

20 July 2007

By email

Professor Allan Fels AO
Chair
Stronger Community Organisations Project Steering Committee
Department for Victorian Communities
1 Spring Street,
Melbourne, VIC 3000

Dear Professor Fels

Submission – Stronger Community Organisations Project (SCOP)

Thank you for the opportunity to make a submission to the SCOP Steering Committee and for including the Public Interest Law Clearing House (**PILCH**) in the stakeholder consultations last month. The work of the Victorian government, via SCOP and the Department for Victorian Communities (**DVC**), on strategies for supporting and sustaining the community sector is vitally important. The well-being of the sector, its good governance and its effectiveness are critical to the Victorian community as a whole.

In terms of the specific questions raised in the SCOP Discussion Paper, we refer to the feedback which Ms Paula O'Brien (Executive Director) and Ms Sue Woodward (Policy Officer) provided at the SCOP consultations held on 26 June 2007.

In terms of the new service model proposed by PILCH (see below), we believe that the service is clearly within the remit of SCOP as it offers an efficient mechanism for government, in partnership with the philanthropic, not-for-profit and business sectors, to promote and support the highest possible standards of governance by community organisations. By building the capacity of the community sector in this way, the new service will enhance the sector's transparency and accountability.

More information about the model was provided in a meeting between Ms Woodward, Mr Lampe and his colleagues on 16 July 2007. The following is a general overview of the model and some additional points about which Mr Lampe sought clarification. We would be happy to answer any further queries the Committee may have.

PILCH has also made a submission to the review being conducted by the State Services Authority (copy attached by separate email). That submission also outlined the proposed new legal service.

New legal service for not-for-profit organisations

On the basis of extensive consultations and research into services in Australia and overseas, PILCH has confirmed the clear need for a specialist not-for-profit (**NFP**) legal service. PILCH proposes to conduct a 3-year pilot of this new service, initially in Victoria and with a view to a national roll-out. We have in principle agreement from Volunteering Victoria about collaboration to establish the service in Victoria, and support from Volunteering Australia and Volunteering NSW about a national roll-out. We also have interest from CPA Australia.

Key objectives of the new NFP service are to:

- a. provide NFP organisations with high quality, accessible, tailored, free and/or low-cost legal and legally-related information, advice, and training;
- b. enhance the capacity and efficiency of the NFP sector by offering high quality legal and legally-related training and resources to those dealing with and providing services to NFP organisations and volunteers;
- c. become a specialist hub of NFP legal and legally-related knowledge and practice;
- d. engage in systemic advocacy and law reform in areas of relevance to the NFP sector; and
- e. provide access to pro bono specialist legal advice for eligible NFP organisations via the Public Interest Law Scheme that will continue to be administered by PILCH.

NFPs (particularly smaller groups that are reliant on volunteers) currently have very limited access to, and resources to pay for, high quality legal assistance in relation to both NFP-specific issues (eg, tax status) and legal matters generally. While some resources are available, most are not well-tailored to the needs of NFPs or accessed by them. For example, it is not intuitive to think of Consumer Affairs Victoria or Australian Securities and Investments Commission as a source, for example, of information on the duties of the organisation's officers. Government small business initiatives do not seem relevant if you are a volunteer group, although the information is often applicable.

As a crucial first step, a high quality web-portal will be created so that existing resources can be mapped accurately, and access to them by NFPs improved. To this end, clear NFP-specific summaries and interfaces will be created. For example, the issues commonly faced during the 'life cycle' of a NFP will be mapped with checklists, plain English guides, frequently asked questions, precedents, case studies and other resources added where a need is identified. This will ensure existing services and resources are not duplicated, and will provide national access for all NFPs. The service will adopt a pro-active approach to preventing legal problems, for example, development of an organisational 'legal health check'.

Building on this specialist web-portal and a range of other services, a telephone and on-line advice service will be provided. Para-legal staff will take the enquiries and, when necessary, in-house NFP lawyers (trained in, or recruited for their experience in, common NFP issues such as taxation, incorporation issues, governance and fundraising) will give basic advice on these common issues, or consider if a specialist pro bono referral via PILCH is warranted. This type of service is keenly sought by NFPs.

The new service would take a broad view of what is a 'legal' issue. Many NFPs sector do not think they have any 'legal issues' - they only think of legal matters as those involving courts and prosecution. However, a broad definition would encompass legal issues such as a risk management process aligned to good governance.

Research Report

Attached (by separate email) is a copy of our 'Establishment of Not-for-Profit Legal Service - Research Report' 1 May 2007 (**Report**). This is the final version of the draft report provided to Mr Lampe (by email on 10 April 2007).

The Report expands on the summary of the proposed service outlined above. The Report gives an overview of PILCH; reviews existing PILCH services; provides information on the complex regulatory environment in which NFPs operate; looks at the need for new services and documents feedback from NFPs, members of PILCH and other stakeholders; considers other service models (Australian and overseas); proposes a new PILCH service delivery model; and looks at funding options.

Points of clarification

Why provide these services via PILCH rather than other organisations (eg, peak bodies)?

PILCH is uniquely placed to establish the new service. PILCH is the only organisation able to garner support from the legal profession (and, possibly, the accounting profession) to assist and build the capacity of the community/NFP sector in this way. No other organisation, that could possibly deliver this service, has an established and strong track record with all arms of the legal profession (private, corporate, academic, community), *and* the NFP sector *and* the Victorian Attorney-General. PILCH is the largest broker of pro bono legal services in Australia and, since its inception in 1994, this has included assistance for a growing number of NFPs.

It is worth noting that the service will be delivered by a new entity that will have a name that describes its role eg, 'Community Organisations – Legal Assistance' (the name is yet to be finalised). It will, in addition to being accessed via the typical internet searches, be promoted via PILCH, Volunteering Victoria/Australia networks (eg, via local volunteer resource centres), (we hope by) government, and peak NFP networks (eg, VCOSS). This means that NFP organisations will not need to be aware of the PILCH name to find the service.

Peak bodies are supportive and keen for PILCH to take on this role: see attached letters of support from VCOSS, Volunteering Vic and Volunteering Aus (key peak bodies) and support from several peaks that attended our focus group (Carers Victoria, VICCSO, Community Housing Federation of Victoria – see Report, heading 9.2, attachment 2D).

Even if a peak body were to employ their own lawyer, they would not have experience in supervising that person and the professional indemnity insurance would be expensive. By comparison, the new service will be an accredited (specialist) community legal centre. It will, therefore, be able to obtain coverage under the community legal centre insurance fund which, for one (more modest) fee, means all in-house lawyers and all volunteer lawyers are covered. Funding of individual lawyers in each peak would seem an inefficient model: eg, that lawyer would have little professional support; issues common for all organisations would be duplicated in each peak (eg, intellectual property, employment); and it would not promote the notion of an expert NFP hub (eg, that can be consulted by government on issues relevant to sector reform). If any peak does offer legal advice to its members then this would be seen as an advantage to the new service – ie, one part of the sector that could be referred to another service as is already the case for arts organisations (via the Arts Law Centre).

If a particular need is identified and funding could be obtained (eg, via the relevant peak and/or government department), the service would consider employing *within* the service an in-house lawyer who specialises in, say, sports law or issues that commonly arise for NFP child care centres. A peak body is also unlikely to be of assistance with advice prior to incorporation – one of the most common enquiries currently received by PILCH.

Why a generalist NFP service rather than a range of specialist legal services?

PILCH's research draws on successful US models (see Report, attachment 3B) that are all generalist NFP services. Many of these services have operated well over the longer term and have been successfully replicated in other States. Ms Tabitha Lovett (Manager, Public Interest Scheme) has been awarded a Churchill Fellowship to visit some of these services next year.

Feedback received by PILCH from the sector suggests that organisations are looking for a single port of call on legal issues, rather than having to move to different services based on the particular issue they face. While the new service will refer to existing specialist services where appropriate (eg, Arts Law Centre, Environmental Defenders Office and Communications Law Centre), the PILCH service will have a wide range of specialist practitioners (via the major law firms that are PILCH members) supporting its in-house

lawyers. In this way, a range of areas can be covered or, at least, the need for a specialist lawyer (eg, via a pro bono referral from PILCH) identified.

What is the likely scope/mix of services and their relationship to governance training already available?

The exact mix of services will be determined once funding is known. It is a core premise that if demand is met by an existing service then it will not be duplicated by the new service. The web portal will map and link existing legal and legally-related services and this will help identify service gaps.

Our research shows that the greatest area of unmet need is access to *legal* services and this will be the core expertise of the new service. However, in order to provide a holistic legal service, we have identified a range of pro-active and 'preventative' legally-related services such as the organisational 'legal health check' and seminars (eg, on governance, financial and management issues). The existing seminar program run by PILCH will be transferred to the new service, and will continue to be reviewed, improved and expanded (especially to regional centres). The seminars will continue to be low-cost and, where appropriate, will be offered via a peak body with support from a PILCH member firm. PILCH's current NFP seminar series (\$25 per session) are well attended with excellent feedback – the 'Best Practice Governance' seminar held in June 2006 had 130 attendees which would indicate that demand is greater than current supply.

Funding

Given the innovative nature of the service model proposed, 3 year start-up funding is required so that robust evidence of the benefits can be obtained, thus enabling a more diversified funding base to be developed over time. We are seeking a mix of funding from corporate, philanthropic and government sources. For liability and other reasons, a separate entity will be established, but administrative and management expenses will be minimised by co-location with PILCH.

The activities of NFPs, and the client-base that many of them serve, cross nearly all government departments: eg, health, housing, aged care, education. Further, the Department of Justice, Consumer Affairs Victoria (as the Registrar of incorporated associations) and DVC all have a keen interest in the compliance by, and good governance of, the community sector. It is both an advantage and a difficulty that there are a range of departments that can be considered for funding of a specialist service for NFPs. It would seem that DVC is the department with the most relevant overall mandate. As the Victorian government aims to deliver 'joined up government', we consider that the new service could serve as a showcase for both delivery of this pledge and government support of the community sector.

In order to ensure the long-term viability of a specialist NFP advisory service, a mix of funding sources will be developed. The Report (heading 14) considers some of the options including the development of a membership fee for certain services/certain NFPs and fee-for-service income. The fee-for-service income could also include income from training and resources for NFP service providers (eg, the legal and financial professions). While we see an on-going role for part government funding (eg, as a specialist community legal centre), the service has a range of other options to support its work post the 3-year trial.

Conclusion

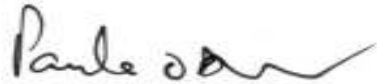
PILCH's proposal in relation to a new specialist NFP legal and legally-related service represents an evidence-based initiative that is uniquely placed to garner support from the private legal profession (and, possibly, the accounting profession) to assist and build the capacity of the community sector. It is a service that, with a contribution from government, could become a best practice model of tri-sector collaboration, consistent with DVC's support of the Agora Think Tank. As NFPs deliver services and receive funding from so many departments, the nature of the funding from government could also model a whole of (Victorian) government approach, with potential for future state-federal collaboration.

The new specialist NFP service will, by a direct linkage with the existing PILCH pro bono referral service, provide integrated assistance to NFPs, initially in Victoria but with an easy path to a national roll-out via support from partner organisations.

We seek the SCOP Steering Committee's support for our new specialist NFP service, together with a recommendation for 3-year part funding to pilot the service in Victoria.

If you would like any further information or would like to discuss our submission, please do not hesitate to contact Ms Woodward.

Yours sincerely,



Ms Paula O'Brien
Executive Director



Ms Sue Woodward
Policy Officer

Attachments (by separate email):

1. Establishment of Not-for-Profit Legal Service Research Report, 1 May 2007.
2. Submission to the State Services Authority, 18 May 2007.
3. Letters of support from:
 - a. Mr John Emerson, Freehills dated 8 May 2007
 - b. Ms Cath Smith, ED Victorian Council of Social Services dated 15 May 2007
 - c. Ms Dianne Embry, CEO Volunteering Victoria dated 9 May 2007
 - d. Mr Ian Rentsch, President Volunteering Australia dated 14 May 2007