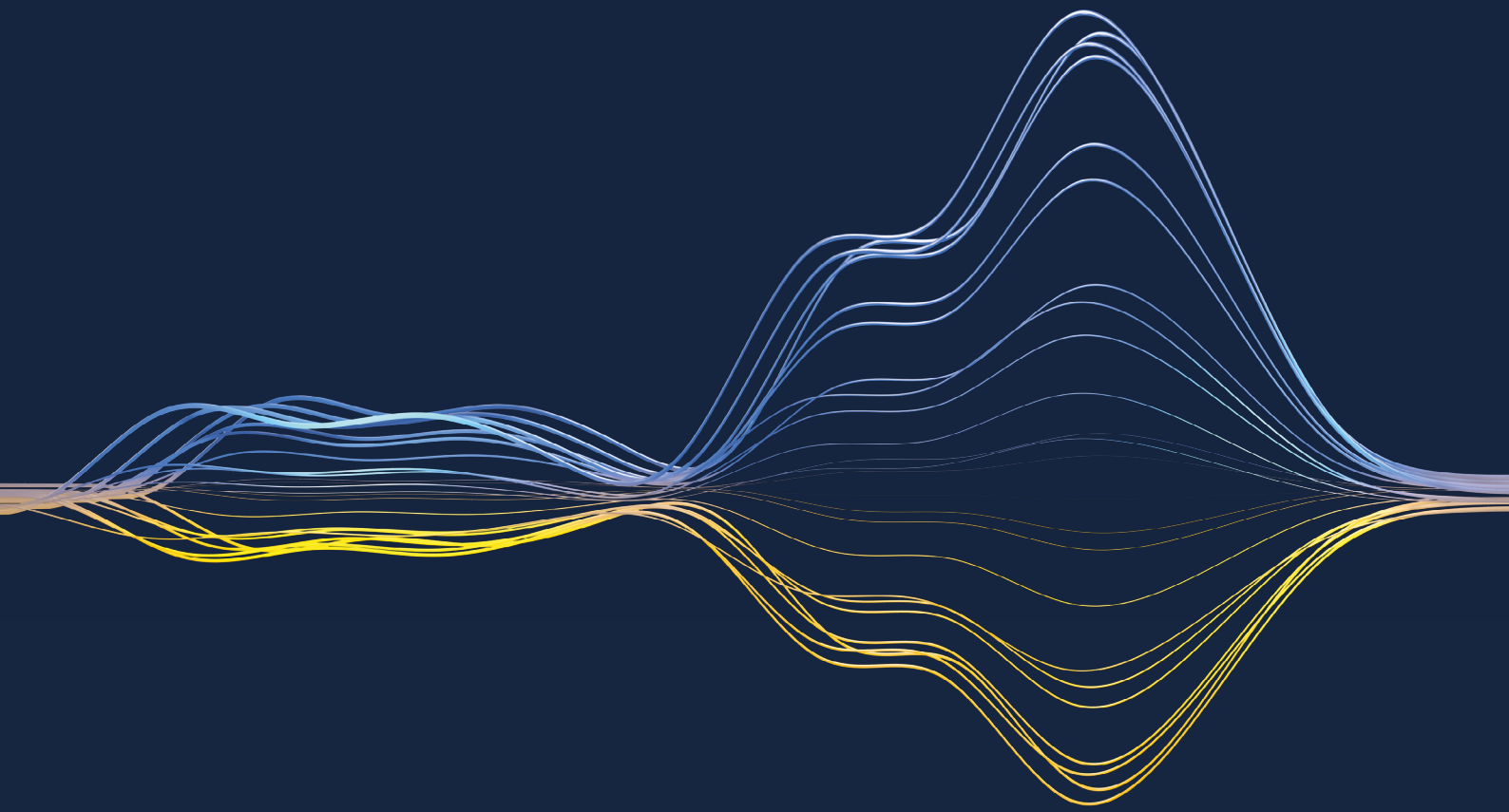


# A Guide to Recruiting, Retaining and Remunerating Pro Bono Roles in Large Law Firms



One of the first dedicated pro bono lawyers (now a pro bono partner) explained how he created his position in the 1990s first as a part-time role:

*"I went around to twenty law firms in town, and I said, I'll make you a deal. I'll give you two-thirds of the number of billable hours that you expect from one of your litigation associates, you pay me two-thirds the usual salary, and let me set aside one-third of my time for pro bono work...which I thought made perfect economic sense."*

Thirty years later, there are still examples of individual pro bono lawyers, who subsidise the cost associated with running pro bono practices for large corporate law firms by accepting salaries equal to about two thirds of the salaries of their peers working similar hours and performing similar work.



# The importance of dedicated pro bono practice leadership

In many major markets around the world, dedicated pro bono lawyer roles have become commonplace, especially in large national and international law firms.

The 2023 TrustLaw Pro Bono Index reported that:

1. Of 245 respondent law firms 61% (155 firms) had employed dedicated pro bono staff to manage the pro bono practice;
2. Firms that had dedicated employees to manage the pro bono practice achieved an average of 35.2 pro bono hours per lawyer per year; whereas;
3. Firms that did not have dedicated pro bono management achieved an average of just 12.8 pro bono hours per lawyer per year.

The appointment of a dedicated pro bono lawyer or manager to oversee the pro bono practice is the single most significant predictor of success when it comes to building a pro bono practice at scale.

A significant pro bono practice, managed by specialist and dedicated lawyers is also synonymous with 'leading law firm' status.

Despite the important role played by specialist pro bono lawyers, there is very little data or guidance available to inform decisions around recruitment, retention, and remuneration of these roles.

This paper sets out some of the key issues and trends for pro bono roles and identifies a range of opportunities and risks when determining appropriate approaches.



## State of the market

Experienced pro bono leaders are in high demand, particularly in the UK, where there is an active lateral market. The past decade has seen a significant growth in the number of dedicated pro bono roles in law firms. Outside of the United States (which is perhaps the most mature pro bono market, where a large number of dedicated pro bono lawyer positions were created in the period from 2000 to 2010), most of the pro bono roles that exist today were created during the past 10 years.

In its September 2023 Target Report, the Australian Pro Bono Centre found a total of 179 individuals employed in dedicated pro bono roles in Australia, with more than 50% of those individuals being senior lawyers (Partners, Directors, Senior Associates, Special Counsel) and:

- At least 5 firms have 2 or more pro bono partners
- A large national firm reported having 12 people in the pro bono team (which included graduates on rotation)
- A large international firm had 9 pro bono lawyers based in Australia.
- Client expectations or requirements have seen a significant increase in the number of lawyers undertaking long term pro bono secondments (for example to community legal centres) typically 6-12 months, with some lawyers having been recruited specifically for this purpose.

In the UK, the past decade has seen the number of pro bono positions in large firms swell from around 10 dedicated positions in 2013, to more than 75 positions as at August 2023. Significant further growth in the number of pro bono roles can be expected over the next 5 years, because:

- Of the top 100 law firms by revenue in the UK, only 45 firms have appointed dedicated pro bono managers as at August 2023. This suggests that a further 50+ firms in the top 100 are yet to formalise an institutional pro bono programme, with professional leadership and oversight. As these firms formalise their pro bono practices, around 40-50 new pro bono manager positions will be created – with most requiring senior level or experienced pro bono lawyers. This will maintain the competitive lateral market for experienced pro bono lawyers for a decade to come.
- Of the firms that currently have dedicated pro bono managers in place, around half have only 1 person overseeing the pro bono practice, while the remainder have 2-5 pro bono lawyers in the UK-based team. This suggests that a further 30 new pro bono lawyer roles (particularly entry level or junior lawyer positions) will be created as some of the existing and under-resourced pro bono practices add headcount to their pro bono teams.



In the US, a similar picture emerges:

- Only 72 of the Am Law 100 firms have dedicated, senior level pro bono lawyer roles.
- Of those, 34 firms employ between 2 and 7 pro bono lawyers, while the remaining 38 firms have only one lawyer in the role.
- This suggests that over the next 5 years, up to 38 firms will add junior level positions to their pro bono teams and up to 28 firms may seek to appoint senior pro bono leadership.

These trends and the forecast future growth in specialist pro bono roles highlight some of the challenges facing law firms when considering how to recruit, retain and remunerate pro bono lawyers, for example:

Of the 75 pro bono roles that exist in the UK, 94% are designated lawyer roles, with the remaining 6% filled by individuals with no legal qualifications.

The rapid growth in pro bono positions in the UK, and the resulting talent shortage has created an active lateral market, with senior and/or experienced pro bono professionals being routinely targeted by recruiters. Distinct from the United States and Australia (where lateral moves are relatively less frequent) pro bono professionals in the UK have tended to be highly mobile and the past few years has seen a significant number of lateral movements, which creates upward pressure on salaries.

Pro bono teams are typically very small teams, or a single individual.

Many firms have had to grapple with the challenge of putting appropriate reporting and remuneration structures in place for newly created roles, often without any access to market data or market insights.

Pro bono lawyers are often appointed speculatively, to build a pro bono practice from the ground up and when success is achieved the approach to remuneration may require review.

Many newly created pro bono roles are filled by senior lawyers whose prior specialisation is not obviously relevant to their pro bono role, but who nevertheless remain on the same remuneration package, sometimes creating significant discrepancies within a team.

Occasionally pro bono roles are recruited from legal aid or non-profits, where candidates:

Typically have significantly lower salaries/salary expectations than lawyers who move to pro bono from a commercial practice group within the firm (making those lawyers somewhat easier to recruit at lower cost) even though they;

Bring experience or expertise which is better aligned and more relevant to pro bono than lawyers recruited internally.

As a result of different approaches to recruitment and remuneration, salaries have varied widely from firm to firm.

The significant disparity in salary levels has helped to maintain the robust lateral market for pro bono lawyers with 2+ years of pro bono experience.

# Factors impacting on a firm's ability to recruit and retain pro bono lawyers

There are 6 key factors which impact upon a law firm's ability to recruit and retain high quality pro bono leadership.



## Structure for success

Job titles, size and location of allocated workspace, access to appropriate levels of junior legal support and secretarial support are all crucial considerations, because the perceived status of pro bono lawyers can influence the legitimacy, quantity and quality of law firm pro bono work.

Some law firms position the pro bono team alongside other legal practice groups, while other firms classify pro bono roles as support staff alongside other business services roles. Generally speaking the former structure allows pro bono lawyers to practice law, while the latter typically does not.

As such, organisational structures, reporting lines and role classification are important considerations for both pro bono professionals and law firms, because these impact on the ability of the lawyer to deliver on the role, pay and promotion, autonomy and job satisfaction, and status.

## Remuneration models

The approach to remuneration of pro bono professionals varies quite significantly from firm to firm, and published salary data is often misleading, with all pro bono roles being treated as a single category. It is however possible to identify 4 distinct remuneration models:

Model 1	Pro bono salaries aligned to sustainability/community engagement roles within the firm or in the external market – a model which treats pro bono roles as non-legal roles, despite these roles being almost exclusively undertaken by individuals with legal qualifications.
Model 2	Pro bono salaries aligned to other non-income-generating lawyer roles.
Model 3	Pro bono salaries linked to salary bands for fee earners but discounted – by for example, 2PQE for lawyers at 6 years and above.
Model 4	Pro bono roles aligned to fee earner salary bands – best practice model increasingly used by leading pro bono firms, consistent with gender diversity and equality principles.

### Model 1

In recent years, model 1 has become uncompetitive and has fallen out of favour, typically being abandoned within 2-3 years. Firms seeking to recruit junior lawyers, find model 1 does yield good results at the recruitment stage of an employee life-cycle due to the popularity of pro bono roles, however it

will not achieve good retention outcomes, as low salary levels act as a significant push factor in an active recruitment market.

### Model 2

Model 2 aligns pro bono lawyer salaries to other non-income-generating lawyer roles, for example, professional support lawyers, precedent lawyers, knowledge management lawyers etc. This remuneration model is typically utilised where the pro bono role entails pro bono administration, coordination, reporting and communication (for example, supporting the pro bono committee, handling requests for assistance, allocating pro bono work to fee earners, supporting file opening and conflict checking, generating reports, responding to surveys, etc).

Where the role involves legal advice and representation, client and matter generation, commercial client collaboration, and the performance of other functions broadly identical to fee earners, remuneration models 3 and 4 are more common/appropriate.

Model 3 is used by several firms in the UK, and typically entails:

- Trainees – trainees undertaking a seat in the pro bono team are paid a salary equal to all other trainees in the firm.
- NQs – NQs employed into pro bono teams are typically recruited from the trainee cohort and are therefore paid at the same level as all other NQs in the business.
- PQE1 – PQE3 – The salaries of associates in pro bono teams are in the same range as associates at the same level working in other practice areas, but are typically towards the bottom of that range (where a range exists, noting that some firms have a lockstep model for PQE1-3).
- PQE4 – PQE8 – The salaries of senior associates and legal directors/counsel in pro bono roles have the equivalent of a 2PQE discount applied as their salaries tend to fall behind their peers in other practice areas. By way of example, a pro bono lawyer with 6PQE might be remunerated at the level of a 4PQE lawyer in a commercial role at the same firm.
- Practice leaders – Senior pro bono lawyers whose roles include practice leadership or wider leadership responsibilities within the business are typically remunerated at a level that recognises their wider remit and contribution, and may therefore attract a higher level of remuneration than lawyers at the same level in fee-earning roles.

Although this approach to pro bono remuneration became common during the period from 2018 to 2022, some of the leading pro bono firms have begun to abandon this model because the

discounting of pro bono salaries for pro bono lawyers raises several concerns and may create legal risk for law firms. As such the practice of discounting is not recommended or endorsed.



Model 4 is easily being adopted to align with commitments to equality and diversity:

- In every market pro bono roles are heavily dominated by women. In the UK for example, women currently hold more than 90% of pro bono roles.
- There is growing awareness of historical bias in the remuneration of female-dominated positions, and there is a growing body of evidence that female-dominated roles remain under-valued, with salary levels significantly lower than male dominated roles.
- Now that a substantial number of large law firms have committed to closing the gender pay gap and/or building diverse and inclusive work environments, firms will be subjected to increased scrutiny and will face criticism from employees, clients and other stakeholders if female-dominated positions are not fairly remunerated.
- As such several of the law firms consulted for this paper have implemented (or are moving toward) remuneration Model 4, which aligns high performers in the pro bono team to the same remuneration level (or within the same band) as fee-earners at the same PQE level, located in the same market, within the same firm.
- Some firms reported an incremental approach to implementation of equal pay principles with full alignment being achieved over 2-3 salary review cycles (that is, by 2025). This change is also reflective of changing expectations on business in relation to ESG risks and opportunities, and the important role pro bono lawyers are making in relation to ESG and sustainability more generally.
- The increasing prevalence of minority lawyers (with protected characteristics) has also been a key factor in the shift towards equal pay principles.

It should be noted that virtually all pro bono roles in the UK are based in London and the law firms which have dedicated pro bono roles have very different financial models and salary ranges for lawyers at all levels and in all roles, including pro bono. As David Hillard, Partner and Pro Bono Practice Group Leader at Clayton Utz has pointed out, due to the vastly different levels of profitability amongst the cohort of firms with

dedicated pro bono practices, external market data is not the correct comparator when setting salary levels for pro bono lawyers. Instead, the salary levels for pro bono lawyers ought to be determined by reference to the salary bands for other lawyers within the same firm. For this reason the remuneration models described at 2 and 4 above have become the dominant and emerging best practice models.

*“If you want to address unfairness in society, you first need to address it in your own house.”*

— Jilly Field, Pro Bono Partner, Gilchrist Connell, explaining the firm’s adoption of Remuneration Model 4.



# “Protected characteristics” becoming increasingly commonplace in pro bono roles

There is a clear imperative for law firms to recruit diverse talent into pro bono roles. An increasing number of pro bono lawyers are being specifically recruited to ensure pro bono teams more closely reflect the communities they seek to serve.

In the United States, pro bono work directed to the pursuit of ‘racial justice’ has been the fastest growing area of focus for law firm pro bono practices. According to data published by the Pro Bono Institute in its 2023 Law Firm Challenge report, 10 firms created new pro bono roles dedicated to this area of focus.

Minority lawyers are particularly sought-after because law firms recognise the value and importance of having people with ‘lived-experience’ delivering pro bono programmes.

The large and growing community of pro bono professionals includes many individuals who are refugees (or who have experienced displacement), Indigenous people, people with disabilities, people who are neurologically diverse, carers, people from racially and ethnically diverse backgrounds, and members of the LGBT+ community. The focus on building diverse pro bono teams is a trend that will almost certainly continue, which is a very positive reflection of the pro bono sector.

It goes without saying that a significant proportion of this growing cohort of pro bono lawyers have ‘protected characteristics’ under anti-discrimination legislation. To the extent that law firms have ‘discounted’ remuneration models for pro bono positions, or allow the salaries of pro bono lawyers to fall significantly behind their peers, there are emerging risks for the employer in terms of optics, reputation and potential breaches of anti-discrimination law.

## Gender<sup>1</sup>

In addition to being a factor negatively impacting on remuneration, gender is a factor which impacts upon many other aspects of pro bono roles, including conditions, status, autonomy and progression. For example:

- Female pro bono lawyers are more likely to focus their practice in areas such as family law or immigration, which are typically ascribed lower status than male pro bono lawyers who are more likely to practice in areas such as death penalty work and impact litigation.
- A survey of 124 senior pro bono lawyers in the US found that 51 did not or could not practice law. Of the 51 who did not practice law, 48 were female.
- Statistically, female pro bono lawyers are more likely to be in non-practicing roles, with far lower job autonomy. Female pro bono lawyers were less likely to be able to approve pro bono matter opening.
- The data suggests that female pro bono lawyers are more likely to occupy windowless offices than their male counterparts.
- In the US, 77% of senior pro bono leaders (counsel or partner level) are women, but women represent only 60% of pro bono partners.

## Bonus Arrangements

Data collected from 21 employers in 2022 (all respondents were international law firms with dedicated pro bono teams) found that:

- 100% of pro bono lawyers in those firms were eligible for bonus payments
- actual bonus payments (as a percentage of base salary) ranged from:
  - International Head 9% – 17%
  - Senior Lawyer 5% – 13%
  - Junior Lawyer 4% – 7%

Bonus awards for senior pro bono lawyers are typically linked to the achievement of agreed targets (e.g. total pro bono hours per office or region, average number of pro bono hours per lawyer per year, pro bono participation rates etc) rather than being linked to the lawyer's individual production (as is often the case with fee earner roles) – although pro bono lawyers whose roles are focussed on pro bono casework rather than practice management may have personal production targets in place.

## Pro Bono Partners

As at July 2023, there were more than 87 examples of dedicated pro bono partners in law firms in the US, UK, South Africa, Australia and New Zealand.

Historically most pro bono partners were internally promoted candidates who had built or grown a successful pro bono practice at their firm. Given the challenges associated with recruiting senior and experienced pro bono leaders into firms at the early stages of developing a pro bono practice,

there have been several recent examples of experienced pro bono lawyers (at senior associate or counsel level) with strong reputations in the market, being poached by competitor firms willing to offer immediate or fast-tracked partnership to attract top talent.

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