



AGS LEGAL PRACTICE POLICY

LPP2 – AGS AND PRO BONO WORK

Approved	24 September 2012
Previous versions	<i>February 2003 and 1 November 2011</i>
Sponsor	<i>National Manager, Pro Bono Services</i>

PURPOSE

1. This policy:
 - provides an overarching framework for the management of AGS's pro bono practice
 - outlines the systems and processes to facilitate the growth of our pro bono practice.

SCOPE

2. AGS lawyers have a long tradition of using their professional skills to serve the public interest, both through their work for Government and in supporting other community interests.
3. As Commonwealth agencies are required to assess a legal firm's pro bono commitment when evaluating legal services tenders, AGS will benefit from being a signatory to the National Pro Bono Resource Centre's Aspirational Target (currently an average of a minimum of 35 hours of pro bono legal work per lawyer per year) when tendering for the provision of legal services to the Commonwealth.
4. When AGS signed up to the Aspirational Target (27 November 2008), we took the following pledge:
 - AGS recognises its professional obligation to provide pro bono legal services.
 - In furtherance of that obligation, AGS agrees to encourage and support the provision of pro bono legal services by all its lawyers.
 - AGS agrees to use our best efforts to ensure that, by 30 June in each year, our lawyers will undertake an average of a minimum of 35 hours of pro bono legal services each year.
 - In furtherance of these principles, AGS also agrees:
 - to provide training and supervision as required
 - to monitor AGS's progress towards the targets established in this statement and to report its progress annually to the executive management and staff of AGS and to the National Pro Bono Resource Centre.
 - AGS acknowledges that, when a lawyer provides pro bono legal services, they owe the pro bono client the same professional and ethical obligations that are

owed to any client and that the lawyer must give that work the same priority, attention and care as would apply to paid work.

5. AGS's support for access to justice through the pro bono program is a natural consequence of its role of supporting the Attorney-General as First Law Officer of the Commonwealth. A successful pro bono program will also enhance our attractiveness as an employer, increase job satisfaction and retention rates, and to develop the skills and confidence of our lawyers.

PRINCIPLES

What is pro bono work?

6. The types of legal work that AGS undertakes within the pro bono program are within the definition of 'pro bono legal work' set out in the *Legal Services Directions 2005*, Appendix F (see [Attachment 1](#)).¹
7. The focus of our pro bono program is on enhancing access to justice for disadvantaged people and disadvantaged communities and legal training in Asia-Pacific countries. The main areas of AGS pro bono work are:
 - a. undertaking legal matters for non-profit organisations in areas of law which are unlikely to give rise to disputes between our pro bono client and Commonwealth government agencies, such as commercial and employment law
 - b. legal training for community legal centres or other non-profit organisations
 - c. secondments to public interest clearing houses, community legal centres that work primarily in areas of Commonwealth law, or other non-profit organisations
 - d. projects involving the provision of legal advice, assistance or training to overseas organisations or governments.
8. All pro bono projects AGS undertakes must:
 - be within AGS's power to act
 - reflect well on AGS
 - not give rise to a conflict of interest risk that AGS cannot adequately manage, both to our satisfaction and the satisfaction of any relevant Commonwealth agency for which we would wish normally to act or which would normally expect us to be available to act
 - reflect well on the domestic and international reputation of the Australian Government.

¹ Appendix F also contains a definition of pro bono work. However, only pro bono legal work is counted when reporting to OLSC and the National Pro Bono Resource Centre, though the report to OLSC also requires details of the value of any unpaid capacity building work in the Asia-Pacific Region.

Constraints on AGS's power to act

9. AGS can only undertake pro bono work if it involves acting for a person or body for whom AGS can act in accordance with its functions and powers as provided for under its enabling legislation, the *Judiciary Act 1903*; for example, where the services relate to Commonwealth law or activities in the Territories or are connected with foreign governments or overseas matters, or the Commonwealth has power to make laws in relation to the subject matter of the services.

Conflict of interest – actual, perceived and commercial

10. AGS will not act for a pro bono client where there is an actual conflict with current or past matters conducted for our usual clients, including where:
 - AGS already acts for the Commonwealth or a Commonwealth agency in legal proceedings and is requested to act for another party pro bono in those proceedings
 - because it has previously provided legal services to the Commonwealth or its agencies, AGS has confidential information about the Commonwealth or its agencies that would make it improper for AGS to act pro bono for another client against the Commonwealth or agency.
11. In addition, because of AGS's mandate to support the Attorney-General in their role as First Law Officer of the Commonwealth, AGS will not undertake pro bono work that represents a concern to, advocates a point of view that is antagonistic to, or involves acting in proceedings against, the interests of any Commonwealth agency – ie there is an AGS commercial conflict of interest.
 - This does not mean that AGS can never act for pro bono clients in matters that relate in some way to the responsibilities or activities of Commonwealth or State governments. In some situations an agency may support AGS undertaking a pro bono project that relates to the agency's responsibilities on the basis that our involvement will assist overall in achieving or promoting compliance by our pro bono client with legislation administered by the department. In those circumstances, the agency – together with AGS – may be willing to accept what might appear to be a small risk that, by providing the pro bono services, AGS might become unavailable to act for the agency. In the event AGS did become unavailable to act for the agency, there should be no damage to the broader relationship between AGS and the agency in this context.
 - Consideration of whether a proposed pro bono project will be of concern to an agency will usually involve AGS consulting with that agency, unless the CEO approves otherwise. Similarly, approval is also required if it is proposed to provide a pro bono service despite a relevant agency having raised a query or concern.

Other types of matters excluded from the pro bono program

12. AGS's pro bono program is not intended to overlap or replace government provision of access to justice initiatives. We do not provide pro bono services in areas of need that are serviced by government programs or government-funded initiatives and do not provide services to government agencies on a pro bono basis.
13. AGS will not normally undertake pro bono matters for an individual as there is higher general potential for, and unpredictability of, an individual relying on AGS's advice to dispute a particular action or position being taken by a Commonwealth agency in relation to that individual. There is less such potential where AGS provides pro bono services through a broader community or other representative body which is not, and is not likely to be, personally in dispute with a Commonwealth agency.
14. AGS will not provide pro bono assistance:
 - to non-profit organisations with a political or campaigning objective
 - in politically sensitive or ethically controversial matters
 - in matters where so to do would be inconsistent with AGS's status and responsibilities.

Personal pro bono work by our lawyers in their personal capacity

15. For the purposes of our reporting, AGS pro bono work includes personal volunteer work for community legal centres that is supported in some way by AGS.
 - While AGS encourages other personal pro bono activities that do not conflict with AGS activities, the definition of pro bono legal work excludes pro bono work lawyers undertake on their own initiative eg work for their local sporting association.
16. The personal pro bono work section of this policy (para 39 onwards) contains guidance on how AGS lawyers can manage the requirements of their employment as public sector lawyers when undertaking pro bono work in their personal capacity.

Structure and management of the AGS pro bono program

17. The AGS pro bono program has a national policy framework: projects are selected at a national level to ensure adherence to this policy and the most efficient and effective use of AGS's pro bono resources. However, the identification of appropriate lawyers to manage legal matters and to undertake secondments is primarily a group, team or local matter.

National roles

18. The CEO oversees the development of AGS's pro bono program and is consulted on any major strategic decisions and before AGS takes on any new category of pro bono client.
19. AGS has a National Manager Pro Bono Services, who reports to the Chief Operating Officer. The National Manager is a dedicated position held by an AGS senior lawyer or senior executive lawyer.
20. The CEO receives quarterly reports prepared by the National Manager on the achievements of the pro bono program and its budgetary position.
21. The National Manager takes responsibility for the development and ongoing operation of the program, sets up and coordinates national pro bono initiatives, ensures that AGS applies any lessons learned, and is responsible for ensuring the program's overall performance against its goals and budget and managing the risk of AGS's pro bono activities.

Liaison with national practice groups

22. National Group Managers (NGMs) are consulted in relation to their group's involvement in any pro bono projects.

Support in each location

23. The office pro bono coordinators in each location are AGS lawyers with an interest in pro bono work and are the central point of contact for local employees and external partners and clients. Their responsibilities include:
 - identifying potential new local pro bono partners and projects
 - working with the National Manager to develop new proposals
 - organising and chairing office pro bono committees or other local interest groups
 - maintaining relationships with local pro bono clients
 - passing on to the national manager any lessons learned from local projects.
24. The office coordinator may choose to establish and take advice from a pro bono committee in their office. Office pro bono committees enable a wide range of involvement in pro bono policy and activities by legal and business support employees who volunteer their time to develop suggestions for local pro bono initiatives. Committees are not expected to meet more than once per quarter.

Developing new pro bono projects

25. Projects can be initiated by any AGS employee, an office coordinator, the National Manager, or via a request from a pro bono client. Proposals must be made in the form at [Attachment 2](#).

26. New project proposals should be passed to the National Manager, who will consider AGS's power to act, any conflict of interest or reputation issues, and whether the project is otherwise acceptable and desirable for inclusion in the AGS pro bono program.
27. An assessment of whether a proposed project proposes an unacceptable risk of conflict of interest or other AGS client issues will be made by the National Manager, on the basis of advice from the relevant NGM, the National Client Service Manager for any relevant government client or the Corporate Adviser depending on the circumstances. Where a pro bono project is being assessed for commercial conflict with an existing AGS client, that client should be contacted so that the perceived conflict or issue can be discussed and consent from that client obtained.
28. If the project is recommended by the National Manager, AGS's capacity to undertake the matter and the appropriate allocation of the matter must be considered by the relevant NGM/s. AGS business considerations, including the ability of AGS to undertake the matter within reasonable timeframes at an appropriate level of capability, will be considered at this stage.
29. If required, the National Manager will seek the appropriate determination from the CEO under the Judiciary Act, s 55N once the project has been recommended and approved, but before the matter is opened. Legal advice on the determination will be obtained from the Corporate Adviser, and further advice from s 55N counsellors will be sought, if necessary. AGS's internal policy on who AGS can act for will also apply.

Prioritising projects

30. As a general rule, priority will be given to projects that:
 - a. enhance access to justice for disadvantaged or marginalised people and community organisations who work for the benefit of the public, disadvantaged sections of the public or the environment
 - b. promote reconciliation by developing relationships between AGS and Aboriginal and Torres Strait Islander peoples and organisations
 - c. increase our lawyers' knowledge, skills and experience in areas of law that are within the suite of offerings that we wish to make to government clients
 - d. assist us in retaining and keeping engaged talented employees who are underutilised from time to time.

Deciding whether to act pro bono or billable

31. Once a request to act pro bono has been made, the decision on whether AGS will act pro bono in a legal matter for a non-profit organisation will be made by the National Manager together with the relevant NGM. In determining whether to seek payment for services or to undertake the work on a pro bono basis, the following factors will be considered:

- a. Does the organisation and the work otherwise meet the criteria for pro bono assistance as set out in this policy? If not, then the matter should be undertaken on a billable basis.
 - b. Are the organisation's objects aligned with AGS's pro bono priorities or other community activity, including charitable donations? If so, there may be a greater inclination to act for the organisation on a pro bono basis.
 - c. What is AGS's relationship with the organisation? An existing relationship may impact on the decision.
 - d. Has AGS done similar work for another non-profit organisation on a pro bono basis or done work for a similar organisation on a pro bono basis? Consistency with other decisions is a relevant factor.
 - e. Does the organisation have the capacity to pay for legal services without real impact on service provision?
 - f. What is the size and scope of the matter, and its prospects of a successful outcome with the aid of AGS's expertise? A large, complex matter may be more difficult for AGS to manage as part of the pro bono program.
32. The decision whether to act pro bono or to bill the work is within the discretion of the National Manager and NGM, and the National Manager will advise the organisation of the outcome of their request.

Opening and managing a pro bono matter

33. A pro bono matter must be managed in the same professional manner that a billable client matter is managed, according to the same quality assurance procedures, with the same diligence and timeliness, and subject to the same supervision and review as any other legal work undertaken by AGS. Pro bono work is subject to AGS's National Professional Standards and Code of Conduct policy.
34. An AGS lawyer on secondment to a pro bono clearing house, community legal centre or other non-profit organisation, should direct any queries about whether particular issues they are asked to advise on in the course of their secondment pose a conflict of interest to their office pro bono coordinator or local supervisor in the first instance, and to the National Manager for further consultation if necessary.

Fee relief

35. Unless otherwise stipulated by the Chief Operating Officer, lawyers performing legal work on a pro bono basis will receive fee relief for that work, provided that their narrations reflect the value of the work to the pro bono client.

Reporting and tenders

36. Under its contracts with some of its clients, AGS is required to report to OLSC on the pro bono work undertaken in the financial year within 30 days of the

end of each financial year. OLSC provides a standard reporting template for these reports and the National Manager is responsible for working with corporate support areas to complete the report and provide it to OLSC by 30 July each year. The report will be provided to Client Services for distribution to any interested clients.

37. In signing up to the National Pro Bono Resource Centre's Aspirational Target, AGS has also undertaken to report to the Centre each year. In July each year the Centre sends each signatory a standard form to be completed and returned to the Centre. The National Manager undertakes this reporting.
 - Copies of AGS reports to OLSC and the National Pro Bono Resource Centre will be placed on AGS's intranet.
38. An enquiry about the quantity and nature of AGS's pro bono activity is now a standard question in any request for tender from Commonwealth agencies. The National Manager will provide Client Services with updated text in response to any questions in client tenders about AGS pro bono work.

Personal pro bono work by our lawyers

39. See para 15 above.
40. AGS encourages lawyers to undertake pro bono work in their personal capacity, provided this does not conflict with AGS activities.
41. Many AGS lawyers choose to volunteer their time working with community legal centres (CLCs) outside working hours. Some AGS lawyers may wish to donate their time and legal expertise to a particular organisation or cause which is of personal interest to them. Personal pro bono work is done in the lawyer's own time and at their own expense and does not attract fee relief.

Conflicts of Interest

42. AGS lawyers should not undertake personal pro bono work which conflict with AGS activities. This prohibition extends to actual and perceived conflicts.
43. To reduce the risk of conflict situations arising, an AGS lawyer who wants to undertake pro bono work in a personal capacity should discuss the matter with their supervisor or NGM. There is a general requirement for AGS employees seeking to undertake outside employment, whether the employment is paid or pro bono.
44. The supervisor or NGM can assist the AGS lawyer by considering the potential for perceived or actual conflicts of interest.
45. The lawyer, supervisor or NGM should also take care to avoid situations where pro bono work could be a potential source of embarrassment to AGS or reflect adversely on its reputation, which would be inconsistent with the rule in the AGS Code of Conduct that an AGS employee must at all times uphold the integrity and good reputation of AGS.

46. If it is unclear whether the pro bono work is likely to give rise to any concern, the lawyer, supervisor or NGM should seek the views of the National Manager.
47. All lawyers are bound by their conflict of interest obligations in the work they undertake, both as employees of AGS and in external activities.
48. A lawyer who, in the course of pro bono work, becomes aware of any conflict of interest, must withdraw from the pro bono work, and notify their supervisor or NGM of the circumstances of the conflict.
49. Where an NGM or supervisor is aware of the pro bono activity, the lawyer is able to access the assistance noted in this policy.

Practising certificates

50. An AGS lawyer's right to practise conferred by the Judiciary Act does not apply to work done outside the scope of AGS business.
51. AGS lawyers can either:
 - obtain a practising certificate to undertake pro bono work
 - advise the organisation for which they are providing pro bono services that they do not have a practising certificate; a number of pro bono schemes accommodate this factor.
52. AGS will generally provide funding to assist AGS lawyers who wish to take out a practising certificate where an NGM considers there to be sound reason. AGS may be prepared to fund an AGS lawyer to take out a practising certificate for the purposes of undertaking pro bono work. An AGS lawyer holding a State or Territory practising certificate as an employee of AGS should ensure that any restrictions on the certificate do not preclude them from undertaking the pro bono work they wish to pursue.

Insurance

53. AGS insurance does not cover AGS lawyers who undertake pro bono work in their personal capacity.
 - Some organised pro bono schemes, including most community legal centres, carry their own insurance to cover lawyers doing pro bono work.
54. If an AGS lawyer has obtained a practising certificate at AGS expense, they generally will not be covered by the State or Territory professional indemnity insurance (as the insurance component is not paid by AGS for these certificates). AGS lawyers with a practising certificate may be able to obtain insurance. In some jurisdictions, lawyers with practising certificates are required to have their own professional indemnity insurance. AGS will not fund the cost of personal professional indemnity insurance for AGS lawyers.
55. AGS strongly encourages AGS lawyers to work with organisations that carry adequate insurance to protect the volunteer against claims made against them.

AGS support for personal pro bono activities

56. AGS provides the following support to lawyers to facilitate personal pro bono work:
- 1) The National Manager can refer employees to Community Legal Centres (CLCs) in their local area which accept volunteers outside the employee's normal working hours, and can provide information about the work of those CLCs, their insurance arrangements and the CLC's requirements for volunteering. The employee would have responsibility for following up on that information with the preferred CLC and making their own arrangements to volunteer.
 - 2) AGS will provide assistance, including financial assistance (refer para 52), to any employee who needs to obtain a practising certificate in order to undertake personal pro bono work.
 - 3) As far as possible, the personal pro bono work undertaken by lawyers will be taken into account in performance appraisals and in considering promotions (based on the lawyer's report of work undertaken and skills and experience gained).
 - 4) Lawyers may utilise AGS library and research resources, photocopiers, computers, facsimiles and telephones as required to assist them in their volunteering tasks, provided the expense to AGS is minor.
 - 5) Lawyers may ask the library to obtain legal reference materials that are relevant to common areas of volunteer pro bono work; such requests must be approved by the National Manager Pro Bono Services.
 - 6) Lawyers may access study assistance to attend training relevant to their personal pro bono work. Applications should be made to the National Manager with reference to the Studies Assistance policy.

Leave

57. AGS lawyers may be able access leave for pro bono activities in accordance with AGS's policy on leave.

WHERE TO GET HELP

58. Contact the National Manager Pro Bono Services if you have any questions in relation to this policy.

Legal Services Directions, Appendix F

pro bono legal work means any of the following:

- (a) giving legal assistance for free or at a substantially reduced fee to any of the following:
 - (i) individuals who can demonstrate a need for legal assistance but cannot obtain legal assistance or otherwise access the legal system without incurring significant financial hardship;
 - (ii) individuals or organisations whose matter raises an issue of public interest that would not otherwise be pursued;
 - (iii) charities or other non-profit organisations that work on behalf of low income or disadvantaged members of the community, or for the public good;
- (b) conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest;
- (c) 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;
- (d) 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 clearinghouse;

but does not include:

- (e) giving legal assistance to any person for free or at a reduced fee without reference to whether a person has the capacity to pay; or
- (f) free first consultations with clients who are otherwise billed at a firm's normal rates; or
- (g) legal work provided under a grant of legal assistance; or
- (h) contingency fee arrangements or other speculative work that is undertaken with a commercial expectation of a fee; or
- (i) the sponsorship of cultural and sporting events, work undertaken for business development, and other marketing opportunities; or
- (j) time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

Note This definition is based on the definition of 'pro bono legal services' in the National Pro Bono Aspirational Target Statement of Principles developed by the National Pro Bono Resource Centre, as at 1 September 2008.

pro bono work means any of the following:

- (a) pro bono legal work, including any pro bono legal work that the legal services provider has or will carry out in the Asia-Pacific region;
- (b) unpaid capacity building work in the Asia-Pacific region that the legal services provider has or will carry out;
- (c) other community or charitable work carried out by the legal services provider;

but does not include work carried out by personnel of the legal services provider on their own initiative, for example, work for their local sporting association



Australian Government Solicitor

Attachment 2

SUBMISSION FOR APPROVAL OF PRO BONO PROJECT

Scope of the project	
Full names of the proposed client or clients	
Full details of the nature of the project and the relevant area/s of law	
What is the element of public good that will be achieved in the performance of the project?	
Does AGS have the expertise to carry out the project with efficiency and competency? If so, what is the most appropriate office or national team to undertake the project? Have any specific individuals been identified to undertake the work, if so, who and why?	
Projected duration of the project	
Estimated total number of hours required on the project	
Estimated opportunity cost of the project (anticipated no. of hours work of each person multiplied by their standard hourly rate) <i>Calculate opportunity cost based on the actual charge out rates if the employees to be undertaking the work have been identified with sufficient certainty, or a blended rate of \$300 if the work author is as yet unidentified</i>	
Nature and cost of any disbursements required on the project	
Source of referral of this project Does the client or project have any connection to other paid or pro bono work, or is there a personal connection to any employee? <i>A connection to the client or project does not mean that we cannot take on the project, but it must be declared up front</i>	

Submitted by:

Date:

Pro bono project assessment

To be completed by National Manager Pro Bono Services with input from office pro bono coordinator

The client	
What is the basis of AGS's power to act under the <i>Judiciary Act 1903</i> ?	
Is there an actual conflict? (<i>a conflict of interest search must be carried out</i>) <i>AGS will not undertake pro bono work in any matter against a Commonwealth department, agency or officer</i>	
Is there a commercial conflict? (ie could taking on this project potentially damage AGS's relationship with an existing client, even though there is no actual conflict in this project?) <i>Commercial conflicts in pro bono work should be considered in the same way as commercial conflicts in regular fee-paying work. You may need to speak to the relevant NCSM/s for their views or assistance.</i>	
Does the client have the ability to pay for legal assistance? Is there a more appropriate avenue of assistance for this client?	
What is the reputation of the potential client? Is there potential for impact on AGS's corporate reputation?	
Are there any factors which indicate that the Commonwealth's interests might be adversely affected by AGS acting for the person or body?	
Details of the project	
Does the project provide an opportunity for training of lawyers?	
Does the project have the ability to expand AGS's pro bono profile?	
Is the project covered by AGS's insurance?	
Does the project raise any issues of personal or information security? If so, how is it proposed that these be addressed?	
Proposed pro bono budget outlay (recharge + disbursements)	

Approvals

National Manager Pro Bono Services

Conflict of interest search undertaken

Consultation undertaken:

Any comments:

Project: **Recommended** **Not recommended**

Relevant Finance Manager

Considerations

Pro bono hours of this project	
Opportunity cost of project	
Project is within current pro bono targets (ie staff costs and expenses)	Yes/No

Project is: **Recommended** **Not recommended**

Comments:

Note: Acceptance of recommendation to undertake project means that the relevant profit centre will approve fee relief for the relevant fee earners, based on recharge paid. Manager, Pro Bono Services will advise Business Managers of recharge paid on a monthly basis.

Determination under the *Judiciary Act 1903, s 55N*

Covered by current determination no.

s 55N(2) Determination received

s 55N(4) Determination made