mandatory reporting for pro bono legal work was introduced in Singapore in 2015 and is based on the following definition of 'specified pro bono service':

'Specified pro bono service' means engaging in an activity referred to in the following paragraphs without any fee, gain or reward (other than an honorarium for, or reimbursement of any expenses incurred in, the activity):

- a. providing any relevant law-related service —
  - i. to any individual who is reasonably perceived, by the solicitor providing the service, to be a disadvantaged individual;
  - ii. under the auspices of any ministry or department of the Government, any Organ of State, any statutory board or any charitable or community organisation, in connection with any activity organised primarily to assist disadvantaged individuals;
  - iii. to any ministry or department of the Government, any Organ of State or any statutory board; or
  - iv. to any charitable or community organisation, for any of the purposes for which that organisation is lawfully conducted;
- b. participating in any activity under any relevant legal assistance scheme;
- c. participating as a member of any relevant committee;
- d. participating in any relevant matter under the auspices of any relevant body.

### United Kingdom

The Law Society of England and Wales has a "pro bono" policy which says:

#### **Definition of pro bono legal work**

When we refer to pro bono legal work, we mean legal advice or representation provided by lawyers in the public interest, including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public and alternative means of funding are not available.

Legal work is pro bono legal work only if it is free to the client, without payment to the lawyer or law firm (regardless of the outcome), and provided voluntarily either by the lawyer or his or her firm.

## Canada

The NPO Pro bono Law Saskatchewan describes Pro bono as:

Pro bono legal services are defined as providing professional legal services without expectation of fee where legal aid is not available for:

- persons of limited means who demonstrate a need for legal assistance but are unable to afford legal counsel without suffering financial hardship;
- charitable, non-profit, religious, civic, community, governmental and education organizations in matters that are designed primarily to address the needs of persons of limited means or which work for the public good of marginalized or disadvantaged individuals or groups;
- matters of public interest and broad community concern which might not otherwise be pursued; and
- the improvement of the law or legal system in a manner which benefits marginalized or disadvantaged individuals or groups.

The guide “The path to law firm pro bono- a guide for students” (produced by the Canadian organisations Pro bono students and Pro bono Canada) provides:

For the purposes of this guide, pro bono services are legal services provided without fee or expectation of a fee to:

- Persons of limited means who cannot otherwise afford them;
- Cases that raise a broad issue of public or community concern that might not otherwise be pursued;
- Non-profit organisations or community groups involved in representing disadvantaged or marginalised people:

Pro bono services include legal advice, courtroom advocacy, drafting of legal opinions and documents, legal research, mediation, negotiation, law reform, community legal education and other legal services. Pro bono services generally do not include non-legal volunteer activities, professional development activities, client development or maintenance activities, or continuing legal education.

## Global

### **TRUSTLAW (Thompson Reuters Foundation)**

The Thomson Reuters Foundation launched the TrustLaw Index of Pro Bono in 2014. The purpose of the Index is to analyse international pro bono data and trends.

In collecting data as part of the Index: *Pro bono is defined as legal assistance provided without expectation of payment to people of limited means or to organisations that have a social, environmental, humanitarian or community focus (including certain government agencies and entities).*