

12 June 2009

Ms Deborah Simmons
Manager
Reducing Red Tape Project
Department of Education and Early Childhood Development
GPO Box 4367
Melbourne VIC 3000

By email

Dear Ms Simmons

Submission – Reducing Red Tape Project, Early Childhood Development Sector Consultation

Thank you for the opportunity to make a submission to the Department of Education and Early Childhood Development's Reducing Red Tape Project (**Project**) and for including PilchConnect in your consultation process.

We commend the Department for initiating the Project, and the Victorian Government's commitment to red tape reduction targets. Reducing the administrative burden placed on early childhood development service providers (**ECDSPs**) will allow them to spend more time on their important core service delivery.

1. About PILCHConnect

PilchConnect is a specialist service within the Public Interest Law Clearing House (**PILCH**). PilchConnect delivers legal services to small to medium not-for-profit (**NFP**) community *organisations* (in contrast to local community legal centres that act for individuals).

PilchConnect was established by PILCH in 2008 in response to increasing demand by NFPs for legal assistance, and provides free or low cost assistance to NFPs across Victoria on a wide range of legal and legally-related issues. We work in partnership with the Australian Centre for Philanthropy and NonProfit Studies at Queensland University of Technology and with peak bodies such as Volunteering Victoria, VCOSS, Kindergarten Parents Victoria and Community Childcare Centres Association (**CCC**). The service is presently in year one of a three year pilot. Our services include:

- (i) **referrals to law firms for pro bono work** - matching eligible, public interest NFPs, who have complex legal issues with PILCH member law firms to provide free legal assistance;
- (ii) **telephone advice service** – staffed by in-house lawyers to address 'quick' common queries raised by NFPs (pilot to commence July 2009);

- (iii) **legal information** - a specialist NFP web portal that maps and links existing free legal information and resources, as well as providing a new plain-English fact sheets, FAQs, case studies, guides etc under the framework of the 'lifecycle' of an organisation;¹
- (iv) **legal training** - a monthly seminar program for NFPs on relevant legal issues (for example, incorporation, governance, volunteers, tax concessions, fundraising laws, regulatory compliance) and piloting outer metro and regional training; and
- (v) **law reform and policy work** - significant work on regulatory reform issues of importance to the NFP sector has already been undertaken by PilchConnect (for example, submissions to 2008 Senate Inquiry, Henry Inquiry, 2007 Federal Treasury Inquiry on Unlisted Companies, and the 2007 Victorian State Services Authority Review).²

By developing as a sector-based hub of NFP legal expertise, PilchConnect is working to achieve excellent standards of governance and regulatory compliance by NFP community organisations so their economic and social contribution to Victoria and Australia is maximised. In effect, we are 'helping the helpers' by supporting the establishment and the effective running of well-governed community organisations. In turn, these NFPs provide crucial support and assistance to the local communities in which they operate – such as the important services (NFP) ECDSPs provide.

2. Regulatory Burdens on the Early Childhood Sector

Assistance provided by PilchConnect to ECDSPs

Since our inception in 2008, about 17 ECDSPs have contacted PilchConnect seeking advice and assistance with legal issues. The organisations that have approached us are mainly kindergartens and community child care centres. There are others, not separately identified as ECDSPs, which provide a range of welfare services including early childhood services. We do not assist 'for profit' providers.

Some of these enquiries have resulted in a referral to a member law firm for pro bono legal advice. In order best allocate (limited) pro bono assistance we have 'public interest' eligibility criteria.³ Even where it has not been appropriate to refer the matter (for example, the particular matter does not have sufficient legal merit), or we cannot provide pro bono assistance (for example, it is an internal member dispute), we provide other assistance to groups. For example, connecting them to more appropriate services for assistance such as the Victorian Dispute Resolution Centre.

PilchConnect has also responded to strategic issues for the ECDSP sector. For example, following an approach from CCC, PilchConnect organised (at short notice) a seminar to provide interested NFP childcare operators with a very practical overview of the legal issues to consider before making a decision to bid for the 'unviable' ABC2 child care centres being offered for sale by the court appointed receiver. The collapse of ABC left parents and 20,000 children vulnerable, with no assurance of access to childcare, and many of the ABC2 centres were located in regional and rural areas, with few alternate childcare options. PilchConnect

¹ See www.pilch.org.au/legal_info/

² For all PilchConnect submissions see <http://www.pilch.org.au/Page.aspx?ID=175>

³ See <http://www.pilch.org.au/pcguidelines/>

determined the matter met its 'public interest' criterion as there was a public interest in gaining greater diversity of ownership in the childcare sector, as well as in ensuring that existing NFP child care centres made well-informed decisions about acquiring new assets or a new entity. The issue was also one that affected the entire NFP childcare sector.⁴

Nature of ECDSPs legal issues

The nature of the enquiries from ECDSPs reflect the broader issues facing small-to-medium NFPs – for example, legal structure and constitutional issues, eligibility for concessional tax status and insolvency concerns. Although PilchConnect is unable to comment specifically on the amounts of time and money invested by ECDSPs in complying with their regulatory obligations, an analysis of the enquiries received by PilchConnect identifies areas of regulation which ECDSPs find complex and difficult to comply with. Whilst there do not appear to be any early childhood sector specific concerns raised by the enquiries received through PILCH, it is clear that the following common NFP issues are also concerning ECDSPs:

- **Insolvency** - queries received from small to medium ECDSPs indicate confusion as to when an organisation is deemed insolvent, and the consequences of operating whilst insolvent
- **Governance** - many organisations contact PilchConnect seeking assistance to review their constitution, and advice as to the roles and responsibilities of the Board of Management. Enquiries have also been received seeking assistance to ensure that older constitutions comply with current laws
- **Property** - many organisations seek advice as to how to negotiate or re-negotiate leases; their obligations under leases; and the implications of being located on land that does not belong to them (for example, the land belongs to the local council – does this give the council a right to influence the management of the organisation?)
- **Privacy issues and background screening checks** – how client information needs to be protected, working with children and police checks etc, and
- **Tendering processes and grant applications** - a number of enquiries have been received seeking assistance with tendering processes and grant applications. It appears that many small-to-medium ECDSPs (like many NFPs) lack the knowledge and expertise to properly complete tender and grant documentation.

3. PILCH's submission to the 2007 Review of Not-for-Profit Regulation

We attach our submission to the Victorian State Services Authority 2007 Review of Not-for-Profit Regulation.⁵ This submission provides information on the complex regulatory environment that is faced by NFP organisations and identifies specific areas of regulatory complexity (including service and grant processes, legal structures and taxation advice).

As community-based ECDSPs face the same problems as other small, volunteer-based NFPs, we put forward this report to be considered as part of the Project.

⁴ See full article in *Pilch News* <http://www.pilch.org.au/Page.aspx?ID=297>

⁵ Also available on our website, see <http://www.pilch.org.au/Page.aspx?ID=175>

4. Conclusion

As indicated by earlier email, PilchConnect would be happy to participate in a focus groups convened as part of the Project.

Please contact PilchConnect if you would like clarification or require further information on areas identified in this submission.

Yours sincerely



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Enc. SSA Submission

