

PILCH Submission to the Inquiry into Improving Access to Victorian Public Sector Information and Data

1. Introduction

- 1.1. In February 2008, the Victorian Parliament asked the Economic Development and Infrastructure Joint Investigatory Committee (**EDIC**) to inquire into and report on improving access to Victorian Public Sector Information and Data (**the Inquiry**).
- 1.2. The Public Interest Law Clearing House (Vic) Inc. (**PILCH**) welcomes the opportunity to provide a brief submission to the Inquiry.
- 1.3. We have read the terms of reference of the Inquiry and the Discussion Paper released by the EDIC in July 2008.
- 1.4. We are pleased that the Inquiry identifies the potential positive impact that improving access to public sector information (**PSI**) could have on civil participation and community empowerment. Our submission will focus on the positive impact the release of PSI could have for Victoria's significant not-for-profit (**NFP**) sector.

2. Executive Summary - Recommendations

- 2.1. We make the following recommendations in the course of this submission:
 - **Recommendation 1:** It would be beneficial to the NFP sector, and to the Victorian community and economy as a whole, if the Victorian government:
 - reviewed and simplified the information it collects about incorporated associations;
 - analysed and used the PSI it collects about incorporated associations; and
 - made PSI about incorporated associations freely available to the public via on-line searching.
 - **Recommendation 2:** That the Victorian government look to provide support for a Guidestar-like application, to make NFP details available to the public for free.
 - **Recommendation 3:** That the EDIC urge the Victorian Government to set up a strategic Working Group to focus on the impact of the release of PSI on the not-for-profit sector in Victoria.
 - **Recommendation 4:** That the EDIC request the Victorian Government to work in collaboration with the NFP sector and support projects like the PilchConnect legal

information webportal, which re-uses PSI in a way that is designed to assist the NFP sector.

3. About PILCH and PilchConnect

3.1. PILCH is an independent, not-for-profit organisation which is committed to furthering the public interest, improving access to justice and protecting human rights. PILCH does this by facilitating *pro bono* legal services to individuals and organisations in need and undertaking law reform, policy work and legal education.

3.2. PilchConnect is a new specialist legal service for NFP community organisations. PilchConnect was established by PILCH in November 2007, in response to an increasing demand by NFPs for legal assistance. The service provides free or low cost assistance to NFPs across Victoria on a wide range of legal and legally-related issues. Its services include:

- a monthly seminar program for NFPs on legal issues relevant to NFPs, such as incorporation, governance, volunteers, tax status and concessions, fundraising laws, regulatory compliance and many other issues;
- a web portal (to be launched in late 2008) that maps and links legal information resources (often existing public sector information) for NFPs, as well as providing a new range of plain-English legal information resources.
- a telephone advice service (forthcoming, subject to funding)
- a legal referral service, whereby we match eligible NFPs who have complex legal issues, with PILCH member law firms who are willing to provide *pro bono* legal assistance. This assistance is often provided by firms as part of their obligations under the Government Legal Services Panel arrangements.

4. The NFP sector in Victoria

4.1. As members of the EDIC will be aware, the Victorian government has recently reviewed the Victorian NFP sector, including its contribution to the Victorian economy.¹

4.2. As noted in the *State Government Action Plan Strengthening Community Organisations, (Action Plan)* released in April 2008, the sector is often underestimated in terms of its economic importance.²

¹ Strengthening Community Organisations Project (SCOP), Final Report of the Steering Committee, 2007 (the SCOP Report); Report on the Review of Not-for-Profit Regulation, State Services Authority, 2007 (the SSA Review) ; Victorian Government's Action Plan : Strengthening Community Organisations, 2008, (the Action Plan). For details of all of these reports see: <http://www.dvc.vic.gov.au/Web14/dvc/dvcmain.nsf/allDocs/RWP5FCB0E3A722237C7CA25727C00059BFB?OpenDocument>

² Action Plan, p 5, see n1.

- 4.3. In 1999-2000, the NFP sector contributed \$20.8 billion to the Australian economy – around 3.3 % of gross domestic product (GDP).
- 4.4. Recent statistics (2006/2007)³ estimate that in Australia the NFP sector employs over 800,000 people and harnesses the skills and energy of over 2.4 million volunteers each year. When the contribution of volunteers is imputed, the contribution the NFP sector makes to GDP rises to 4.7 % - more than the mining industry in Australia.
- 4.5. However, more than its contribution to the economy, the NFP sector plays a vital role in our civil society. Many NFPs work to assist disadvantaged and marginalized groups in society or have other public interest objectives. Leading academic Professor Mark Lyons states:
- Nonprofit organisations make an even more important contribution to society through their demonstration of, and thus encouragement for, collective action. They play a central role in the regeneration of social capital. Nonprofit organisations also sustain and shape a democratic political system. They are the 'elementary schools of democracy'. While the vast number of nonprofit organisations that do not employ people may not contribute greatly to the economy, they contribute greatly to the nonprofit sector's social and economic impact.⁴
- 4.6. This submission will focus on two ways that the strategic release of PSI could assist Victoria's NFP sector:
- (i) the Victorian government holds information *about* Victoria's NFP sector which could be made freely available in a way that maximises the sector's capacity to contribute to the Victorian economy and community (see **section 5 below**) ; and
 - (ii) the Victorian government holds PSI which, if released to NFPs at marginal cost and in a strategic manner, could improve the NFP sector's capacity and ability to provide services to the Victorian community (see **section 6 below**).

5. Public sector information (PSI) *about* the NFP sector in Victoria

- 5.1. In Victoria, it is estimated that there are 120,000 community and NFP organisations, although the exact number of organisations is not known. In 2006, approximately 32,500 of Victoria's community organisation were registered as incorporated associations.⁵
- 5.2. Other than these aggregate figures, there is little, in-depth, publicly available data on the size of the NFP sector or the contribution it make to Victoria's economy and society, despite the importance and value of the sector. The lack of information is a major barrier in understanding and supporting the work of the sector, as identified in the *Strengthening Community Organisations Project (SCOP)* led by Prof. Alan Fels :

³ *Not-for-profit Organisations 2006-07 Cat. 8106.0* Australian Bureau of Statistics, 2008, available at : www.abs.gov.au

⁴ *Third Sector: the contribution of nonprofit and cooperative enterprises in Australia* Mark Lyons, Allen & Unwin, 2001.

⁵ SCOP Report, p 27, see n 1.

This deficiency of information and research is a major barrier to describing the full range of broader community, social and economic contributions of community organisations and the non-profit sector. It also significantly limits the information base available for informing public debate and policy...

...many of the major public policy challenges facing governments, such as the need to increase workforce participation, improve early childhood outcomes, and address chronic health issues such as diabetes, mental health and obesity, require innovative ways of reaching individuals and families. The unique qualities of community organisations mean they are often better placed to identify and develop innovative and local responses to these and other emerging challenges.⁶

- 5.3. However, the Victorian government does hold public sector information (**PSI**) in relation to a significant part of the NFP sector in Victoria - incorporated associations. This is the most common NFP legal structure.
- 5.4. The government (via Consumer Affairs Victoria (**CAV**), Department of Justice) currently collects PSI about the NFP sector when an organisation applies to register as an incorporated association. This includes information about the organisation, its name, registered address, statement of purposes, rules, and structure. The government charges a fee for registration. We understand that CAV do not publicly report on this information (other than very aggregate figures on total numbers of incorporated associations in Victoria).⁷
- 5.5. After registration, incorporated associations are also required to lodge an Annual Statement (basic financial information) with CAV each year. The incorporated association is charged a fee to lodge this information. We understand that the Annual Statement forms (which have to be lodged in hard copy) are simply scanned by CAV and this PSI is not used or analysed.⁸
- 5.6. The PSI referred to in 5.4 and 5.5 above, once collected by CAV is not freely available to the public. Currently, an incorporated association has to pay for access to a copy of its own incorporation certificate, statement of purposes or model rules. Similarly, a member of the public who may wish to find out more about an association they wish to donate to, volunteer for or become a member of, has to pay to access details about the association.
- 5.7. A list of fees that are charged for access to this documentation is available from the [CAV website](#).⁹

⁶ SCOP Report, pp 30,31, see n 1.

⁷ In 2004, Consumer Affairs Victoria conducted research into incorporated associations, but the results of this survey appear to be an unpublished report, see footnote 17 in SCOP Report p 27, see n 1.

⁸ SSA Review, p 26, see n 1. Also limited solvency checks are made on larger prescribed associations who are required to file audited accounts.

⁹ Refer full link at:

<http://www.consumer.vic.gov.au/CA256EB5000644CE/page/Associations+Clubs+%26+Fundraising-Incorporated+Associations-Fees+and+forms?OpenDocument&1=05-Associations+Clubs+%26+Fundraising~&2=20-Incorporated+Associations~&3=080-Fees+and+forms~>

- 5.8. The recent State Services Authority Review (**SSA Review**) proposed abolishing the requirement for incorporated associations to lodge annual statements with CAV as a way to reduce regulatory burden.¹⁰ PilchConnect does not support this recommendation. It is in the interests of the NFP sector (and in line with international trends) that the sector remains transparent and accountable to its funders and supporters (ie. government¹¹, private donors, members, employees and volunteers).
- 5.9. Rather than remove the requirement for incorporated associations to lodge basic annual information, we submit that it is better public policy to review and simplify the information required and allow free, on-line filing.
- 5.10. A lack of information about the sector has been recognised at the state and federal level as a significant barrier to understanding and supporting the NFP sector.¹² The information about incorporated associations (including its financial information) could be used by government to analyse the changing nature of this important sector, and the economic and social contribution it makes to the Victorian community. This could help it to make policy and budgetary decisions that support the sector.
- 5.11. Aggregate data about the NFP sector should also be made publicly available so that the NFP sector itself, academics and others could learn more about the 'hidden sector'¹³ and similarly use this information to assist and support the sector.

Recommendation 1

In contrast to the recent SSA Review recommendation,¹⁴ it would be more beneficial to the NFP sector, and to the Victorian community and economy as a whole, if government:

- (i) reviewed and simplified the information it collects about incorporated associations;
- (ii) analysed and used the PSI it collects about incorporated associations; and
- (iii) made PSI about incorporated associations freely available to the public via on-line searching.

¹⁰ SSA Review, p 36 see n1. It is noted that even if the Victorian government abolished the requirement for incorporated associations to file annual statements, many would continue to collect and report on this information for its funders and for marketing purposes .

¹¹ Government provides funding to the NFP sector both by way of direct grants but also by way of concessions such as tax concessions.

¹² SCOP Report, pp. 30-31, see n 6 ; see also recent reference to the Productivity Commission to gather more national data on the NFP sector - <http://mediacentre.dewr.gov.au/mediacentre/Stephens/Releases/FirstConsultationonaNationalCompact.htm>

¹³ *Third Sector: the contribution of nonprofit and cooperative enterprises in Australia* Mark Lyons, Allen & Unwin, 2001.

¹⁴ See n 10.

- 5.12. In other jurisdictions, governments have supported the publication and use of this information via arrangements third party, NFP organisations - see Guidestar UK (www.guidestar.org.uk) and the US (www.guidestar.com). Guidestar is a web-based, fully-searchable database that provides the public with standard information about NFP organisations. Guidestar makes it possible to search for a NFP by a wide variety of criteria - it makes it easier for donors and beneficiaries to locate the right NFP for them to support.
- 5.13. The economic savings to government of a Guidestar-type initiative appear to have been compelling in other jurisdictions. In the UK, financial support (over £2 million) for the Guidestar application was provided by the UK's HM Treasury Department under the Treasury's **Invest to Save Budget (ISB)** project (www.isb.gov.uk). It was one of a number of projects designed to assist the Third Sector (i.e. the NFP sector) with a view to long term budget savings.¹⁵
- 5.14. There is no equivalent Guidestar application in Australia yet. PilchConnect urges the Victorian government to lead the way in partnering with the NFP sector on a Guidestar-like initiative. It is an area where the economic activity generated through the use of PSI would substantially outweigh the costs incurred by government in the course of generating and disseminating that information.

Recommendation 2 :

The Victorian government look to make NFP details (name, statement of purpose or aims, NFP status, and basic financial information) available to the public for free. This would have the following benefits:

- (i) Allow NFPs to freely access and use or refer to their own information - NFPs would be able to point to the information:
- for marketing purposes, to attract new donors;
 - for the purposes of funding or grant submissions (ie. an incorporated association's entry could be referred to as verification when applying for government grants or to philanthropic organisations, rather than having to repeatedly fill in this kind of information);
 - to provide proof of eligibility for concessions and other benefits (eg. tax concessions) that various State government laws grant to NFPs, rather than making NFPs "re-prove" their NFP status to each individual government department or agency - or worse - to the same agency for each concession.¹⁶

¹⁵ Refer *ISB and Third Sector Projects* at : <http://www.isb.gov.uk/hmt.isb.application.2/common/Third%20Sector%20Projects%20PDF%2064635%20NEW%20INVEST%20TO%20SAVE.pdf> viewed at 15 August 2008.

¹⁶ It is estimated that there are at least 18 different pieces of legislation in Victoria in which some legal outcome turns on the words 'charity' or 'charitable'.

- (ii) Encourage confidence in the community, by allowing potential private donors or potential members to access information about the NFP organisation they are thinking of supporting;
- (iii) Allowing people who are thinking of starting a new NFP organisation to search for others working in the same field in their geographic area - to avoid duplication of NFPs with the same purposes, if unnecessary.

6. PSI made available to assist community organisations

- 6.1. We also urge the EDIC, when inquiring into the issue of releasing PSI, to consider how the release of this information may assist the NFP sector in carrying out its valuable work.
- 6.2. The majority of NFPs are small, rely heavily on volunteers and have limited resources. The imposition of charges for the release of PSI impacts heavily on this sector. In this regard we note and endorse VCOSS's submission to the Inquiry, in relation to the pricing options for PSI (Question 11).

Recommendation 3

That the EDIC urge the Victorian Government to set up a strategic Working Group to focus on the impact of the release of PSI on the not-for-profit sector in Victoria.

- 6.3. The EDIC Issues paper referred to UK research¹⁷ which presented many case examples of “user-generated” websites that re-use government information. The report went on to note :

Government has long-relied on not-for-profit agencies from the third sector to supplement its own information provision to citizens...in practice this could mean government working in collaboration with those that provide [such] websites.¹⁸
- 6.4. PilchConnect is currently in the process of setting up a website that, in addition to other PilchConnect resources, re-uses government information to help other Victorian NFPs understand and comply with the complex array of state and federal laws and regulations that affect the NFP sector in Victoria.

¹⁷ Ed Mayo and Tom Steinberg 'The power of information' www.cabinetoffice.gov.au viewed at 15 August 2008.

¹⁸ Ibid. 40

- 6.5. Research conducted by PILCH¹⁹ about the legal needs of the NFP sector identified that NFP's do not have the resources to find or wade through the myriad of legal and regulatory requirements that apply to their organisation. They wanted a 'one stop-shop' web-portal which would :
- provide them with an overview of their legal requirements; and
 - map (ie link to) the relevant acts, regulations, fact sheets, guidelines, and other resources from the many different government agencies that publish on numerous different websites.
- 6.6. PILCH notes that there are dedicated electronic tools that release PSI in a co-coordinated way that helps business and small business in Victoria. An example is the Business Licensing Information (BLIS) online tool (available at www.bunsinness.vic.gov.au²⁰) which brings together a range of government held information about relevant laws and regulations, to assist businesses to start up. Business owners can enter the details of their business operations into the tool, and it automatically generates a list of laws and regulations that the business needs to comply with, and permits / licences that the business will need.
- 6.7. There is currently no equivalent on-line tool for Victorian NFP organisations.
- 6.8. PilchConnect is using pilot funding to develop a simple NFP legal information web-portal in response to this need. The web-portal will be launched in late 2008 and will look to make a start on addressing the needs of the NFP sector to get co-coordinated access to legal and regulatory PSI. It will map the relevant acts, regulations, fact sheets, guides, and other legal resources that government agencies publish on numerous different websites - which are relevant to NFP organisations.

Recommendation 4

That the EDIC request the Victorian Government to work in collaboration with the NFP sector and support projects like the PilchConnect legal information webportal. PilchConnect would welcome the opportunity to work with the Victorian Government to further develop the web-portal into a more sophisticated on-line tool. Alternatively, PilchConnect could bring its experience of working with NFPs to assist the Victorian Government to develop tools for NFP's such as an equivalent to the BLIS system, for NFP organisations.

¹⁹ See Public Interest Law Clearing House Research Report : Establishment of a Not for Profit Legal Service (May 2007) available at : <http://www.pilch.org.au/files/UNNO8QT8P1/PILCH%20NFP%20Research%20Report.pdf>

²⁰ For direct link see : <http://blis.business.vic.gov.au/OnlineEnquiry/frmMainOnlineEnquiry.aspx>

6.9. Resources such as the PilchConnect web-portal and a BLIS type on-line tool for NFPs have the potential to become a significant resource to assist with NFP regulatory compliance, leaving NFPs with more time to do what they do best - provide services that make a significant contribution to Victoria's economy and society.