



NATIONAL PRO BONO RESOURCE CENTRE

Submission to the Legal Services Council

Legal Profession Uniform General Rules 2014

Consultation Draft

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This submission is endorsed in full by



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ABOUT THE NATIONAL PRO BONO RESOURCE CENTRE

The **National Pro Bono Resource 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 persons, and furthering the public interest.

While the **Centre** does not provide legal advice, its policy and research work supports the provision of free legal services and informs government of the role that it can play to encourage the growth of pro bono legal services. The **Centre's** work is guided by a board and advisory council that include representatives of community legal organisations, pro bono clearing houses, the private legal profession, universities and government.

Established in 2002 as an independent, not-for-profit organisation at the University of New South Wales, it was envisaged that the **Centre** would:

*“Stimulate and encourage the development, expansion and co-ordination of pro bono services, as well as offering practical assistance for pro bono service providers (and potential providers). The **Centre** would play the key roles of facilitating pro bono practice and enabling the collection and exchange of information.”*

The strategies that the **Centre** employs to grow pro bono capacity include:

Strengthening the place of pro bono legal work within the Australian legal profession as an integral part of legal practice by

- being a leading advocate for pro bono legal work;
- promoting the pro bono ethos and increasing the visibility of pro bono legal work;
- developing policies and advocating for measures to encourage an increase in the quality and amount of pro bono legal work; and
- producing resources and sharing information in Australia, regionally and internationally that builds pro bono culture in the Australian legal profession and participation by Australian lawyers in pro bono legal work.

Providing practical assistance to facilitate, and remove barriers to, the provision of pro bono legal services by

- undertaking research on how pro bono legal assistance can best respond to unmet legal need, including the identification of best practice in its provision;
- engaging in policy development, advocacy and law reform on issues that have an impact on pro bono legal services;
- providing practical advice to lawyers and law firms to support their efforts to increase the quantity, quality and impact of their pro bono work;
- informing community organisations about the way pro bono operates in Australia; and
- leading in the development of new and innovative pro bono project and partnership models.

Promoting the pro bono legal work of the Australian legal profession to the general public by

- informing members of the public through the media and presentations about the pro bono legal work undertaken by members of the Australian legal profession.

The **National Pro Bono Resource Centre** operates with the financial assistance it receives from the Commonwealth and State and Territories Attorney-General Departments, and support from the Faculty of Law at the University of New South Wales.

ASSISTANCE AND ENDORSEMENT FROM DLA PIPER

DLA Piper Australia (**DLA Piper**) is a founding member and strong supporter of the National Pro Bono Resource Centre (**Centre**). For a number of years, DLA Piper has worked alongside the Centre to ensure that all lawyers have the opportunity to provide pro bono legal services.

The National Pro Bono Professional Indemnity Insurance Scheme (**Scheme**) and the accompanying *The Australian In-house Legal Counsel Pro Bono Guide* were developed in close partnership with DLA Piper.

While significant progress has been made, there are still skilled and experienced lawyers who face a number of barriers to providing pro bono services. Recognising this, DLA Piper has assisted the Centre with and fully endorses this submission.

The Centre gratefully acknowledges DLA Piper's assistance with the preparation of this submission.

SUMMARY

The National Pro Bono Resource Centre (**Centre**) thanks the Legal Services Council (**LSC**) for its invitation to provide comments and submissions on the Consultation Draft of the Legal Profession Uniform General Rules 2014 (**General Rules**) to be made pursuant to the Legal Profession Uniform Law.

The Centre has previously made submissions in relation to the introduction of uniform laws for the regulation of the Australian legal profession.¹

This submission contains the Centre's comments and submissions on the General Rules in relation to removing barriers to pro bono legal work.

In particular the Centre recommends that the LSC amends the General Rules to clarify:

1. that volunteer practising certificates should be provided for free, rather than on a low cost basis; and
2. in relation to professional indemnity (**PI**) insurance that:
 - PI insurance is made available through the Centre's National Pro Bono Professional Indemnity Insurance Scheme (**Scheme**); and
 - the Scheme will cover legal services provided on a pro bono basis where they are undertaken by or supervised by an Australian legal practitioner with an "unrestricted" practising certificate, and it is not necessary to hold an "unrestricted principal" practising certificate.

¹ See National Pro Bono Resource Centre et al, *Joint Submission to the Task Force for the National Legal Profession Project*, October 2009 available at https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/NPBRC%20Submission%20on%20Legal%20Profession%20National%20Law%20August%202010%20final.pdf and National Pro Bono Resource Centre, *Submission to the National Legal Profession Reform Taskforce: Legal Profession National Law – 14 May 2010 Consultation Draft*, August 2010 available at https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/Submission%20on%20national%20reform%20of%20the%20legal%20profession%20301009.pdf.

1. VOLUNTEER PRACTISING CERTIFICATES

1.1 BACKGROUND

Volunteer practising certificates allow career break and retired Australian legal practitioners, who do not hold another category of practising certificate, to use their considerable experience and skills to undertake pro bono legal work. In its recent Inquiry Report on *Access to Justice Arrangements* the Productivity Commission recommended that all State and Territory governments should, where they have not already done so:

introduce free practising certificates for retired or career break lawyers limited to the provision of pro bono services either through a community legal centre or a project approved by the National Pro Bono Resource Centre.²

Providing for the grant and renewal of volunteer practising certificates on a free, rather than low cost basis, should not represent a cost to issuers of practising certificates. Volunteer practising certificates would by their nature be issued to qualified Australian legal practitioners who would not otherwise hold a practising certificate and therefore would not otherwise be paying practising certificate fees. Therefore, issuing free volunteer practising certificates:

- does **not** represent an opportunity cost to issuers; and
- is a possible source of additional revenue for continuing legal education providers as a result of the continuing professional development obligations that would attach to volunteer practising certificates.³

In its earlier submissions regarding practising certificates in the context of the uniform regulation of the Australian legal profession the Centre advocated for:

- “pro bono basis” to be defined⁴;
- volunteer practising certificates to be available for both volunteer legal work at community legal services (CLS) and also general legal work performed “otherwise on a pro bono basis”⁵;
- all categories of practising certificate to allow lawyers to undertake pro bono legal work beyond CLS⁶; and

² Productivity Commission 2014, *Access to Justice Arrangements: Overview*, Inquiry Report No. 72, Canberra at 829.

³ See section 52 of the Legal Profession Uniform Law regarding continuing professional development.

⁴ See section 8 of the Legal Profession Uniform Law.

⁵ See section 47(1) of the Legal Profession Uniform Law.

- volunteer practising certificates to be free, in recognition of the fact that any work undertaken by a holder of this category of practising certificate will be undertaken on a pro bono basis.

1.2 FREE VOLUNTEER PRACTISING CERTIFICATES

The Centre submits that the availability of free, rather than low cost, volunteer practising certificates has not been clearly addressed in the General Rules. Clarifying this issue is particularly important given that the *Legal Profession Uniform Law Application Act 2014 (NSW) (Application Act (NSW))* and *Legal Profession Uniform Law Application Act 2014 (Vic) (Application Act (Vic))* both take different approaches to this issue.

Rule 13(2) of the General Rules provides:

An application under subrule (1) must be accompanied by the fee applicable to the application.

Section 73(5) of the Application Act (Vic) provides that:

*A fee or surcharge is **not** payable for an Australian practising certificate that authorises the holder to engage in legal practice only as a volunteer at a community legal service or otherwise on a pro bono basis. (emphasis added)*

Section 38(1) of the Application Act (NSW) provides that:

A fee is payable for the grant or renewal of a local practising certificate of such amount as is determined by the appropriate Council and approved by the Attorney General.

Section 38(2) of the Application Act (NSW) further provides that:

A Council may determine different practising certificate fees according to different factors that are specified in the determination and approved by the Attorney General.

There is an opportunity for the General Rules to provide clarity in relation to this issue. We recommend that rule 13 is amended to make it clear that no fee is required to be paid where an applicant is applying for the grant or renewal of an Australian practising certificate that allows

⁶ See section 47(5) of the Legal Profession Uniform Law.

the applicant to practice “both as a volunteer at a community legal service and otherwise on a pro bono basis, only.”

Recommendation 1

The Centre recommends amending rule 13(2) and inserting a new rule 13(3) in the General Rules to reflect that **no fee** is payable for the grant or renewal of a volunteer practising certificate.

The Centre suggests, by way of guidance only, the following drafting for subrules 13(2) and 13(3):

- (2) Subject to subrule (3), an application under subrule (1) must be accompanied by the fee applicable to the application.
- (3) No fee is payable in relation to an application under subrule (1) in relation to the grant or renewal of an Australian practising certificate that allows the applicant to practice only as a volunteer at a community legal service or otherwise on a pro bono basis.

2. THE NATIONAL PRO BONO PROFESSIONAL INDEMNITY INSURANCE SCHEME

In its earlier submissions regarding PI insurance in the context of the uniform regulation of the legal profession the Centre recommended that any amendments in relation to PI insurance should promote the availability of PI insurance through the Scheme.

The Centre also considers that in the context of providing uniformity amongst the jurisdictions that wish to adopt the Legal Profession Uniform Law that the General Rules should address the appropriate level of supervision required for coverage under the Policy. The requirement in relation to supervision is currently inconsistent in New South Wales as compared to Victoria and South Australia.

2.1 BACKGROUND

In order to obtain a practising certificate, unless an exemption is granted, an Australian legal practitioner must have appropriate PI insurance. Where an Australian legal practitioner is performing pro bono legal work through a CLS or under the auspices of their employer (where the employer is a law practice) the practitioner will be covered by the PI insurance of the CLS or the employer.

If a practitioner wishes to undertake pro bono legal work outside of their employment or not through a CLS the difficulties associated with obtaining PI insurance, in particular the associated costs, represent a real barrier to undertaking this work.

In 2009 the Centre established the National Pro Bono Professional Indemnity Insurance Scheme (**Scheme**) to remove this barrier for Australian legal practitioners, particularly in-house corporate and government lawyers.⁷ To facilitate the Scheme the Centre holds an insurance policy with LawCover Insurance Pty Ltd (**Policy**) which provides PI insurance cover for lawyers carrying out pro bono projects approved by the Centre.⁸

Under the Policy the Centre is named as the insured “law practice”, and this insurance is extended to “principals” and “employees” of the “law practice”. The Policy also extends cover to paralegals working on approved pro bono projects.

⁷ Further information about the Scheme is available at <http://www.nationalprobono.org.au/page.asp?from=8&id=236>.

⁸ A copy of the Policy is available at https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/LawCover%20PI%20Insurance%20Policy%20FY%202015.pdf.

An Australian legal practitioner can apply for coverage under the Policy by submitting an application form to the Centre outlining the nature of the pro bono project. Where a pro bono project is approved by the Centre, PI insurance is provided in relation to the project without charge to the applicant. The Centre approves pro bono projects applying the Law Council of Australia's (LCA) definition of "pro bono legal work".⁹ The LCA definition of "pro bono legal work" is broader than the Centre's own definition. The broader LCA definition has been incorporated into the Policy to facilitate the contribution of as much pro bono legal work as possible by in-house corporate and government practitioners, as well as retired and career break practitioners.

The Scheme, together with the dedicated lawyers who work on the pro bono projects, has facilitated some outstanding pro bono contributions. As an example, in October 2014 Lieutenant Commander Shannon Richards was awarded the 2014 Law Society of NSW President's Medal in recognition of his work with KidsXpress. KidsXpress is "a charity dedicated to helping young children develop coping mechanisms to deal with trauma in their lives"¹⁰. Without access to cover under the Scheme, Lieutenant Commander Richard's pro bono legal work for KidsXpress may not have been possible.

The Centre notes that neither the Premium Rating Information Form, that it completes annually, nor the Policy contains any practising certificate or supervision requirement. However, it is the Centre's practice to only approve projects undertaken by or supervised by a lawyer who holds an unrestricted practising certificate given the conditions under which the regulatory body in each jurisdiction has approved the Scheme (see **Current approvals of the Scheme** on page 10). Furthermore, the application form alerts applicants to the need to ensure that they hold the requisite practising certificate.

⁹ The Law Council of Australia's definition of "pro bono legal work" is as follows:

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.

¹⁰ The Law Society of New South Wales, *Another medal for decorated military lawyer* (23 October 2014) available at <https://www.lawsociety.com.au/about/news/910880>.

2.2 PROMOTE THE AVAILABILITY OF PI INSURANCE UNDER THE SCHEME

Rule 76(2) of the General Rules makes it clear that Australian legal practitioners who perform pro bono legal work are required to:

have professional indemnity insurance when engaging in legal practice as a volunteer at a community legal service or otherwise on a pro bono basis.¹¹

As outlined above the costs associated with obtaining PI insurance are prohibitive which has the practical effect of being a barrier to practitioners who wish to undertake pro bono legal work. The Centre recommends that a new Rule 76A is inserted into the General Rules to promote the availability of PI insurance through the Scheme. Please see **Recommendation 2** on page 15 for suggested drafting, by way of guidance only.

2.3 CLARIFY THE REQUIREMENT OF SUPERVISION BY AN “UNRESTRICTED” PRACTISING CERTIFICATE HOLDER

2.3.1 OVERVIEW

The Centre also submits that in the context of providing uniformity amongst the jurisdictions that wish to adopt the Legal Profession Uniform Law (being New South Wales and Victoria in the first instance) that the General Rules should address the appropriate level of supervision required for coverage under the Policy. The supervision requirement under the current approval in New South Wales is different when compared to the approvals in Victoria and South Australia.

The Centre submits that supervision by an Australian legal practitioner, who holds an unrestricted practising certificate, rather than an unrestricted **principal** practising certificate, represents the appropriate level of supervision in relation to pro bono legal work covered by the Scheme. On this basis the Centre recommends that new Rule 76A also provides that coverage is only available under the Scheme in relation to legal services provided on a pro bono basis where they are undertaken or supervised by an Australian legal practitioner who holds an “unrestricted” practising certificate. Please see **Recommendation 2** on page 15 for suggested drafting, by way of guidance only.

In support of this submission the Centre refers to the following factors:

- the current approvals of the Scheme;

¹¹ See also note 3 to section 211 of the Legal Profession Uniform Law.

- the role of “principal” in the New South Wales practising certificate regime;
- the ability to harness the currently under-utilised pro bono capacity of corporate and government solicitors; and
- the limiting impact of including a “principal” requirement.

The discussion below will focus on the practising certificate regime in New South Wales given that this is the jurisdiction which, for the purpose of the Scheme, requires that the supervising Australian legal practitioner holds an “unrestricted principal” practising certificate, rather than an “unrestricted” practising certificate.

2.3.2 CURRENT APPROVALS OF THE SCHEME

The Scheme is currently approved by the Council of the Law Society of New South Wales (**NSW Council**), the Legal Services Board of Victoria (**LSB**) and the Council of the Law Society of South Australia (**SA Council**) as outlined above.¹² The terms of these approvals differ in relation to the level of supervision required.

On 28 May 2009 the NSW Council passed the following resolution approving the Scheme:

***RESOLVED** that the Council of The Law Society of New South Wales approves the National Pro Bono PI Insurance Scheme as an arrangement for the provision of pro bono legal services by legal practitioners holding practising certificates granted by the Council on the following conditions:*

1. *that the arrangement involves the supervision of the provision of pro bono legal services by a legal practitioner holding an **unrestricted principal practising certificate**; and*
2. *any legal practitioner providing the legal services under the arrangement is covered by an insurance policy taken out by the National Pro Bono Resource Centre with LawCover Insurance Pty Limited on terms of the policy document attached to these minutes.¹³ (emphasis added)*

Both the LSB and the SA Council approvals have been provided on the terms of the Policy alone. The LSB and SA Council approvals do not contain any supervision requirement but, as outlined

¹² The Scheme is also specifically approved by the Queensland Law Society in relation to the “volunteer” category of practising certificate available in Queensland. See rules 15A and 15B of the *Queensland Law Society Administration Rule 2005*.

¹³ The policy referred to in this case was the policy in place in 2008/2009. The Council has since confirmed that it views the Policy as a “living document” and that the initial approval will continue to remain in force while any changes made to the Policy are not of a substantial nature.

above, it is the Centre’s practice to only approve projects where the supervising practitioner holds an unrestricted practising certificate.¹⁴ The Centre notes that since the Scheme’s establishment in 2009 the Centre has approved 70 pro bono projects undertaken in Victoria and South Australia, as well as New South Wales, and there has never been a claim made under the Policy.

The General Rules do not provide any certainty regarding the level of supervision that will be required for the purposes of satisfying the PI insurance requirements of the Legal Profession Uniform Law.

2.3.3 THE ROLE OF “PRINCIPAL” IN THE NEW SOUTH WALES PRACTISING CERTIFICATE REGIME

There are four categories of practising certificate available to solicitors in New South Wales, all of which can be held on a restricted or unrestricted basis¹⁵:

- a. Principal
- b. Non-principal
- c. Corporate & Non Lawyer Entity
- d. Government

“Restricted” and “unrestricted” refer to restrictions associated with supervised legal practice.¹⁶ A solicitor in New South Wales is not eligible to be granted an unrestricted practising certificate until they have completed a period of supervised legal practice of either 18 months or 2 years, depending on the circumstances.

¹⁴ In practical terms, the Policy under the Scheme has been approved by the Council of the Law Society of South Australia (**SA Council**) as a policy that provides “insurance against such liabilities” as required in order for a solicitor to obtain a practising certificate in South Australia (see section 19(1) of the *Legal Practitioners Act 1981 (SA) (LPA SA)*).

The PI insurance regime in South Australia operates differently to those in New South Wales and Victoria. In New South Wales and Victoria the regulatory bodies have the power to specifically approve a PI policy as complying with the relevant requirements. In contrast in South Australia there is only one available PI insurance scheme operated by the Law Society of South Australia (**SA Law Society**) through Lawguard Management Pty Ltd (**Lawguard**) (see section 52 of the LPA SA). Therefore, in South Australia the process of the approval of a PI policy is replaced by a process of exempting South Australian practitioners from having to contribute to the SA Law Society’s PI scheme. The SA Council, through Lawguard, has confirmed that solicitors covered by the Policy are exempt. The SA Law Society has confirmed that it is its view that a practitioner will satisfy the requirement that they have obtained “insurance against such liabilities” by being specifically exempted from the SA Law Society’s PI insurance scheme.

¹⁵ The Law Society of New South Wales, *Practising Certificate Types and Conditions 2014/2015* available at <https://www.lawsociety.com.au/cs/groups/public/documents/internetregistry/702990.pdf>.

¹⁶ See section 53 of the *Legal Profession Act 2004 (NSW) (LPA)*.

The key difference between the “principal” category and the other categories of unrestricted practising certificate is the attachment of “condition 3” to the other categories. Condition 3 requires the “holder to complete a Practice Management Course before being eligible to be a principal of a law practice or a solicitor on the record for a corporation or government”¹⁷. Alternatively, as provided on the Law Society of New South Wales’ (**NSW Law Society**) website, an undertaking to complete the Practice Management Course, will also allow a practitioner to apply for a principal practising certificate.¹⁸

Complying Practice Management Courses are offered by private providers such as FMRC and The College of Law. Fees are in the range of \$2,000 per person for a three day course.¹⁹

As outlined on the NSW Law Society’s website the aim of these Practice Management Courses is “to improve:

- the managerial skills and job satisfaction of solicitors
- the efficiency and cost effectiveness of practice
- client satisfaction through the use of quality practice management procedures.”²⁰

In broad terms, the Practice Management Course is focused on ‘the business’ of law rather than the skills and experience associated with the delivery of front line legal services, such as advice or representation. It is the distinction between “restricted” and “unrestricted” that addresses experience. Furthermore, the disciplinary and consumer protection provisions of the LPA continue to operate regardless of what category of practising certificate is held. For this reason the Centre submits that an Australian legal practitioner with an unrestricted practising certificate has the appropriate experience to act without supervision, as is supported by the structure of the NSW Law Society’s unrestricted/restricted practising certificate regime.

Furthermore, the pro bono projects approved by the Centre do not generally require the business skills that the Practice Management Course seeks to develop.²¹ For example, many of the Centre’s projects relate to the establishment of not-for-profit organisations, the provision of legal education and assisting otherwise unrepresented litigants. The solicitors involved in these

¹⁷ The Law Society of New South Wales above n 14.

¹⁸ See The Law Society of New South Wales at <https://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/yourpractisingcertificate/changing/index.htm>

¹⁹ See The College of Law at <http://www.collaw.edu.au/shop/legal-practice-management-courses> and FMRC at <http://www.fmrc.com.au/unrestricted-practising-certificate>.

²⁰ See The Law Society of New South Wales at <https://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/practicemanagementcourse/index.htm>.

²¹ A copy of the Register of approved pro bono projects is available at <http://www.nationalprobono.org.au/page.asp?from=8&id=302>.

projects need to hold an unrestricted practicing certificate in order to deliver high quality advice and assistance, not an unrestricted principal practicing certificate.

2.3.4 HARNESSING THE CURRENTLY UNDER-UTILISED PRO BONO CAPACITY OF CORPORATE AND GOVERNMENT SOLICITORS

Requiring a supervising Australian legal practitioner, in the context of the Scheme, to hold an “unrestricted principal” practising certificate would significantly limit the pool of experienced corporate and government solicitors who are able to obtain coverage under the Scheme. As a result, this requirement restricts the number of practitioners in New South Wales who are able to perform pro bono legal work outside of arrangements that their employer may have in place or through a CLS. It was for this reason that in its earlier submissions on the national reform of the legal profession the Centre recommended that the holder of an Australian practising certificate should be able to volunteer not only at a CLS but also “otherwise on a pro bono basis.” This recommendation has been incorporated into the Legal Profession Uniform Law.

It is the Centre’s main objective to grow the capacity of the legal profession to perform pro bono legal work. Corporate & Non Lawyer Entity and Government practising certificate holders are not generally involved in ‘the business’ of law but often possess significant legal experience. The Scheme was developed in order to specifically harness this experience.

In its most recent report on New South Wales solicitors the NSW Law Society reported that solicitors working in the government and corporate sectors represented 30.2 percent of solicitors in New South Wales who held a current practising certificate.²² Of these corporate and government solicitors, approximately 76 percent, or over 6,000 solicitors, had 6 or more years’ experience.²³ It would be unfortunate to unnecessarily maintain this barrier to participation in pro bono legal work for such a large number of experienced Australian legal practitioners who would like to contribute their considerable skills on a pro bono basis.

²² Urbis: *2013 Profile of the Solicitors of NSW – Final Report*, prepared for The Law Society of New South Wales (December 2013) at 22 and 24.

²³ Ibid.

2.3.5 THE LIMITING IMPACT OF INCLUDING A “PRINCIPAL” REQUIREMENT

The following are examples of the limiting impact that the inclusion of the “principal” requirement has on the ability of corporate and government solicitors to perform pro bono legal work.

New South Wales

In New South Wales, experienced lawyers have been unable to obtain coverage under the Scheme in order to participate in the Duty Solicitor Roster (**Roster**) at the Downing Centre Local Court. While many of the solicitors who participate in the Roster are sole practitioners, and therefore hold an unrestricted principal practising certificate, the Centre has received applications for coverage under the Scheme from a number of experienced lawyers who hold “unrestricted” Government or Corporate & Non Lawyer Entity practising certificates.

These solicitors have many years of experience and would like to offer their time for free to individuals who do not have the means to obtain private representation and who are moments away from appearing before the court.

The significant cost associated with completing the Practice Management Course which would allow these solicitors to obtain a principal practising certificate is not a practical option. This is especially so considering that any pro bono legal work they would undertake would be on their own time, rather than using time paid for by an employer. Therefore, the restriction results in these solicitors not being able to contribute their significant skill and experience on a pro bono basis in this way.

South Australia

In South Australia, the Scheme provides coverage to approximately 20 solicitors from the South Australian Crown Solicitor’s Office, who hold unrestricted practising certificates. These solicitors undertake pro bono legal work pursuant to referrals from JusticeNet SA, a clearing house.

If these solicitors had been located in New South Wales and had applied for coverage under the Scheme the Centre would not have been able to approve their projects on the basis that they do not hold the equivalent of an unrestricted **principal** practising certificate.²⁴ As a result, these solicitors would not have been able to assist these disadvantaged individuals on a pro bono basis.

Victoria

The Centre has recently approved a number of pro bono projects in Victoria which relate to the provision of legal advice to not-for-profit organisations by lawyers who hold unrestricted corporate practising certificates. These solicitors assisted the relevant not-for-profit

²⁴ We note for completeness that there is no specific “principal” category of practising certificate in South Australia.

organisations with the preparation of a power of attorney, the preparation of policies and procedures and to apply for registration with the Australian Charities and Not-for-profit Commission.

If these solicitors had been located in New South Wales and had applied for coverage under the Scheme the Centre would not have been able to approve their projects on the basis that they do not hold the equivalent of an unrestricted **principal** practising certificate. As a result, these solicitors would not have been able to assist these not-for-profit organisations on a pro bono basis.

Recommendation 2

The Centre recommends the insertion of a new rule 76A to clarify the level of supervision required to satisfy the PI insurance requirements of the Legal Profession Uniform Law in relation to the Scheme ie supervision by the holder of an unrestricted practising certificate. The Centre suggests, by way of guidance only, the following drafting for proposed new rule 76A:

76A National Pro Bono Professional Indemnity Insurance Scheme

- (1) An Australian legal practitioner may apply to the National Pro Bono Resource Centre (ACN 102 444 557) for professional indemnity insurance under the National Pro Bono Professional Indemnity Insurance Scheme in relation to legal services to be provided on a pro bono basis.
- (2) Any legal services to be provided on a pro bono basis and which are covered by the National Pro Bono Professional Indemnity Insurance Scheme must be undertaken by or supervised by an Australian legal practitioner who holds an unrestricted practising certificate.

15 January 2015

National Pro Bono Resource Centre