

# **ESTABLISHMENT OF NOT-FOR-PROFIT LEGAL SERVICE**

## **RESEARCH REPORT**

**May 2007**

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## **NOT-FOR-PROFIT LEGAL SERVICE PROJECT EXECUTIVE SUMMARY**

With funding from the Victoria Law Foundation and the Transport Accident Commission we have conducted research into the need for a specialist not-for-profit (NFP) legal service. This project is part of PILCH's 2006-2009 Strategic Plan and, in terms of its 2007 Implementation Plan, is one of its top priorities.

### **Outline of Report**

This Report recommends the establishment of a specialist legal service for NFP organisations under the PILCH umbrella. It reviews existing PILCH services; provides information on the sector and 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 current Victorian government reviews of the sector and other service models (Australian and overseas); proposes a new PILCH service delivery model; and looks at funding options.

### **Review of the current services provided by PILCH**

In a typical year, nearly 100 NFPs would be referred for free assistance by PILCH. These NFPs vary greatly in size and type. Many are very small and not well-known. The range of legal issues they face is also diverse. Aside from those matters that lead to a referral, help is given by PILCH to approximately a further 200 NFPs each year, often connecting them to other services. Feedback about PILCH's existing service has been positive. The recommendations made in the Report for new services are intended to both preserve and enhance PILCH's referral service.

### **Significance of the NFP sector**

In order to appreciate the public benefit of providing better legal services to the NFP sector, the Report provides an overview of the sector (see Heading 5). It is worth noting that, in economic terms, alone:

- the giving of money, goods and services to NFPs by individuals and business is estimated to total \$11 billion (2004, even excluding Tsunami appeal);
- NFPs contribute 4.7% of GDP, 6.8% of total employment, with total revenue of approximately \$33.5 billion; and
- in comparative terms, NFPs add more to GDP than the mining industry.

In Victoria:

- there are 32,552 incorporated associations (an increase of 4.7% on 2005);
- many are very small: only 3,092 were 'prescribed associations' ie, had revenues of at least \$200,000 and/or assets of \$500,000; a few are very large (millions of dollars in revenue); and
- 87% of all adult Victorians gave a donation in 2005 and over 40% volunteered for a NFP.

### **Need for new services**

Other than PILCH's existing service (and the more limited service offered by some of our interstate counterparts), there is no discrete, specialist pro bono legal advice service in Australia for NFPs. While legal aid is provided for individuals who meet a means test and other eligibility criteria, there is no similar government assistance for NFPs. There is federal government arts funding for the Arts Law Centre, which provides low-cost assistance to arts NFPs, but this is only a small part of the NFP sector.

There is considerable evidence (both that PILCH has gathered and from the findings of a major project in NSW, see Heading 9) to show that access to legal information is an important concern for NFPs. Major government and other reports highlight that the regulatory environment for NFPs is even more complex than for business (see Heading 6.5), yet the ability of NFPs to access and pay for high quality legal assistance is very limited, particularly for the majority that are small and rely heavily on volunteers. It is also important to ensure that the often limited financial resources of NFPs are not diverted from core service delivery.

The overall aim in recommending a specialist legal service for NFPs is to improve the capacity of NFPs to meet their legal obligations, be well-governed and, most importantly, be more effective service providers to the community.

### **Current Victorian government reviews**

The creation of a separate department (Department for Victorian Communities) in 2002 and the recent announcement of two reviews of the sector (outlined under Heading 7), highlight current interest by the Victorian government in the community/NFP sector. In many ways, Victoria is providing leadership on the regulatory and other issues that are important for the sustainability and on-going growth of the sector. It seems that Victoria is the state most likely to push for national legislative reform, as well as looking for ways to improve its own state-based regulatory environment, and the support it gives to the sector. A specialist NFP legal service will enhance the work being undertaken by the Victorian government.

### **New PILCH services**

Drawing on research of overseas (particularly in the USA) and other Australian models, a wide range of additional legal services have been considered. Feedback was sought on which additional services would be of most value to NFPs and discussions have been held with PILCH members about their role in providing and/or supporting these services on a pro bono basis. In order to avoid duplication and to ensure better use of existing services by NFPs, the recommendations are cognisant of the need to map and better link existing services.

The recommendations for new services to be provided by a specialist NFP legal service are outlined under Heading 13. A two-stage implementation process is outlined. Stage 1 centres on the development of a specialist NFP legal services web-portal with a range of other integrated services. These will include e-bulletin updates, fact sheets, frequently asked questions and precedents. Suggestions about pro-active work, such as organisational 'legal health checks', are also made. Stage 2 involves the addition of a telephone/on-line basic advice service staffed by in-house PILCH lawyers with back up from members (via referrals, staff training and an expert panel).

### **Funding considerations**

A range of possible funding sources is considered under Heading 14. Given the innovative nature of the model, 3 year funding is needed so that robust evidence of the benefits can be obtained, thus enabling a more diversified funding base to be developed over time. Philanthropic and/or corporate funding is being sought for the start-up phase. A commitment of matching Victorian government funding is also being explored. In the medium-to-long term, this service model could be rolled-out across Australia, thus building the case for some federal government funding. Some membership and fee-for-service income is also possible in the medium-to-longer terms.

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1 May, 2007

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## ***Specialist legal service for not-for-profit organisations***

### **1 OVERVIEW OF PILCH**

#### **1.1 Mission**

PILCH's mission is to further the public interest, improve access to justice and protect human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education.

PILCH is committed to:

- providing a responsive, effective and professional service to its members and the community;
- acting with integrity and fairness at all times;
- treating all people equally and with dignity and respect; and
- innovation and creativity in pro bono.

The Not-for-Profit Legal Service Project (the Project) is part of PILCH's 2006-2009 Strategic Plan and, in terms of the 2007 Implementation Plan, is one of the top priorities.

#### **1.2 Services**

PILCH acts as a facilitator or intermediary for pro bono legal assistance between the community and the private legal profession. Its main role is to receive, assess and refer requests for pro bono legal assistance. PILCH aims to work creatively to match clients with lawyers willing to give their services pro bono (for free).

PILCH coordinates the delivery of pro bono legal services through four schemes:

- the Public Interest Law Scheme;
- the Victorian Bar Legal Assistance Scheme;
- the Law Institute of Victoria Legal Assistance Scheme; and
- the Homeless Persons' Legal Clinic.

PILCH assists individual clients who satisfy legal merits and means tests, and who are ineligible for legal aid. If the client's matter raises issues of public interest that require legal resolution, they will be referred through the Public Interest Law Scheme. Otherwise, they may be assisted through one of the other schemes. The lawyer who accepts the referral then acts for the client on a pro bono basis.

Not-for-profit (NFP) organisations with public interest objectives, or that provide services that are in the public interest, are also eligible for assistance through the Public Interest Law Scheme (but not under the other schemes as their guidelines are limited to individuals). PILCH aims to support and enhance the work done for and on behalf of the community by such organisations, which typically function with limited resources, by providing access to quality legal services.

The Homeless Persons' Legal Clinic assist people who are homeless or at risk of homelessness through the provision of legal services in relation to civil law and summary crime. The services are delivered by PILCH member law firms at 10 sites around Melbourne which are frequented by homeless people in order to access other related services, such as food or accommodation.

In January 2006, PILCH and the Victorian Council for Civil Liberties Inc. jointly established the Human Rights Law Resource Centre Ltd. The Centre aims to promote the harmonisation of international and domestic law relating to human rights in Victoria and Australia, particularly the human rights of people that are disadvantaged or living in poverty, through the practice of law. It seeks to achieve this aim by supporting, conducting, coordinating, resourcing, facilitating and enhancing the provision of legal services, litigation, education, training, research and advocacy regarding human rights.

### **1.3 Funding**

PILCH's membership represents the diversity of the Victorian legal profession and includes private law firms of all sizes, the Victorian Bar, the Law Institute of Victoria, corporate legal departments, community legal centres and university law faculties. A current list of members is available at: [www.pilch.org.au](http://www.pilch.org.au).

Members support PILCH in a variety of ways including financial and 'in kind' support and by accepting referrals to provide legal assistance.

PILCH receives its income primarily from membership fees. The Homeless Persons' Legal Clinic receives core recurrent funding from the Department of Justice. The Victorian Bar Legal Assistance Scheme and the Law Institute of Victoria Legal Assistance Scheme are funded by the Victorian Bar and the Law Institute respectively, with support from the Legal Services Board. PILCH seeks private sector, government and philanthropic funding to supplement its core income.

## 2 **PROJECT OVERVIEW**

### 2.1 **Project objective**

Within the context of PILCH's mission and current strategic plan, the overall Project objective is to **provide both those NFP organisations that are eligible for pro bono assistance through PILCH's referral scheme and the NFP sector as a whole, with increased access to pro bono legal services and information** to, in turn, enable them to:

- concentrate their efforts on service delivery (including related activities such as community education, fundraising and advocacy);
- preserve their resources for service delivery; and
- improve their own capacity, management and organisational strength.

If these objectives are achieved, then the NFP sector and, in turn, the multitude of people it assists and thus our civil society in general, will be strengthened.

### 2.2 **Project funding**

In 2006, a grant was received from the Victoria Law Foundation (VLF) to conduct research into the legal needs of NFPs in order to assess the viability of establishing a specialist legal service for NFPs. The research funded by the VLF, in addition to funding provided by the Transport Accident Commission (TAC) to employ a solicitor to undertake further policy work, underpins this Report. PILCH is grateful to VLF and TAC for this support.

### 2.3 **Project officer**

Ms Sue Woodward was appointed as the PILCH project officer in September 2006 (2 days per week). By way of relevant experience, Ms Woodward published a major research report in 2004 for the University of Melbourne, Centre for Corporate Law and Securities Regulation, titled '*A Better Framework: reforming not-for-profit regulation*'<sup>1</sup>. She will be teaching a new masters subject at Melbourne University in 2008 called 'Governing not-for-profit organisations'. Ms Woodward also has experience as a board member of several NFPs organisations and has dealt with a wide range of NFPs in the course of her work for a large Victorian philanthropic trust.

This Report has been prepared by Ms Woodward with assistance from Ms Tabitha Lovett (Manager, PILCH Scheme), Ms Tarni Perkel (law student intern) and Ms Paula O'Brien (Executive Director, PILCH).

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<sup>1</sup> The University of Melbourne, Centre for Corporate Law and Securities Regulation, 2004 see <http://cclsr.law.unimelb.edu.au/go/centre-activities/research/reforming-not-for-profit-regulation-project/>.

### **3 REPORT FORMAT**

This Report recommends a new range of services for NFPs after:

- reviewing the current services provided to NFPs by PILCH and others;
- considering the size and contribution of the NFP sector;
- examining the overall regulatory environment in which NFPs operate;
- considering current Victorian government reviews of the sector;
- looking at the legal service needs of the sector;
- drawing on overseas models for the provision of pro bono legal services for NFPs, and specialist Australian examples, to formulate a range of possible new services;
- reflecting on the results of consultations undertaken with NFPs about existing services, the need for additional services and which new, additional services would be most valuable;
- referring to consultations with PILCH members about the referrals they have received from PILCH to assist NFPs, and what further services they may be interested in providing in the future;
- referring to consultations with other key stakeholders; and
- considering the implications of the introduction of any new services for PILCH as an organisation.

In the light of this information, this Report makes recommendations for the introduction of new PILCH services and considers funding options for them.

## 4 **PILCH's CURRENT SERVICES**

Since its inception in 1994, PILCH has provided free legal assistance to eligible NFPs by leveraging the pro bono services of law firms, academics and barristers.

In a typical year, nearly 100 NFPs would be referred for free assistance. These NFPs vary greatly in size and type. Many are very small and not well-known. The range of legal issues is also diverse, although there are some issues that are NFP-specific (eg, eligibility for concessional tax status, volunteers). Aside from those matters that lead to a referral, help is given to about a further 200 organisations each year: eg, defining the nature of their issue and connecting them to other services.

PILCH, with assistance from its members, runs seminars on various legal and financial issues which arise in the course of a NFP's day-to-day operation, such as governance, taxation and employment law. Any NFPs can attend these seminars.

### 4.1 **Eligibility**

Not all NFPs are eligible for referral to a pro bono lawyer under the Public Interest Law Scheme. The Manager of the PILCH Scheme considers a variety of factors such as whether the organisation serves (or proposes to serve) the disadvantaged, benefit low income clients or work in the public interest. PILCH will generally not refer a NFP for assistance with board or internal disputes unless the dispute may undermine the organisation's ability to continue providing its services and programs. Revised eligibility guidelines are currently being prepared as part of PILCH's 2007 Implementation Plan.

NFPs that are not eligible for a referral under the PILCH scheme are often given other assistance such as information about alternate avenues of assistance: eg, the Victorian Dispute Resolution Centre (for internal disputes<sup>2</sup>), Consumer Affairs Victoria (for incorporation enquiries), and goodcompany<sup>3</sup> and Melbourne Cares<sup>4</sup> (for pro bono, non-legal assistance).

### 4.2 **Referral process**

The majority of enquiries to PILCH are made by telephone and are fielded by law student volunteers. In the case of enquiries from NFPs, the questions that are asked in order to determine the organisation's eligibility for pro bono legal services and the type of assistance sought, focus on the organisation's legal structure (ie, incorporated or unincorporated and type of legal structure), its principal activity and services, and the legal issue it is facing. The volunteers and solicitors at PILCH will also consider whether there are alternate avenues of assistance available to the NFP. If the solicitor is satisfied that the NFP is eligible for pro bono assistance and requires a referral to a PILCH member, he/she prepares a referral memorandum which sets out details of the organisation (including legal structure, principal activity and funding sources) and the legal assistance requested. The solicitor then 'matches' the client to a PILCH member to provide the advice sought. Once the matter is referred, the NFP and the law firm's relationship proceeds as a normal lawyer/client relationship, except that the NFP is not paying fees for the legal advice. The solicitor from PILCH conducts progress reports every two months to ensure the matter is progressing smoothly.

When a referral is made to a PILCH member, it is for advice or representation in relation to a discrete issue (ie, only for that particular matter), and there is no obligation on the member firm/barrister to provide advice on other matters. However, in some instances, an initial referral has been the beginning of a longer-term relationship between the NFP and the member firm (see

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<sup>2</sup> See <http://www.justice.vic.gov.au/disputes/>. This is a free, government-funded mediation service that operates across the State.

<sup>3</sup> See <http://www.goodcompany.com.au/>. This is an on-line, volunteer matching service.

<sup>4</sup> See <http://www.melbournecares.org.au/>. They aim to 'broker mutually beneficial and sustainable partnerships with the private, public and voluntary sectors in Melbourne to tackle disadvantage and social exclusion in the City [Melbourne]'.

Heading 4.5, Case Study 1) and may even include other non-legal services such as IT support, financial advice, human resources advice, printing, advocacy and submission writing.

PILCH has developed an understanding of the types of matters and organisations that its member firms have particular expertise and interest in assisting. In effect, each member firm has, over time, developed its own 'pro bono profile'. This 'pro bono profile' is not stagnant. By regular contact between PILCH and its member firms (eg, via meetings with the pro bono co-ordinators, representation on PILCH's Board and conferences), strong relationships have been built so that PILCH is readily aware of any changes or refinements to the capacity and/or type of work its member firms are willing to accept.

By virtue of the broad range of NFPs that PILCH has dealt with over the years, PILCH also has expertise in understanding many of the issues and concerns commonly confronting NFPs. PILCH staff often spend considerable time understanding the nature of the NFP organisation (or group wishing to incorporate) and obtaining details about the problem, including determining whether or not it is of a legal nature.

In summary, PILCH's referral process aims to ensure that:

- timely, high quality pro bono advice and/or representation is obtained by the NFP client;
- the time taken by PILCH to find a pro bono provider willing to take on the referral, and the time spent by the pro bono provider reviewing requests, is minimised; and
- the pro bono provider is satisfied that it was properly briefed about the NFP client and the type of assistance required.

Thus, it is a critical part of PILCH's role to understand both the pro bono provider's 'profile' and the nature of the NFP's request so that the outcome for *both* the provider and the NFP client is maximised. If this 'partnering' or 'matching' of client and provider is successful, there is not only an immediate benefit to the NFP client (and, in turn the people they assist), but it also increases the likelihood of the member firm/barrister agreeing to take on further pro bono work. Fostering a strong pro bono culture and increasing the pro bono capacity of the legal profession is central to PILCH's mission.

PILCH is of the strong opinion that this understanding and knowledge of both parties is a critical success factor; it is an effective use of PILCH's staff and volunteer time to obtain both clear information about the nature of the assistance sought by the NFP, and to make an active referral to a lawyer with capacity and relevant expertise. PILCH believes, at least for the provision of legal advice, this assessment and referral process is more effective than a self-matching, on-line system.

### 4.3 Seminars

In 2006, building on previous occasional seminars, PILCH began holding a series of half-day training and information seminars on issues which commonly arise in the course of an NFP's administration, operation and governance. The 2006 seminars, which were presented by PILCH's members, covered the following topics.

Date	Topic	Law Firm	No of Attendees
28 June 2006	Best Practice Governance for NFPs	Clayton Utz	130
11 August 2006	Taxation Issues affecting NFPs	Blake Dawson Waldron	80
9 November 2006	Employment Law Issues affecting NFPs	Maddocks	20

The participants at each seminar were asked to complete a survey to rate (on a scale of 1-5) the seminar they attended, including content, accessibility, relevance to their organisation, the quality of the presentations, written materials and handouts, venues and catering. The survey also asked for feedback regarding the most useful aspect of the training, and suggestions for other topics which would be beneficial for NFPs.

The feedback from the participants has been very positive and they report that the content of the seminars had helped them to understand the legal issue covered and to articulate and understand further advice that the organisation may need to seek in the future. A number of participants, who had not previously used PILCH's services, reported that they were delighted to hear that PILCH offered a referral service which would allow their organisation to obtain tailored advice from PILCH's members in the future if required.

For the purpose of this Report, the participants' individual comments about the seminars are too numerous to include. However, one manager of a NFP (who was unable to attend the third seminar on employment law, having attended the other two seminars, wrote:

I really benefited from the [seminar on] Taxation for Not-for-Profits so I am disappointed to miss this one, this is a fantastic initiative by PILCH and its pro bono partners, I commend you on your contribution to the community sector.

In 2007, in response to the feedback of the sector regarding ideas for future topics for seminars, and in an effort to involve other PILCH members, the following seminars have been scheduled.

Date	Topic	Law Firm	No of Attendees
1 March 2007	Intellectual Property NFPs	Allens Arthur Robinson	55
10 May 2007	Fraud Prevention for NFPs	Pricewaterhouse Coopers	
June 2007	Financial Literacy	ANZ or NAB	
August 2007	Preparing for an Annual General Meeting	Not yet determined	
September 2007	Taxation/Fundraising	Not yet determined	
November 2007	Privacy Obligations/ Document Retention and Record Management	Visy Industrial Holdings	

In 2007, PILCH has expanded its advertising networks to reach a larger audience of NFPs. Information about PILCH's upcoming seminars for NFPs are distributed through: PILCH's contact database of NFP clients and applicants; PILCH's members; the VCROSS Clearinghouse website; Federation of Community Legal Centres; Pro Bono News; Infoxchange; Ross House Association; Law Institute of Victoria – Friday Facts; Association Neighbourhood and Learning Centres; VAADA (Victoria Drug and Alcohol Association); VLGA (Victorian Local Governance Association); AFDO (Australian Federation of Disability Organisations); Community Housing Federation of Australia; Women's Healthy Association; Older Women's Network; Arts Industry Council and Our Community.

#### 4.4 Quantitative data

The following table tracks the types of clients for which the PILCH Scheme has made referrals over the last four years. (As mentioned earlier, the other schemes administered by PILCH – namely the Law Institute of Victoria Legal Assistance Scheme, the Victorian Bar Legal Assistance Scheme and the Homeless Persons' Legal Clinic – provide referral services for individuals rather than organisations.)

*Table 1: PILCH referrals by client category (2002-2006)*

	2002 - 2003	2003 - 2004	2004 - 2005	2005 - 2006	Totals
NFPs (No. clients)	59% (85 clients)	45% (68 clients)	52% (97 clients)	48% (103 clients)	353 clients
Unincorporated Group (No. clients) <sup>5</sup>	7% (10 clients)	22% (33 clients)	13% (24 clients)	9% (18 clients)	85 clients
Individuals (No. clients)	34% (49 clients)	33% (49 clients)	35% (65 clients)	43% (92 clients)	255 clients

NFPs, particularly when unincorporated groups are taken into account, constitute the main referral case load for the Public Interest Law Scheme. As can be seen from the following table, in addition to those NFPs for which a referral has been made, many more NFPs and groups seeking to incorporate as NFPs, have contacted PILCH.

*Table 2: number of PILCH enquiries by client category and action taken (2006)*

Category	Ineligible or other action	Successful Referrals	Enquiries
NFPs	170	127	297
Unincorporated Group	41	26	67
Totals	211	153	364

As Table 2 shows, aside from inquiries that lead to a referral, information and guidance is provided to over a further 200 organisations/groups (ie, the column headed 'ineligible/other action'). More than half of all the enquiries PILCH receives do not result in a referral. This does not mean that these groups do not receive valuable assistance from PILCH. The 'ineligible or other action' category (column 2, Table 2) comprises those enquiries where the NFP/group:

- did not satisfy the Public Interest Law Scheme criteria, for instance it was member-serving NFP (such as a sports club) rather than public-serving, and did not serve the disadvantaged, benefit low income clients or have public interest aims or objectives;
- the case did not have legal merit;
- was more appropriately referred to another legal and/or community organisation (such as the Environmental Defenders Office, the Victorian Dispute Resolution Centre,<sup>6</sup> or a relevant peak body);

<sup>5</sup> This category is unincorporated groups – many of whom are seeking assistance to incorporate.

<sup>6</sup> This is a free, government-funded mediation service that operates across the State: <http://www.justice.vic.gov.au/disputes/>.

- failed to return PILCH's application form or make further contact; or
- obtained assistance elsewhere after making their inquiry, or resolved the matter by other means.

Connecting those who telephone PILCH with existing services and external resources is an important part of PILCH's role in supporting the NFP sector and guiding the community through the legal system. PILCH is a 'clearing house' and does not want to (nor does it have the resources to) duplicate other services or resources that are freely available within the sector.

The most common types of NFP enquires are outlined in the following table.

*Table 3 – PILCH matter types by NFP/group enquiries (2006)<sup>7</sup>*

Area of law	Number of NFP & unincorporated group enquiries
Associations/ incorporation	55
Taxation	17
Employment	16
Commercial law	15
Intellectual Property	13
Corporations <sup>8</sup>	12
Tenancy (leases etc)	12
Environment	11
Property law	10

In terms of the types of NFPs assisted, there is great diversity. By way of example, see Attachment 5 for some of the NFPs referred to PILCH's members for pro bono assistance.

#### 4.5 Qualitative data

Aside from discrete, one-off referrals that PILCH may broker for a NFP, the following case studies (based on actual files) illustrate the range of roles PILCH takes on in its work as a clearing house for NFP referrals. They highlight that PILCH operates as a 'relationship manager' – managing the two-way relationship between the NFP client and the lawyer.

##### Case study 1 – where referral has lead to on-going, direct pro bono relationship

In 2005, an incorporated NFP association which aims to foster respect for cultural diversity in Victoria, applied to PILCH for pro bono assistance. The organisation sought assistance with a range of issues. PILCH discussed the legal issues with the organisation's representative at length

<sup>7</sup> There were a wide range of other enquiries that are not included in the 'top 10' in frequency in the table. Other enquiries were in administrative law (judicial review) 4; administrative law (merits review) 6; alternative dispute resolution 1; banking & finance 2; insolvency 2; civil liberties 7; constitutional law 3; criminal law 6; debt recovery 2; discrimination 5; energy & resources 1; equal opportunity 2; equity/trusts 2; family law 1; freedom of information 4; human rights 3; immigration 1; industrial law 3; insurance 4; mental health 1; native title 1; personal injuries 2; planning and local government 6; wills 3; professional negligence 1; professional regulation 2; social security 3; telecommunications/IT 1; torts 3; traffic law 1; work cover 3.

<sup>8</sup> Although an incorporated association is the most common form of legal structure for an NFP, there are also NFPs that are incorporated as companies limited by guarantee (almost 10,000). It is unknown how many of these would operate in Victoria because a company limited by guarantee can operate throughout Australia, a reason why that legal structure is often chosen by multi-state, national and peak organisations.

and assisted the organisation to articulate its legal needs, consider appropriate time frames for the advice and prioritise its requests, which included assistance to:

- amend its constitution (in time for its AGM);
- establish a public fund and apply for endorsement as a tax deductible gift recipient (DGR)<sup>9</sup>;
- prepare confidentiality agreements with employees; and
- draft disclaimer clauses for its website and contracts with artists and other organisations.

The organisation also advised PILCH that, ideally, it sought a long-term pro bono relationship with a firm to deal with future legal issues, and wanted to strengthen its relationship with a firm by having a firm appointee join their board as a member or observer.

PILCH referred the matters to a member firm. The discrete areas were outlined and listed in the order of priority. The firm was given the option of providing the advice on a staggered basis. PILCH also advised that the organisation sought this type of long-term pro bono relationship.

The firm subsequently accepted the referral to provide all the advice sought and has continued to accept requests for assistance from the organisation directly, although it did not take up a place on the organisation's board. Via this relationship, the member firm has also assisted a group auspiced by the client to separately incorporate and obtain DGR status.

A specialist service for NFPs also benefits lawyers. Academics, barristers and law firms can refer NFPs to PILCH for assistance in matters where they have previously provided advice, but are unable to assist the organisation further due to lack of expertise or capacity.

#### Case study 2 – referral from lawyer

A small, self-help group (approx. 54 members) that offers information and support to sufferers of a particular medical condition and their families, approached one of PILCH's members for legal advice regarding its privacy obligations to members when reproducing their stories on the group's new website or distributing membership lists. The group, which aims to raise awareness about the condition amongst health professionals and the wider community, was concerned about the 'personal/medical' character of some of the information being used.

The member firm had previously assisted the group to incorporate, but did not have capacity to provide privacy advice and referred the group to PILCH. The group was referred by PILCH to another of its law firm members for discrete privacy advice.

Since that time, the group has stayed in contact with PILCH and attended PILCH's training seminar on intellectual property issues affecting NFPs.

The branding and expansion of PILCH's services for NFPs will also raise awareness of PILCH's services for marginalised and disadvantaged individuals and groups.

By expanding PILCH's services to NFPs that in turn provide services to low income or vulnerable and disadvantaged individuals and communities, PILCH raises awareness of the availability of pro bono assistance for the members and clients of those NFPs.

In many cases, when people think of pro bono legal services they imagine that they must have proceedings on foot or be involved in a dispute in order to be able to utilise pro bono services. However, all the schemes that PILCH administers can assist individuals and refer them to lawyers for legal advice, independent of whether there is or will be litigation. This is particularly the case with NFPs that seek advice in order to avoid disputes or litigation.

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<sup>9</sup> That is, donations to the organisation are a tax deduction for the donor.

Case study 3 - NFP that approached PILCH for assistance, as well as referring its members

An organisation was established to support people suffering from a serious and infectious medical condition and their families, including advocating on behalf of people with the condition. The organisation approached PILCH for generalist advice on discrimination law, privacy law and occupational health and safety issues with respect to people with the condition, which it could disseminate amongst its staff and to other organisations.

At the same time, the organisation sought assistance for one of its clients in relation to the client's exclusion from a TAFE course as a result of having the condition. PILCH referred the organisation to one of its members to provide organisational advice, and also opened a separate file to advise the individual on the merits of bringing a complaint of discrimination against the TAFE.

The firm accepted both matters and advised the individual that a claim against the TAFE had merit and agreed to initiate proceedings. The matter ultimately settled and the client was allowed to re-enrol in the course and received an apology and financial compensation.

Since that time, the organisation has referred another two clients who had experienced similar discrimination, to PILCH for pro bono assistance. In both those cases, one of PILCH's member firms acted on behalf of the client to initiate proceedings, negotiate financial compensation and ultimately resolved the matters at mediation.

The organisation has also contacted PILCH to find a lawyer who has expertise in discrimination law, to be part of its Technical Advisory Panel.

## 5 SNAPSHOT OF NFP SECTOR

### 5.1 Australia

The NFP sector<sup>10</sup> plays a vital role in our society. Until fairly recently, the Australian NFP sector has been known as the 'hidden sector' because of the lack of official or accurate estimates of its size and contribution. Recent work by the Australian Bureau of Statistics and a major research project on the amount of giving to the sector (*Giving Australia 2005*)<sup>11</sup> have helped, but details for particular parts of the sector and on a state basis are still not readily available.

From the most recent data available we can see that, in economic terms alone, the sector is significant:

- the giving of money, goods and services to NFPs by individuals and business is estimated to total \$11 billion (2004, even excluding Tsunami appeal);<sup>12</sup>
- NFPs contribute 4.7% of GDP<sup>13</sup> and account for 6.8% of total employment;<sup>14</sup>
- in comparative terms, NFPs add more to GDP than the mining industry;<sup>15</sup>
- estimated total revenue is \$33.5 billion;<sup>16</sup>
- nationally, there are as many as 700,000 NFPs, most of which are small and entirely dependent on the commitment of members – of these approximately, 380,000 are incorporated in some form or another;<sup>17</sup> and
- there are approximately 20,000 with Deductible Gift Recipient (DGR) status.<sup>18</sup>

Apart from this economic perspective, it is important to remember the NFP sector's contribution to our civil society. 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.<sup>19</sup>

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<sup>10</sup> Sometimes the NFP sector is also known as the 'Third Sector', 'non-government' (NGO), or nonprofit sector. In this Report the term 'not-for-profit' is used to cover the broad range of organisations operating for social or community purposes, such as those providing charity, recreation, advocacy, art or religion. The main characteristic of such organisations is that funds or profits are used by the organisation solely to further its social/public purpose, rather than being distributed to members or officers (known as the non-distribution constraint). The term is intended to be much broader than the traditional, legal definition of a 'charity'. The term 'not-for-profit' has been preferred to 'non-profit' because it more explicitly recognises that these organisations, and indeed the sector, often make (substantial) profits, even though they are not distributed to members. The independent Charities Definition Inquiry recommended the use of the term 'not-for-profit' for similar reasons (*Report of the Inquiry into the Definition of Charities and Related Organisations*, 2001, pp. 91–6 see n 20).

<sup>11</sup> A major research report commissioned by the (then) Department of Family and Community Services, on behalf of the Prime Minister's Community Business Partnership, released 10 October 2005: see [http://www.partnerships.gov.au/philanthropy/philanthropy\\_research.shtml](http://www.partnerships.gov.au/philanthropy/philanthropy_research.shtml) (Giving Australia Report).

<sup>12</sup> See Giving Australia Report, n 11.

<sup>13</sup> Includes the contribution of volunteers. Without this contribution it is estimated at 3.3% of GDP.

<sup>14</sup> See ABS Satellite Accounts ('Non-profit Institutions Satellite Account', ABS Cat. No. 5256.0 released 28 November 2002).

<sup>15</sup> ABS see n 10 above.

<sup>16</sup> (1991–2000) ABS and referred to in the fact sheet, see n 17 below.

<sup>17</sup> See fact sheet: 'The Nonprofit Sector In Australia' National Roundtable of Nonprofit Organisations, 2005. For information about the National Roundtable see: <http://nfproundtable.org.au/>.

<sup>18</sup> See fact sheet n 17 above.

<sup>19</sup> *Third Sector: the contribution of nonprofit and cooperative enterprises in Australia* Allen & Unwin, 2001.

To quote from the major *Industry Commission Report* (1995):

The charitable sector underscores many basic values in Australian democracy. It exemplifies the principles of pluralism, free choice and the rights of citizens to participate in and take responsibility for their community. It helps ensure that no government has a monopoly on the way society deals with its citizens – especially those who are most vulnerable because of economic or personal need.<sup>20</sup>

## 5.2 Victoria

In Victoria, the main statistics are those published by the Minister for Consumer Affairs, as registrar of incorporated associations. While this captures the majority, at least in terms of the number of NFPs,<sup>21</sup> there are other significant NFP organisations that operate in Victoria as either companies limited by guarantee, co-operatives, or church bodies that are not separately incorporated etc. There are also many more that operate as unincorporated groups and so never appear in the statistics. Some 'snapshot' figures for the Victorian NFP sector:

- there are 32,552 incorporated associations (an increase of 4.7% on 2005);<sup>22</sup>
- the vast majority are very small: only 3,092 were 'prescribed associations' ie, had revenues of at least \$200,000 and/or assets of \$500,000;<sup>23</sup>
- conversely some are very large: for example, Bicycle Victoria has over 40,000 members and its 2005/2006 revenue was over \$9.6 million;<sup>24</sup> and
- 87% of all adult Victorians gave a donation in 2005 and over 40% volunteered for a NFP.<sup>25</sup>

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<sup>20</sup> *Charitable Organisations In Australia*, Report 16 June, 1995 No. 45, AGPS.

<sup>21</sup> Incorporated association is the most common form of legal structure for a NFP.

<sup>22</sup> See 2005/2006 Consumer Affairs Victoria Annual Report.

<sup>23</sup> See 2005/2006 Consumer Affairs Victoria Annual Report.

<sup>24</sup> See 2005/2006 Annual Report, Bicycle Victoria <http://www.bv.com.au/>.

<sup>25</sup> Giving Australia Report, 2005 see n 7.

## 6 **NEED**

### 6.1 Existing legal services for NFPs

Other than PILCH's existing service (and the more limited service offered by some of our interstate counterparts<sup>26</sup>), there is no discrete, specialist pro bono legal advice service in Australia for NFPs. While legal aid is provided for individuals who meet a means test and other eligibility criteria, there is no similar government legal assistance for NFPs.

In Victoria, community legal centres act only for individuals and refer NFPs to PILCH for assistance.<sup>27</sup>

There is Federal government arts funding for the Arts Law Centre which provides free/low-cost assistance to individual artists and arts NFPs, but this only services a small part of the overall NFP sector.

There are also some 'issues-based' services that NFPs can access such as the Environment Defenders Office<sup>28</sup> and the Communications Law Centre<sup>29</sup>. This latter service has a limited capacity to provide pro bono assistance and no longer receives community legal centre funding. These services do not deal exclusively with NFPs and are obviously only of assistance in relation to a limited number of issues that NFPs face. Where appropriate, PILCH refers NFPs to these services and will continue to do so, thus ensuring that new PILCH services will not duplicate these existing niche services.

There is information (eg, fact sheets) and resources (on-line and hard copy) from various government departments and agencies (eg, ATO, Consumer Affairs Victoria) and also from many of the peak organisations (eg, VCOSS<sup>30</sup>) that can help with many issues relevant for NFPs, including some legal issues. Again, where appropriate, PILCH will refer NFPs to these resources. There is considerable variability in the accessibility, cost and quality of these services. There is no comprehensive web-based portal to direct NFPs to these existing resources, and they are not well mapped or linked.

### 6.2 Other support services for NFPs

There are other bodies – government-funded, independent and private consultancies – that provide a range of support services to NFPs. PILCH directs NFPs to these organisations as appropriate.

The Federal government has provided 3-year seed funding to establish Nonprofit Australia<sup>31</sup> whose mission is to 'improve the viability of nonprofit organisations for the benefit of Australian society'. Nonprofit Australia is currently developing an on-line purchasing program for NFPs and is working to establish programs of excellence in leadership for CEOs of NFPs.

There are other brokers for pro bono assistance such as: Volunteering Australia<sup>32</sup> and the State peak Volunteering Victoria<sup>33</sup>; goodcompany<sup>34</sup>; and Melbourne Cares<sup>35</sup>. These organisations seek

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<sup>26</sup> For example, PILCH (Qld)'s website states that they only take on a matter for a NFP if the *matter* itself raises an issue that involves the 'public interest'. This is more limited than the PILCH (Vic) test where, once the *organisation* is eligible (ie, by considering the aims, objectives and services of the NFP to determine if the organisation serves the disadvantaged, benefits low income clients or has public interest aims and objectives), pro bono assistance will be brokered for the full range of legal issues. In 2005-06, PILCH NSW referred 61 matters for NFPs and its eligibility criteria are similar to PILCH (Vic).

<sup>27</sup> We understand that in NSW some community legal centres will provide advice to NFPs, but that the availability of advice is somewhat ad hoc as it depends on the expertise of the volunteer solicitor on duty (Centre for Volunteering NSW).

<sup>28</sup> See <http://www.edo.org.au/>.

<sup>29</sup> See <http://www.comslaw.org.au/>. They are a research unit within the law school of Victoria University.

<sup>30</sup> Victorian Council of Social Services: see <http://www.vcss.org.au/>.

<sup>31</sup> See [www.nonprofitastralia.org.au](http://www.nonprofitastralia.org.au).

<sup>32</sup> See <http://www.volunteeringaustralia.org/>. Volunteering Australia is the national peak body working to advance volunteering in the Australian community. Its role is to represent the diverse views and needs of the volunteer sector while promoting the activity of volunteering as one of enduring social, cultural and economic value. 'GoVolunteer' is an initiative of Volunteering Australia (in

to match professionals and corporations (eg, via employee volunteering schemes) with NFPs needing specialist assistance.<sup>36</sup> VCOSS has a 'clearing house' for training providers and others to register the services they can provide free or at low-cost.<sup>37</sup>

'Our Community'<sup>38</sup> which provides a range of support services: eg, insurance, a facility for on-line donations to NFPs, training, information on a range of issues such as risk management and grant seeking, and sample policies and procedures etc. There are also 'for-profit' providers that specialise in providing assistance to NFPs: eg, C.Tas a private consultancy specialising in charity taxation advice.

In summary, legal information and advice is not a core part of the work of any of these organisations and, we understand from our consultations with them,<sup>39</sup> that they are supportive of the establishment of a new specialist legal service for NFPs to meet this need. The new specialist NFP legal service will refer NFPs to these other services as appropriate, and collaborate with these groups to promote the provision and accessibility of greater pro bono legal and non-legal advice.

### 6.3 Direct pro bono relationships

There are some NFPs that have established direct pro bono or reduced fee arrangements with law firms and/or receive research assistance from academics. Often these arrangements are a highly valuable (and a highly valued) source of legal advice and assistance for NFPs. In some cases, the arrangement is limited to certain types of legal work and/or a certain number of hours. Thus, even those NFPs that enjoy such an arrangement may need other assistance with legal issues, including general information by way of seminars etc.

Some of these direct pro bono relationships will have emanated from a PILCH referral. In others cases, it may have developed from a direct approach or 'pitch' to the firm, or arisen out of a connection with a staff member (eg, a staff member being on board of the NFP).

For many NFPs, particularly the smaller ones and those with less popular or 'fashionable' causes, these arrangements are out of reach. Even for those NFPs that have established an ongoing relationship with a law firm or lawyer, this may not be sustainable in the long term (eg, if the person who is the main contact at the firm leaves or the firm's pro bono priorities or capacity changes).<sup>40</sup>

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partnership with Seek Communications and The Boston Consulting) and is a national volunteer recruitment website. It is a not-for-profit site that provides free Internet advertising for not-for-profit community organisations looking for volunteers.

<sup>33</sup> See <http://www.volunteeringvictoria.com.au/>. Volunteering Victoria is the State peak body representing the volunteer movement in Victoria. It provides a range of services (including a face-to-face and telephone referral service) to individuals in the community who are interested in volunteering and to organisations who involve volunteers. It links with the national on-line 'Go Volunteer' database.

<sup>34</sup> See <http://www.goodcompany.com.au/>. An on-line matching service.

<sup>35</sup> See <http://www.melbournecares.org.au/>. A partnership brokering service from the City of Melbourne.

<sup>36</sup> A matrix with a more comprehensive outline of providers and the services they offer is available at [http://www.melbournecares.org.au/wordpress/wp-content/uploads/2006/07/brokers\\_matrix\\_2006.pdf](http://www.melbournecares.org.au/wordpress/wp-content/uploads/2006/07/brokers_matrix_2006.pdf).

<sup>37</sup> See also Heading 11.1.

<sup>38</sup> Our Community is a proprietary limited company that describes itself as a new hybrid: 'Our Community is a self-sustaining social enterprise and has been developed using investment provided by a forward-thinking group of social investors, led by Carol Schwartz AM, our Chairman. These are the first social investors in Australia to invest in the first major private company established solely to enhance the social good, by enhancing the operations of the community sector by helping the community sector to operate more effectively and efficiently: [http://www.ourcommunity.com.au/general/general\\_article.jsp?articleid=2152](http://www.ourcommunity.com.au/general/general_article.jsp?articleid=2152).

<sup>39</sup> See Attachment 1.

<sup>40</sup> A member told us that they had had a direct pro bono relationship with a women's agency 'We had previously assisted [them] and one of our lawyers had served on the board - but moved overseas. This severed the main link between the firm and the organisation. The link was revived through a recent PILCH referral where we have assisted the organisation with workplace relations advice. This is an example where PILCH has been able to breathe new life into a dormant relationship.'

From discussions with NFPs<sup>41</sup> and some of our members,<sup>42</sup> it is apparent that PILCH could expand its role in brokering on-going relationships between members and NFPs. In some cases, these partnerships can embrace a much more holistic relationship or 'community partnership' – ie, not be limited to legal advice but also involve staff from other areas within the firm (eg, accounting, training and human resources).

#### 6.4 Pro bono and low-cost

The cost of services is a critical issue for the sector, especially given the data which shows that the majority of NFPs are small and have limited financial resources. There is a need to ensure that these financial resources are not diverted from core service delivery. In particular, if resources are spent on legal advice - 'admin' - the public are less likely to donate.<sup>43</sup>

#### 6.5 Complex regulatory environment

PILCH's experience over the last decade is that many NFPs, are struggling to operate under a complex regulatory framework. For example, to keep abreast of amended employment and other legislation, determine their eligibility for tax exemptions and meet their state and federal reporting requirements. This anecdotal evidence is confirmed by others.

Major government and other reports highlight that the regulatory environment for NFPs is complex, even more than for business. But the ability of NFPs to access and pay for high quality legal assistance is very limited, particularly for the majority that are small and rely heavily on volunteers.

#### Industry Commission Report (1995)

The Industry Commission (now known as the Productivity Commission) produced a comprehensive report titled *Charitable Organisations in Australia*.<sup>44</sup> There are many references in the report to the lack of consistent and appropriate regulation for the sector which, in turn, hinders the sector's growth and accountability. The recommendations in this report have never been (formally) adopted by government. It is interesting to reflect that more than a decade later many of the concerns highlighted still ring true, for example:

Inconsistencies between States/territories in matters such as...authorisations to raise funds hinder the efficiency of Australia-wide fundraising by national...[NFPs].<sup>45</sup>

#### Charities Definition Inquiry (2001)

The Charities Definition Inquiry<sup>46</sup> was an independent inquiry by three Commissioners established by the Federal Treasurer, Mr Peter Costello. Although it was primarily concerned with definitional issues especially from the taxation perspective, it also recommended the establishment of an independent administrative body to oversee charities and related entities.

This recommendation, and indeed most of the Inquiry's other recommendations, have not been adopted. There are many examples throughout the report, including many quotes from submissions received from NFPs, that highlight the complexity of the regulatory environment in which NFPs operate.<sup>47</sup>

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<sup>41</sup> This point was made in various meetings and at the NFP focus group held at PILCH on 6 February 2007.

<sup>42</sup> See Attachment 1.

<sup>43</sup> There has been considerable debate and concern expressed in the media about the percentage of donations that go towards an organisation's 'administrative costs' eg, the Red Cross post-Bali bombings and for many overseas aid organisations regarding use of the tsunami donations.

<sup>44</sup> Report No. 45, AGPS 1995.

<sup>45</sup> See *Charitable Organisations In Australia*, Report 16 June 1995, Overview, p. xxxvii.

<sup>46</sup> See *Report of the Inquiry into the Definition of Charities and Related Organisations*, 2001: <http://www.cdi.gov.au/>.

<sup>47</sup> For example, the Final Report released in June 2001 states:

The Committee has observed that there is no overarching policy framework to help define governments' expectations of, and relationship with, the charitable and related sector. Relationships between the sector and governments tend to be

### Woodward & Marshall Report (2004)

In her academic work, Ms Sue Woodward (current PILCH Policy Officer) undertook a large scale, national survey of those NFPs incorporated as companies limited by guarantee.<sup>48</sup> In 2004, the findings together with a series of recommendations for reform were published in a major research report titled, '*A Better Framework: reforming not-for-profit regulation*' (the Woodward & Marshall Report).<sup>49</sup> The findings highlight the complexity of the environment in which NFPs operate, and that regulation is not well tailored to the particular needs of the sector. The Executive Summary states:

The underlying health of the NFP sector is at risk. The regulatory framework that underpins the sector is complex and riddled with inconsistencies...

Currently, there is a myriad of possible legal structures for NFPs – companies, associations, foundations, co-operatives, church auspice, aboriginal corporations, Royal Charter and more. Combined with this is a confusing mix of State and Federal regulation and regulators, and a lack of nationally consistent reporting obligations. These factors provide significant impediments to accountability and could jeopardise donor confidence. Disclosure by NFPs should be directed to the special needs of NFP stakeholders...

While the views of business have been canvassed before any corporate law reforms have been implemented, the views of NFPs have been overlooked.<sup>50</sup>

In particular, the Woodward & Marshall Report recommends the need for additional services to help NFPs navigate the existing system and, in turn, to improve compliance and accountability:

An independent NFP advisory body should be established to provide a range of support services for NFPs. This would create a centre of expertise in the specialised needs of NFP organisations. It would also underpin improved accountability and corporate governance practices within the sector. The body should be separate from, and independent of, government and the regulators (including any administrative body established to determine charitable status). The types of services that could be provided at low cost or possibly even 'no cost' to some organisations include:

- auditing
- financial and taxation advice
- legal advice
- training
- dispute resolution and mediation services for NFP stakeholders.<sup>51</sup>

The findings and recommendations of the Woodward & Marshall Report have received widespread support from the NFP sector<sup>52</sup> and interest from the Victorian government.<sup>53</sup>

framed around specific issues affecting the whole sector (such as the introduction of the New Tax System) or on a program-by-program basis, each affecting smaller parts of the sector. Either way, such arrangements are generally piecemeal and fail to identify and deal with interrelated policy issues.

<sup>48</sup> Over 1,700 completed surveys.

<sup>49</sup> The University of Melbourne, Centre for Corporate Law and Securities Regulation, 2004. Available free, on-line see: <http://cclsr.law.unimelb.edu.au/go/centre-activities/research/reforming-not-for-profit-regulation-project/>.

<sup>50</sup> See the Woodward & Marshall Report, Executive Summary, p.1. See also Chapter 4: Regulatory Framework, 79:

One of the questions raised repeatedly throughout this Report is whether the burden of regulation is too great for the NFP sector, in particular, for small NFP organisations.

In addition to the effect of the myriad legal structures (outlined in Chapter 1, Introduction), and of taxation laws and fundraising/collection laws in each State, the regulation of NFP bodies varies greatly depending on:

- the nature of the activities of the organisation, and therefore the Acts and regulations that govern their activities
- whether they receive government funding and are, subject to government funding agreements.

With regard to the overall regulatory burden for NFP organisations, the findings in this Report give empirical support to the contention (made mostly recently by Professor Myles McGregor-Lowndes) that, as a consequence of the failure of government (both Federal and State) to consider or be concerned for NFP organisations in their strategy to identify ineffective and inefficient regulation, NFP compliance costs have increased. This increase has been the side effect of those governments focussing on business-oriented reforms.

To elaborate, problems can arise when regulations are amended or new regulations are introduced. These changes can impose significant compliance costs on voluntary organisations. This can be a particular problem for organisations that depend on government funding.

<sup>51</sup> Recommendation 3, see the Woodward & Marshall Report, Chapter 4: Regulatory Framework, especially pages 87 – 90.

<sup>52</sup> Eg, from the National Roundtable of Nonprofit Organisations: <http://nfproundtable.org.au/>.

### National Roundtable of Nonprofit Organisations

The National Roundtable of Nonprofit Organisations (the Nonprofit Roundtable)<sup>54</sup> was formed in 2002 by a coalition of NFP peak bodies from all parts of the sector. Between them, these peaks have tens of thousands of NFP organisations as their members. The Nonprofit Roundtable seeks to promote and strengthen the reputation and recognition of the sector, and to increase the infrastructure and capacity of the sector. In 2004, the Nonprofit Roundtable identified reform of the legal and regulatory environment of NFPs as its first priority area.<sup>55</sup>

### Allens Consulting Report (2005)

In August 2005, the Department for Victorian Communities commissioned The Allens Consulting Group to conduct research and develop options to improve the NFP regulatory environment – itself recognition of the problem. They, as independent consultants, confirm that:

The complexities, inconsistencies and unsuitabilities of the current regulatory framework mean that it represents more of a barrier to the relationship between the not-for-profit sector and the community than a support.<sup>56</sup>

In summary, the difficulties associated with the complex NFP regulatory environment combined with limited financial resources and the heavy reliance on volunteers, means that access to timely and accessible legal information is a pressing concern for NFPs.

There is an important role for PILCH in supporting the moves that have begun (at least in Victoria) for legislative reform so that this complexity etc is reduced. However, it is clear that a comprehensive overhaul (both within and across states, and on national issues) is not close at hand, and that the need for specialist, low-cost legal advice for NFPs is great and on-going.

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<sup>53</sup> Eg, referred to extensively in The Allens Consulting Report, see n 56 below.

<sup>54</sup> See <http://nfproundtable.org.au/>.

<sup>55</sup> See Media Release dated 21 May, 2005 and related Statement on Nonprofit Regulation Reform Program: <http://nfproundtable.org.au/Initial%20Statement%20Reg%20Reform.doc>.

<sup>56</sup> See The Allens Consulting Group – *Improving Not-for-Profit Law and Regulation*: [http://www.dvc.vic.gov.au/Web14/dvc/rwpgslib.nsf/GraphicFiles/0706-38Regulation\\_ACG\\_Options\\_Paper/\\$file/0706-38Regulation\\_ACG\\_Options\\_Paper.pdf](http://www.dvc.vic.gov.au/Web14/dvc/rwpgslib.nsf/GraphicFiles/0706-38Regulation_ACG_Options_Paper/$file/0706-38Regulation_ACG_Options_Paper.pdf).

## 7 CURRENT GOVERNMENT REVIEWS

### 7.1 Department for Victorian Communities

On 8 February 2007, the Department for Victorian Communities (DVC) announced a new project - *The Stronger Community Organisations Project* (SCOP – DVC). The Steering Committee (headed by Professor Allan Fels) has academic, business, corporate and NFP members<sup>57</sup> and will provide strategic advice to the government on:

- an overview of the community sector in Victoria - the principal trends, influences and challenges that are currently impacting on organisations and those that may impact in the future; and
- a strategic vision for the next 10 years that identifies the role of the sector in contributing to the social and economic goals of the government.<sup>58</sup>

Following completion of these strategic tasks, SCOP will identify the issues and possible ways forward in relation to a range of matters that go to the capacity of the sector and its relationship with government. The SCOP matters of relevance to the Project include:

- organisational governance – what standards of governance are needed to meet public expectations of accountability;
- organisational sustainability – what business and financial planning are needed to ensure sustainability and to attract resources from all sectors including philanthropy;
- quality and effectiveness – how can organisations achieve high standards, efficiencies and innovative approaches to service delivery; and
- law and regulation – measures to reduce red tape and the burden of compliance upon organisations and so allow greater focus on their mission of community service.

Consultations will be held during the year with a report due in November 2007.

### 7.2 Review of NFP regulation by State Services Authority

In relation to this last issue, law and regulation, the Victorian Treasurer, Mr John Brumby, has announced (1 March 2007) a review by the State Services Authority<sup>59</sup> (the SSA Review). The SSA Review is to focus on:

...slash[ing] red tape in the not-for-profit sector as part of the Bracks Government commitment to reduce the burden of regulation in Victoria.<sup>60</sup>

Submissions are due by 18 May 2007 and the SSA report, with recommendations, is due to be submitted to the Treasurer by 30 September 2007.

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<sup>57</sup> The SCOP Steering Committee comprises: Professor Allan Fels – Chair, Dean of the Australian and New Zealand School of Government; Tom Bentley – Executive Director, Policy and Cabinet Group, Department of Premier & Cabinet; John Howie – Chair of VicSport; Rob Hunt – Managing Director, Bendigo Bank; Professor Mark Lyons – Professor of Social Economy, University of Technology, Sydney; Professor Myles McGregor-Lowndes – Director of the Centre of Philanthropy and Non-profit Studies, Queensland University of Technology; Tony Nicholson – Executive Director, Brotherhood of St Laurence; Carol Schwartz – Director, Highpoint Property Group; Cath Smith – Chief Executive Officer, VCOS.

<sup>58</sup> <http://www.dvc.vic.gov.au/Web14/dvc/dvcmain.nsf/allDocs/RWP5FCB0E3A722237C7CA25727C00059BFB?OpenDocument>

<sup>59</sup> The State Services Authority (SSA) (<http://www.ssa.vic.gov.au/>) is established by the *Public Administration Act 2004*. The Authority comprises a Chair, the new position of the *Public Sector Standards Commissioner*, and as many Commissioners as the Premier may appoint. The Victorian Government has vested the SSA with functions designed to foster the development of an efficient, integrated and responsive public sector which is highly ethical, accountable and professional in the ways it delivers services to the Victorian community.

<sup>60</sup> See Press Release 'Review to cut red tape in the not-for-profit sector', 1 March 2007:

[http://www.dpc.vic.gov.au/domino/Web\\_Notes/newmedia.nsf/798c8b072d117a01ca256c8c0019bb01/91fd178f66e61125ca257292001001700!OpenDocument](http://www.dpc.vic.gov.au/domino/Web_Notes/newmedia.nsf/798c8b072d117a01ca256c8c0019bb01/91fd178f66e61125ca257292001001700!OpenDocument).

The SSA Review is wide-ranging and extends beyond just legislative matters. SSA is an independent authority that reports directly to the Premier.<sup>61</sup> This review serves as further recognition of the complexity and red tape that NFPs face.

The creation of DVC as a separate department in 2002 and the announcement of these reviews, highlight current interest by the Victorian government in the community/NFP sector. In many ways, Victoria is providing leadership on the regulatory and other issues that are important for the sustainability and on-going growth of the NFP sector. It seems that Victoria is the state most likely to push for national legislative reform, as well as looking for ways to improve its own state-based regulatory environment and the support it gives to the sector. A specialist NFP legal service will enhance the work being undertaken by the Victorian government.

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<sup>61</sup> SSA operates separately from the daily activities of departments and agencies, and has no regulatory or audit role (like the Auditor-General or Ombudsman, both of whom report to Parliament).

## **8 AUSTRALIAN & OVERSEAS EXAMPLES FOR NEW SERVICES**

### **8.1 Australian models**

The specialist Australian services such as the Arts Law Centre and the Communications Law Centre have been considered. The Arts Law model is of particular interest and utilises web-based precedents and information as well as in-house lawyers supported by 'legal advice nights' with volunteer solicitors. Because the service is long standing and enjoys a good reputation, there are many lessons that can be learnt from it. From discussions to date, Arts Law has indicated a willingness to assist PILCH in the development of any new services for NFPs. There are real opportunities for building on their resources and processes, with more than enough work for both organisations. Attachment 3A gives a 'snap shot' of the services provided by Arts Law and Communications Law.

### **8.2 Overseas examples**

Information about relevant overseas models has been obtained via the internet and from the National Pro Bono Resource Centre – see Attachment 3B for an overview of the main examples found in the USA, Canada and the UK. The USA models are extensive, whereas the UK offers less extensive services than are currently available in Australia.

In the USA, there are some long standing examples where expertise is provided by a combination of in-house lawyers and pro bono referrals. Interestingly, there are also a significant number of universities that run their own pro bono programs staffed by law students. The students, under the supervision of qualified lawyers, provide legal advice and representation to NFPs on a variety of matters such as, legal structure, tax exempt status, leases, contracts etc. - not dissimilar to the requests PILCH receives from NFPs for assistance. Some law schools (eg, Yale) have established 'community and economic development clinics' that, as well as providing legal services, advise NFPs on management and operations, negotiations, and public policy research and analysis. PILCH's consultations with NFPs have confirmed that access to similar services to complement legal services would be valued. These models are informative for the Project and it would be helpful to have greater knowledge of how they work on the ground. However, in making our recommendations we have been cognisant of the differences between the USA and the Victorian/Australian pro bono environment, in particular, that:

- the number of lawyers (especially those in large cities such as New York) is much greater; and
- the USA tax laws are such that donations to the pro bono organisations themselves are tax deductible, such that they have a much larger potential funding base. (PILCH does not enjoy this tax status and, nor we are advised, would any separate entity which PILCH may establish to provide specialist NFP legal services.)<sup>62</sup>

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<sup>62</sup> See Heading 14.

## 9 CONSULTATIONS WITH NFPs

PILCH obtained feedback about its existing services and ideas for new services from a range of NFPs by:

- a survey of NFPs, both those that have used PILCH in the past and those that have not;
- meetings with several NFPs; and
- a focus group held at PILCH on 6 February 2007.

A summary of the meetings and other discussions is contained in Attachment 1. For a copy of the survey form see Attachment 2A. For details of where the survey and focus group was advertised see Attachment 2B. Some of the key results of the survey are set out below. A fuller table is contained in Attachment 2C.

### 9.1 NFP survey results

The survey was intended to provide quick and simple feedback from NFPs. It is not, and was never intended to be, a representative sample etc; merely a bit of a 'snapshot'. Importantly, the survey which was available on-line on PILCH's website, provided NFP organisations outside the Melbourne metropolitan area with an opportunity to provide feedback. It was deliberately kept to a double sided page and largely 'tick the box' responses in order to limit the effort and time required for completion and, therefore, to maximise the number of responses. It was advertised widely via peak body newsletters, sector e-bulletins and via the PILCH database, website and newsletter. PILCH members were also asked to distribute it to any NFPs that they advise in order to reach those NFPs that have a direct pro bono relationship with a lawyer or firm and as a result may not use PILCH's referral service.

As of 16 March 2007, PILCH has received 101 completed surveys. While the surveys have been de-identified, it can be seen from the covering emails and letters that there is a wide range of respondents: very large organisations to very small; metropolitan, regional and rural; and variety of activity/service areas. In total, the organisations that responded have between them approximately<sup>63</sup>:

- \$46,819,750 annual income;
- 2,488 employed staff; and
- 2,935 volunteers.

The following shows the number of survey respondents that had already used PILCH and if they received pro bono legal assistance via a referral from PILCH and/or from another source.

*Table 4 – Survey results (2007) for existing PILCH services*

Question	Yes	No	Don't Know	No answer
Has contacted PILCH	50	38	12	1
Received pro-bono legal assistance through PILCH	37	15	9	39
And/or received pro-bono legal assistance from other source	36	21	9	35

<sup>63</sup> These calculations are based on a median average sum of the survey ranges eg, the median of 6 categories for income with a total range of under \$500 – over \$1M (see survey form, Attachment 2A).

Comments about the assistance provided by PILCH were extremely positive, with many organisations full of praise regarding how helpful and informative PILCH's current services are, eg:

The service from PILCH is professional, and accurate, and easy to obtain, high quality appropriate, saved us going down a blind alley.

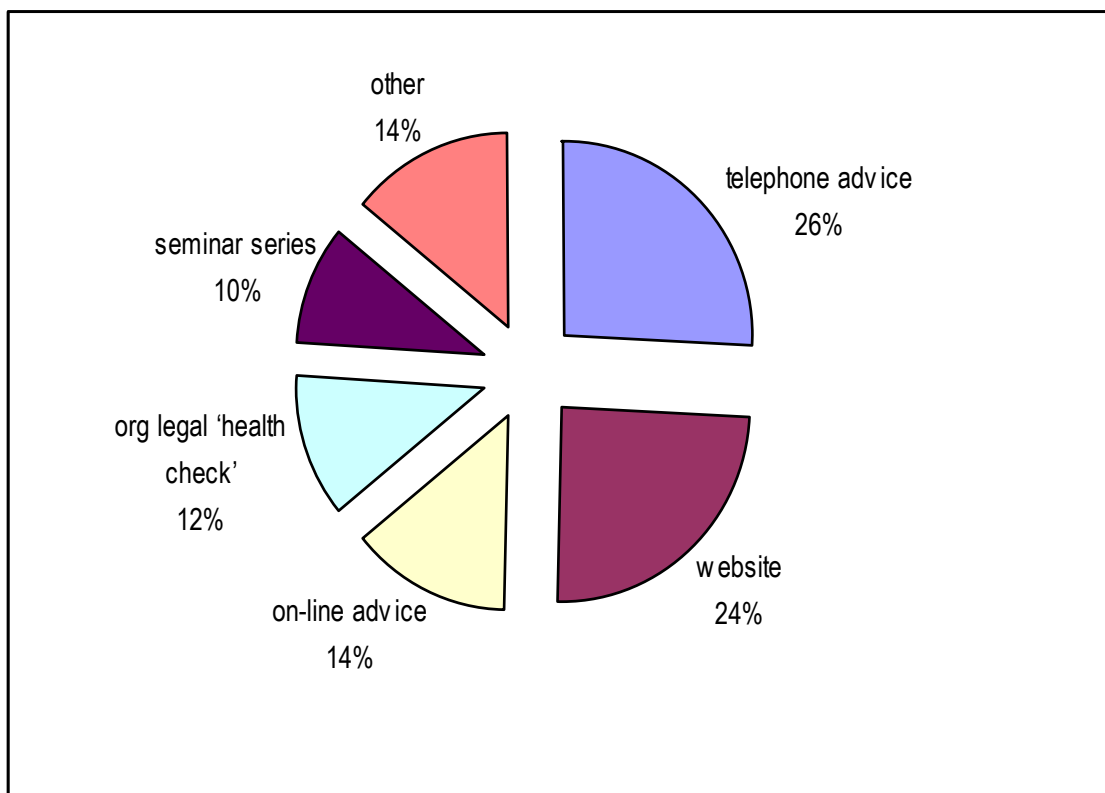
Other feedback revolved around the length of time that pro bono can take and the difficulty of getting answers to small and easy questions over the phone. One respondent stated that while they feel 'comfortable that no matter what the inquiry PILCH...assists', they would not contact PILCH unless 'completely necessary'.

The assistance received from pro bono referrals was seen to be highly efficient and competent. One respondent commented that if a matter become too 'hard' then a firm might not be willing to provide on-going assistance to see that matter to completion.

The type of sources of pro bono assistance received other than that provided by PILCH were mainly because of a direct relationship with a law firm (established via a board member or CEO of the NFP) or via a member firm's own contacts.

The following chart highlights the responses to the range of possible new services mentioned. The respondents were also asked to rank them in order of priority and the chart is based on how many times the particular service ranked in the top 3 (out of 10).<sup>64</sup>

*Chart 1 – NFP survey results for new services*



<sup>64</sup> The pie chart shows how many responses (for the top 5, with the other 5 services grouped together under 'other') ranked that service as 1, 2 or 3 in their priorities (out of the aggregate number of responses of 239). See Attachment 2C for the results for all 10 options.

For the purpose of this chart, the option of 'on-line advice' (ie, where an NFP would register a query via the website and then receive a reply by email) was not included as part of the 'website' category. On this basis, the preference for a new website ranked slightly behind the telephone advice line (ie, 58 vs 62 organisations ranking it in their top 3 priorities). If the website is taken to include on-line advice and precedents, the overall demand for a website would be 42.3%, making the preference/priority much stronger. In either case, the telephone advice service is a clear priority for respondents (62). Apart from the website and telephone service as the highest priorities, the next three were an on-line legal advice (33), organisational 'legal health checks' (28) and seminars (24).<sup>65</sup>

Overall, most respondents indicated that all of the suggested services would be appreciated - 54 respondents stated that they would use them 'regularly', 39 'occasionally' and only 1 said they would not use any of the resources (this respondent had an existing direct pro bono relationship with a large private law firm).

Interestingly, the majority of respondents (62) would be willing to pay a modest, scaled membership fee of some description. However, the comments clearly highlighted that each organisation would: need to check their budgets; already feel as though they pay enough to their peak organisation; have very limited funds; or would need to see more detail about the exact services to be offered before committing.<sup>66</sup>

Given that 68.3% of the organisations are members of at least one peak body, it raises the possibility that an effective way to assist small organisations is through peak bodies. This is discussed further at Headings 12 and 14.

## 9.2 NFP focus group

The focus group provided an opportunity to receive more detailed feedback on the limits of existing services, barriers to accessing legal advice and demand for potential new services. Attachment 2D lists the 17 diverse organisations that attended.

Feedback from the group was consistent with the survey data, in particular regarding prioritising new services. The discussion fleshed out the different types of legal advice that NFPs need. Three main areas of legal difficulty for NFPs were identified:

- 'client focus' – legal advice about direct service provision issues;
- 'structural and systemic issues' – affecting a class of people, advice on legal aspects of systemic advocacy and assistance with law reform (eg, possible impact of new legislation on clients or, in the case of a peak body, impact on its members); and
- 'organisational/governance' – eg, risk management strategies, awareness raising, assistance with conditions of funding, employment, etc.

There was keen interest in pro-active assistance through an organisational 'legal health check'.<sup>67</sup> The need for NFP regulatory reform emerged, especially for legal structures and governance requirements.

The group raised the potential problem of generating significant demand on PILCH and the need, therefore, to make sure that provision of any new services took this into account. Some other general points that emerged were:

- the need to raise awareness about legal obligations of NFPs without deterring volunteers;
- that many groups were not aware of existing PILCH services or the breadth of service provided;

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<sup>65</sup> Although it is interesting to note that the seminars were either ranked very high or very low, also coming in the bottom three in terms of priorities.

<sup>66</sup> Some services provided by the Arts Law Centre are only available to members and membership fees account for approximately 10% of their total funding.

<sup>67</sup> One organisation has since been in touch say their board would like to go ahead with such a check – jumping ahead, but at least demonstrating the likely demand!

- the need to raise awareness of existing resources such as those offered by peak bodies and some government departments;
- the importance to NFPs of creating on-going relationships and building their own capacity;
- the need to tailor information and services to the scale, activity and issue of the particular NFP being assisted (eg, what is appropriate for a small group meeting in someone's home compared with a group receiving government funding to provide services);
- the need for a pro-active approach to engage organisations that are most 'disadvantaged' - eg, providing a 'clinic' based in a community centre or via a peak body;
- the need for a central point for brokering legal 'community partnerships'; and
- that the services provided need to be a two-way learning process – ie, there is a need to educate the legal profession about NFPs as well as the lawyers assisting NFPs with understanding the legal system;

In relation to this last point, it is also important to note there is an unfortunate combination of a complex regulatory system (see Heading 6.5) and a dearth of expertise in the legal profession on certain NFP-specific issues such as tax concessions, fundraising and incorporated associations. Many lawyers may be willing to help (eg, on a pro bono or reduced fee basis) but, because it is not their main area of practice and there are almost no undergraduate or professional development opportunities on such issues, they inadvertently give inappropriate advice.

The survey and focus group indicate that a comprehensive web-based service is the first priority, but that it is important for this service to be supported by other 'direct contact' services, in particular, a telephone helpline (to answer quick, basic queries and to point them in the right direction). There is demand for pro-active legal assistance: eg, organisational 'legal health checks', assistance with law reform and brokering on-going pro bono partnerships. Collaboration with peak bodies is also important in ensuring effective delivery of new services.

### 9.3 Other data – NSW

There is a large body of data (telephone interviews of 283 NSW 'volunteering organisations') that supports and enhances our findings: see *'It's a bit of a minefield: Findings from the Legal Issues and Resources Survey of NSW Volunteering Organisations'* (April 2007).

The Centre for Volunteering NSW (the state-based body for Volunteering Australia) has conducted research about the legal needs of the NSW volunteering sector and how best to meet them. Part of the research also involved an audit of the legal resources available for volunteer organisations in NSW (the findings are contained in an accompanying report titled *'Making the Law Accessible: Legal Issues and Resources for NSW Volunteering Organisations'* 2007). The vast majority of NFPs in the sample had volunteers (even if it is only as unpaid Board members) and, therefore, the findings are highly relevant to the Project. PILCH and Volunteering NSW have shared research findings and PILCH is grateful to Dr Anton Mischewski (Research and Policy Manager at Volunteering NSW) for providing copies of the reports prior to their formal launch.

The following are some of the key findings taken from the Volunteering NSW reports, together with some comments in the light of the Project.

- Their review of Australian legal literature for the volunteering sector highlighted the lack of comprehensive data and legislative uniformity across all states and territories, concerning key issues such as insurance, civil liability, and volunteer protection. The legal issues faced by volunteering organisations are becoming 'increasingly complex' and they believe this 'negatively impacts all volunteering organisations, especially small-to-medium ones'.

*Comment – this is further affirmation of our observations about the complex regulatory environment in which NFPs operate.*

- Their audit of resources found an extensive range of on-line and print legal resources and services 'but there is no one comprehensive and interactive on-line legal resource specifically addressing volunteers and volunteering that provides easy access to them.' Also, some of the resources that are available are 'sometimes too specialised for volunteering organisations in general'.

*Comment – this is consistent with the Project's findings that indicate NFPs want access to a range of new services ie, their needs are not currently being met.*

- Small-to-medium organisations<sup>68</sup> and those in rural NSW are more likely to use pro bono lawyers and websites for legal information. However, more of these organisations pay for legal services and are less likely to use community legal centres.

*Comment - in NSW, some community legal centres give free advice to NFPs but this is not the case in Victoria where the centres refer NFPs to PILCH.*

- Regional organisations mainly use websites and non-legal sources such as colleagues; pro bono lawyers are relatively under-utilised.

*Comment -: this affirms the Project findings about the need for a specialised NFP web-portal and PILCH's roll-out of seminars and pro-bono referrals to regional centres.*

- Existing NSW resources such as LawAccess<sup>69</sup> are used infrequently as legal resources by any volunteering organisation irrespective of its size and location.

*Comment - LawAccess does not have any resources specifically aimed at NFPs among the large number of topics covered on its website and is aimed at individuals not organisations.*

- There was a lack of consensus or understanding about what is a 'legal issue'. Many respondents did not believe their organisation had any 'legal issues' because they only thought of matters that involve courts, judges and potential prosecution. However, the researchers intended a broad definition and the interviewers were instructed to emphasise the broader definition – ie, seeking information on a legal matter, seeking legal advice of any nature or taking legal action in a dispute. The broad definition would encompass legal issues as a risk management process aligned to good governance and management.

*Comment - this is an important finding. It confirms the need to improve awareness within the sector about the role of legal advice and information and when it is appropriate to seek this assistance (eg, in order to prevent a legal issue arising in the narrow sense ie, courts and prosecution for non-compliance).*

- Barriers to accessing existing resources and services

- '...lack of specialised volunteering legal services and lack of knowledge of services are major barriers identified by all organisations.'

*Comment - this is consistent with the Project findings about existing resources not being well-tailored to NFPs.*

- 'Costs were more likely to be noted by small-to-medium sized organisations in regional and rural organisations.'

- Future services

- The most preferred options were for 'a freely accessible on-line legal resource to assist them to understand and comply with current legislation.'

*Comment – this is consistent with the Project findings.*

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<sup>68</sup> For the purposes of the Volunteering NSW research, small organisations are those with less than 100 paid employees and large are those with more than 100 paid employees.

<sup>69</sup> A free NSW government telephone service that provides basic legal information, advice and referrals for people who have a legal problem in NSW plus web-based information: see <http://www.lawaccess.nsw.gov.au/>

- A close second preference was the need for a free 1800 'volunteering hotline'.  
*Comment – again this is consistent with the Project findings although we have not considered offering advice to individual volunteers, only NFP organisations.*
- Rural organisations expressed more interest in having access to courses, workshops and seminars.

<p>In summary, the large scale and recent NSW research supports very strongly the information gathered by PILCH both over time (via PILCH's existing services for NFPs) and more recently as part of this Project.</p>
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## 10 CONSULTATIONS WITH PILCH MEMBERS

The recommendations made in this Report (see Heading 13) for the establishment of a new specialist legal service for NFPs take into account feedback from PILCH members regarding their capacity to accept more referrals, and their support for services that could better reduce duplication and improve the efficacy of the pro bono services they provide.

As seen in Attachment 1, PILCH has met with a number of its members to discuss the need for, and potential development of, a specialist legal service for NFPs. In particular, PILCH met with firms that already assist a large number of NFPs via referrals from PILCH, as well as those that predominately have direct relationships. A number of PILCH's members have also developed community partnerships with NFPs, whereby they provide the NFP with on-going pro bono legal advice, promote the NFP's fundraising events throughout the firm, provide Board service and include the NFP on the firm's workplace giving list.<sup>70</sup>

The feedback from member firms confirms that they value PILCH's services as a 'clearinghouse' to take enquiries from the NFP sector and to determine which NFPs require referral to a member firm for expert advice and assistance. Although the pro bono coordinators receive a number of direct calls from NFPs, they reported that a request from PILCH on behalf of a NFP is often easier to assess and allocate internally. Because the PILCH referral memorandum sets out the legal structure of the organisation, articulates the legal issues, the nature of the assistance required and timeframes for the advice, it assists the pro bono coordinator to determine whether the NFP (and the particular query) is within the firm's pro bono priority areas and capacity. It is also easier to decide which legal practice group to allocate the matter to and assists the partner in charge of the relevant group to assess the complexity of the matter, the time it is likely to take and the seniority of the solicitor required.

Further, a number of the firms appreciated the fact that when a NFP approaches the firm directly requesting assistance they can refer the NFP to PILCH for referral to another firm: eg, in cases where the firm does not have the capacity or expertise to accept a direct request; or where they have assisted the NFP previously, but exceeded the budget allocated to that NFP (see Heading 4.5, Case Study 2).

All the firms consulted were supportive of PILCH expanding its service for NFPs and agreed that many of the matters raised by NFPs were common across the sector (eg, tax status and incorporation). A number of the firms currently use precedents to avoid duplication when assisting NFPs and were interested in the idea of PILCH working with its members to develop precedents which could be used by a specialist NFP legal service and made available to other lawyers assisting NFPs on a pro bono basis.

The pro bono coordinators acknowledged that, given the size of the NFP sector, establishing a specialist legal service for NFPs could result in an influx of enquiries and result in a significant increase in referrals. However, this did not deter them from supporting the establishment of this service.

The coordinators appreciated that one of the objectives of the service would be to answer as many legal enquiries as possible through the use of fact sheets and web-based tools (such as answers to 'Frequently Asked Questions'), and that PILCH would also seek funding from the corporate and government sectors to employ in-house solicitors to field a large number of enquiries over the phone/on-line. From a cost-benefit perspective, the pro bono coordinators PILCH consulted appreciated that their firm's pro bono budgets and solicitor's time would be best utilised advising on complex matters affecting the NFP sector; preparing tailored advice for eligible NFPs, assisting with law reform on behalf of the sector and assisting the PILCH service to develop precedents and

<sup>70</sup> So that donations made by the staff to the NFP are deducted before tax, and at some firms, are matched by the firm.

materials for its website (which would then be accessible across the sector). The coordinators agreed with PILCH that the introduction of the new services would also create greater opportunities for their solicitors in terms of professional development, as the matters referred to them would be more interesting and challenging, (eg, law reform, submission writing and presenting at seminars).

There was interest in the idea that experts within member firms could assist with training and support for in-house PILCH lawyers. Members were also keen to explore possible ways that their non-legal staff could become involved with assisting PILCH to provide services to NFPs: eg, financial, management, administration and human resources.

## **11 OTHER STAKEHOLDERS**

Feedback from other stakeholders in the NFP sector (see Attachment 1) has been supportive of the establishment of a specialist NFP legal service. Other pro bono providers and key bodies such as VCOSS have commented that what distinguishes PILCH from other pro bono providers is that it operates solely in the legal arena. In this way, people are clear about when to contact PILCH, more so than, for example, for generalists pro bono groups. If the PILCH services for NFPs were, in the longer term, expanded to provide other related but not purely legal services, we would liaise further with these generalist pro bono providers to ensure smooth links between services. Given the number of NFPs in Victoria alone (eg, 33,000 incorporated associations), one pro bono provider is unlikely to meet all the demand.<sup>71</sup>

The development of a specialist legal service for NFPs will draw on PILCH's existing relationships, such as those with a wide range of NFP agencies, law firms, the Victorian Bar, community legal centres, and universities. It will also put PILCH in a position to establish new strategic partnerships.

### **11.1 Existing collaborations**

VCOSS has established a 'Community Sector Training Program', which aims to strengthen the capacity of community sector organisations by providing training and support. VCOSS also advertises training by other organisations if community references are provided, it is low-cost (under \$50) and open to the sector. As a result, VCOSS has encouraged PILCH to advertise its seminar series for NFPs on the VCOSS website.

Further, as part of its Community Program, VCOSS has received funding from the VLF to update a series of manuals which were originally published in the 1990s to educate the community sector, on issues such as, Management, Incorporation, Managing Money, Policy and Procedures and Community Employment. PILCH is on the Manuals Reference Group and has been asked by VCOSS to access the pro bono resources of PILCH's member firms to revise the sections of the manuals which deal with legal issues, in order to ensure the information is up to date and written in plain English. Once the manuals are published, PILCH will be able to promote information about the manuals when we receive enquiries and via the new PILCH web-portal for NFPs.

In summary, there are likely to be further areas where VCOSS and PILCH can collaborate to ensure a wider range of NFPs are aware of new services and receive information about legal issues.

### **11.2 New partnerships**

The Project raises the possibility of new collaborations: see Headings 12 and 14.4.<sup>72</sup> For example, collaboration with DVC and Volunteering Victoria/Volunteering Australia/Volunteering NSW could broaden the reach of the new service. Between them, these Volunteering agencies (and their counterparts in the other states and territories) receive thousands of calls every year<sup>73</sup> from volunteers and NFPs (the vast majority of whom rely heavily on volunteers). A large percentage of these calls relate to legal issues and volunteer management issues that have legal aspects.

If legally-related issues are included in the new service, then support from peak professional bodies such as CPA Australia would be valuable.

The Project will also assist PILCH in strengthening links with existing providers such as Our Community – there are real gains to be made by tapping into existing networks and significant opportunities for cross promotion of resources and services. PILCH has expertise that complements the work done by Our Community and others on issues such as NFP governance.

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<sup>71</sup> In the case of Melbourne Cares, the support is for those NFPs in the City of Melbourne only.

<sup>72</sup> PILCH's Strategic Plan 2006 – 2009 (see [www.pilch.org.au](http://www.pilch.org.au)) has as one of its goals 'Maintain existing and build new relationships with individuals and organisations relevant to PILCH's role' (goal 1, para 7.2).

<sup>73</sup> Volunteering Victoria alone estimate that it receives over a 1,000 such calls pa.

## 12 CONSIDERATIONS FOR PILCH

In deciding to introduce new services for NFPs (see Heading 13), the following points have been considered.

- While PILCH has considerable credibility within the NFP sector, the focus group confirmed that there is not a high level of awareness of its role and services among the general population of NFPs (ie, among the 33,000 organisations that are incorporated as associations, plus the thousands of informal groups that may, over time, wish to incorporate). The promotion of new PILCH services (and any collaboration with the Volunteering agencies - see Heading 11.2), will also raise awareness of PILCH's existing services for both NFPs and individuals. However, PILCH will be very careful about the timing and widespread promotion of new services to the NFP sector so as to avoid a sudden, overwhelming influx of requests for assistance which could, in turn:
  - damage PILCH's strong organisational reputation if PILCH was unable to provide high quality service in response to this greater demand; and
  - jeopardise PILCH's existing core referral work.
- It is important not to duplicate existing resources or services. PILCH, and the sector generally, have limited resources. The best, freely available resources need to be identified and access to them by NFPs maximised. New resources will only be developed where gaps exist.
- New services for NFPs need to preserve and enhance PILCH's existing referrals under the Public Interest Law Scheme.
- Wherever possible, services that are pro-active (in that they help NFPs reduce the risk of non-compliance and other legal issues arising) are preferable.
- While many services such as web-based resources will be available to all types of NFPs, certain services, in particular pro bono referrals, will only be available to 'public interest' NFPs in keeping with PILCH's core mission.<sup>74</sup> This is to ensure the proper allocation of limited pro bono resources.
- In accordance with PILCH's Strategic Plan 2006-2009, new PILCH services will be mindful of the needs of regional and rural NFPs. Services will be designed with the overall aim of improving access to pro bono legal services by promoting PILCH's services 'to the wider community in Melbourne and non-metropolitan Melbourne'.<sup>75</sup>
- Any new services will be fully funded (or at least very close to fully funded) over a minimum period of 3 years. It will take at least 3 years to establish the new services, promote them and evaluate their effectiveness in order to secure recurrent funding. Without this funding, PILCH's existing services could be jeopardised.
- A new entity will not be created unless there is a compelling case for it: eg, because of issues to do with liability, insurance and/or funding. Otherwise, the service should be established to operate under the overall PILCH umbrella. Where possible and appropriate, administrative and other costs will be shared.

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<sup>74</sup> Restricting referrals is also relevant to ensuring satisfaction of current Department of Justice definition of 'approved cause' for government panel work: see

<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/About+Us/Our+Organisation/JUSTICE+-+Policy+Guidelines+for+Pro+Bono+Legal+Services+%28PDF%29>.

<sup>75</sup> See goal 1 'Ensure efficiency and effective referrals and maximise community benefit from existing schemes' (para 3.2) and goal 2 'Proactive approach to project development' (para 3.3) of PILCH's 2006-2009 Strategic Plan: [www.pilch.org.au](http://www.pilch.org.au). The Plan also includes obtaining a 1800 telephone number so that regional and rural Victorians have better access PILCH's services (goal 1, para 3.2).

- In terms of long-term funding, the new service will need to attract government funding from one or more of the following departments:
  - State government: DVC, Department of Justice, Department of Health, Department for Industry, Innovation & Regional Development and/or Department of Human Services; and/or
  - Federal government: Department of Families, Community Services and Indigenous Affairs and Department of Health and Ageing.

The range of NFPs is so great that their services fall within these portfolios and others.

### 13 NEW PILCH SERVICES

In light of the research and considerations outlined in this Report, the following are the new services for NFPs that will be introduced by PILCH.

#### 13.1 Relationship with existing PILCH services

The new services are intended to complement and enhance the valuable assistance currently provided by the PILCH pro bono referral service and seminars for NFPs.

Together the new services will form a specialist NFP advice service. The existing seminars will form part of this service, but the pro bono referral service will remain part of the Public Interest Law Scheme administered by PILCH as it will continue to be only available to those NFPs that satisfy the scheme's 'public interest' test.

#### 13.2 New services

A wide range of additional services will be offered to improve access to legal and legally-related advice and information tailored to meet the needs of NFPs. These services will improve the capacity of NFPs to meet their legal obligations, be well-governed and, most importantly, to be more effective service providers to the community.

The most pressing need is to accurately map existing legal resources and provide ready links and guidance for NFPs via a high quality web-portal. This will ensure that existing services and resources are not duplicated, and will improve access by NFPs to them. Many other services will be built from this base.

Taking into account the considerations outlined under Heading 12, and both the feedback PILCH has received (see Headings 9, 10 and 11) and the NSW research (see Heading 9.3), the PILCH Board has resolved to establish a specialist service for NFPs. The specialist service will:

- a. as an immediate priority, develop a **comprehensive web-portal** that:
  - maps and links the relevant existing legal and legally-related resources and services for NFPs (both Victorian-based and relevant national ones);
  - provides a guide which is user-friendly, easy-to-understand and navigate to these resources and services, including summaries and introductory information (see Attachment 4 for an example of the type of interface that will be used); and
  - fully explains the eligibility criteria for pro bono referrals through PILCH's Public Interest Scheme.
- b. when the web-portal is fully operational, offer a **basic telephone and/or on-line inquiry** service:
  - in the way that PILCH currently operates, use law student volunteers to take the enquiries, ascertain the basic nature of the inquiry and, where appropriate (eg, if is not a query easily answered by material on the website), direct it to an in-house NFP lawyer(s);
  - use an in-house NFP lawyer(s) (trained in or recruited for their experience in common NFP issues such as taxation, incorporation issues, governance and fundraising) to call back and give basic advice (possibly only on limited common issues), or obtain more information such that the need for a referral can be considered;
  - investigate using retired ATO officers for assistance with general guidance about eligibility for concessional tax status;
  - have a panel of PILCH members to act as expert support for the in-house lawyer(s) by way of training, telephone back up etc; and
  - use secondees lawyers where possible.

- c. further develop the NFP seminar program by linking and co-branding with both a PILCH member and a NFP peak body so that sessions can be tailored to meet the particular needs of different groups within the sector. Also, PILCH will investigate holding some 'outreach' seminars for NFPs – eg, at outer metropolitan community centres and in regional areas<sup>76</sup>;
- d. identify gaps in existing resources and develop user-friendly, easy-to-understand facts sheets, checklists, frequently asked questions and (with expert assistance from PILCH members) key precedents (eg, a constitution suitable for application for DGR status);
- e. establish an email notification system for legislative changes and as a two-way link in relation law reform proposals (ie, to link NFP groups that are working on proposals requesting reform or those seeking to make submissions about proposed reforms);
- f. coordinate a small 'team' who can develop and trial an organisational 'legal health check' with at least 2-3 NFPs. Experienced gained from this pilot will inform both the development of resources for the website and for the 'legal health check' service itself. The longer term aim will be to develop a 'train-the-trainer' model that could be offered via peak bodies, with assistance from PILCH for those organisations who identify the need for assistance as a result of a self-check;
- g. develop training for lawyers about the sector and the common issues for NFPs: eg, a unit on common issues for NFPs/considerations when advising a NFP that attracts Continuing Professional Development points;
- h. in time, investigate the student clinic model in conjunction with PILCH's academic members (draw on the experience of the administrative law clinic offer by PILCH Qld in conjunction with Bond University and, ideally, information gained from visiting student clinics that operate in the USA);
- i. consider more specialised services for target groups such as indigenous organisations, and multi-cultural groups (eg, *Artists in Black* project by Arts Law Centre); and
- j. investigate other related services so that PILCH can, by drawing on the expertise and resources of corporate members and government bodies,<sup>77</sup> offer pro bono assistance with issues such as: guidance with undertaking an audit of key (non-legal) risks to the organisation, review of personnel procedures and policies etc.

The new service would take a broad view of what is a 'legal' issue. Many of those in the NFP sector do not think they have any 'legal issues' because they only think of legal matters as those involving courts, judges and potential prosecution. However, the broad definition used by the new service will encompass legal issues such as risk management processes aligned to good governance. Often legal issues are intertwined with the lack of proper policies and procedures, and inexperience in financial management. These legally-related issues will also be covered.

PILCH is, with assistance from its corporate and law firm members, already running seminars on these types of issues (eg, fraud prevention and financial literacy). We are also expanding the reach of these seminars and our pro bono referral service to regional Victoria.

By combining the wide expertise of PILCH members (eg, corporates such as NAB, Goldman Sachs and others) and alliances with peak professional groups such as CPA Australia (who have expressed interest in supporting the service), there is an excellent opportunity for a range of legally and financially-related issues to be covered by the new service.

While the greatest area of unmet needs appears to be access to specialist NFP legal services (and this will be the core expertise of the new service), in order to provide a holistic legal service it is important to include a range of pro-active and 'preventative' services such as assistance with governance, financial and management issues.

<sup>76</sup> PILCH has already begun planning NFP seminars to be delivered in conjunction with its members in Geelong.

<sup>77</sup> Recently PILCH have been asked to make a presentation about the Project to the government lawyers section of the LIV.

### 13.3 Implementation

The launch of new services will be staggered to allow 'behind the scenes' time for development of the web-portal, internal protocols and precedents so that when additional enquiries are received, they can be handled promptly and expertly. In this regard a two-stage implementation process is proposed:

Stage 1 centres on the development of the specialist NFP legal and legally-related web-portal, with a range of other integrated services including e-bulletin updates, fact sheets, frequently asked questions and precedents.

Stage 2 involves the addition of a telephone/on-line basic advice service staffed by in-house lawyers with back up from PILCH members (via referrals, staff training and an expert panel).

Stage 1 will involve a significant amount of web design and IT support. It is currently anticipated that this assistance will be obtained as part of an in-kind corporate contribution. If this is not obtained on an in-kind basis, then additional funding will be required. On-going IT support (to ensure regular maintenance of the web-portal) will be included in the budget unless provided via on-going in-kind support.

With regard to staffing levels, the new service (including the provision of basic telephone/on-line legal advice) will require a *minimum* of 2.6 EFT lawyers and 0.8 EFT administrative assistance. In the manner in which PILCH currently uses secondee solicitors and administrative staff, this option will be explored for the new service. There may be greater opportunities for secondee solicitors in the NFP service as the legal issues that face NFPs more readily 'fit' with the commercial and corporate expertise of many of PILCH's member firms.

The implementation plan for the new service will also scope the most appropriate framework for an evaluation of the service. It is anticipated that this will be undertaken with expert (external) in-kind assistance. This framework (eg, the collection of data) will be built into the new service from its inception, and will be an important tool for securing on-going funding.

More work is being undertaken on budgeting, staffing and implementation aspects by the NFP Legal Service Establishment Sub-Committee of the PILCH Board. Of course, exactly how the services will be rolled-out will be influenced by the availability of funding and in-kind assistance.

## 14 FUNDING CONSIDERATIONS

### 14.1 Is a separate entity necessary?

The option of incorporating a separate entity to conduct the new service is being considered.

One consideration relevant to this decision is whether it is necessary in order to obtain funding for the service. For example, most individual donors and the majority of philanthropic foundations will only donate funds to organisations that have DGR status to ensure their donations are tax deductible. PILCH does not have DGR status. In the USA, donations to NFPs which provide pro bono legal services for other NFPs are tax deductible and, hence, those NFPs have access to a broader funding base.<sup>78</sup> However, PILCH's initial advice on this issue is that it is unlikely that, even if the new service was separately incorporated, it would be eligible for DGR status (the only exception would be if the *Income Tax Assessment Act* was amended to specifically list the entity, as is proposed for Nonprofit Australia).

There may, however, be other reasons for separately incorporating the specialist NFP (community) legal service. The issue of liability and insurance cover for advice given by PILCH employees via the telephone and/or on-line will need to be considered carefully. Further, if the service involves collaboration between PILCH and other agencies and/or corporate sponsors and/or re-current (federal) government funding then, as part of those arrangements, there maybe be a need to separately incorporate the service. If the pilot of the service in Victoria is successful, it may be possible to expand its operation across Australia: ie, via the web-portal, telephone/on-line advice line, with more detailed state-related advice (and any referrals for pro bono assistance) being directed by that service to state-based PILCHs. If, as the NFP sector is lobbying for, legislative reforms are made such that there is national consistency (or at least much greater consistency between the states) in matters such as associations and fundraisings laws, then this national, separate entity model for a specialist NFP legal service may become the most effective way to deliver services.

### 14.2 Corporate sponsorship

Any funding from a corporate is likely to assist the service to attract additional funding from the Victorian government. As outlined under Heading 12, the Victorian government prefers community/business/government partnerships.<sup>79</sup> Further, some of the government grants that may be relevant to the service require matched funding: eg, DVC community support grants.

### 14.3 Philanthropic funding

The project to establish the service could be of interest to philanthropics. As a general comment, philanthropics tend to only fund pilot projects, not recurrent funding. There are some philanthropics that are willing to fund organisations that do not have DGR status. However, without DGR status the number of foundations that will be interested in funding the establishment of the service will be limited. Each philanthropic has its own set of priorities, funding limits and closing dates. Often their application turn-around time is not fast. The service may be able to attract some philanthropic funding for its start up phase (eg, 1-2 years plus an evaluation, as was the case for Human Rights Law Resource Centre). Some philanthropics are willing to partner with government and/or other philanthropics. There may be discrete parts of the service that will be suitable for philanthropic funding (eg, evaluation of the service or research into meeting the specific legal needs of indigenous NFPs and/or NFPs in rural, regional and remote areas<sup>80</sup>).

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<sup>78</sup> Eg, Probono Partnership – about 20% of its income comes from individuals and Foundations (see Attachment 3B).

<sup>79</sup> Eg, the Victorian government's involvement in and support of the Agora Think Tank see [www.agorathinktank.org](http://www.agorathinktank.org) – it was at the last meeting of the Think Tank that the Minister announced the SCOP – DVC review.

<sup>80</sup> For example the Reichstein Foundation, supports and funds projects which effect structural change to redress the disadvantage experienced by particular communities (with an emphasis on assisting indigenous organisations and small consumer groups) and accordingly will fund projects that have the capacity for structural/systemic change even if the organisation does not have DGR status. See [www.reichstein.org.au](http://www.reichstein.org.au).

## 14.4 Government funding

### Victorian

As mentioned under Heading 7, 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 NFP (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. Possibly DVC is the department with the most relevant overall mandate. As the Victorian government aims to deliver 'joined up government' (a major reason for the creation of DVC), the new service could serve as a showcase for both delivery of this pledge and government support of the community/NFP sector.

### Federal

Given the work being done in NSW and the number of issues affecting NFPs that come under federal legislation, federal funding is another possible medium-long term source. Again, any moves to achieve greater national consistency in NFP legal structures and fundraising would increase the likelihood of federal government funding for a legal service for NFPs. If the specialist service is properly evaluated and, after 2-3 years, demonstrates outcomes such as improved NFP compliance and governance, better co-ordination and use of resources (eg, the resources of the ATO), then there would be a good case to put to the federal government to provide recurrent funding.

## 14.5 Membership fees

Drawing on the Arts Law model, a question was included in the survey about the NFP's willingness and ability to pay a membership fee to access an increased range of services. As described under Heading 9.1, the majority (62%) of respondents would be willing to pay a modest, scaled membership fee<sup>81</sup> of some description if it gave them access to the full range of new services. This was an interesting result, and most likely an indicator of the need for the services, rather than an accurate indication that funding for the NFP legal service could rely, in any significant way, on membership fees. With a phase-in of new services, it will not be possible to consider the introduction of membership fees until a year or two into the life of the new NFP service – when most of the services were in operation and the NFP service has developed a profile and reputation with NFPs for prompt, high quality and easy to understand resources and advice.

In this regard, it is worth noting the Arts Law experience. This experience has shown that it can take many years to build a membership fee base, and that it cannot be relied on as a significant source of funding – for the Arts Law Centre, it currently represents approximately 10% of its total income.

Another issue that will be explored is developing relationships with peak bodies with a view to them to becoming members of the specialist NFP legal service. The survey results highlight that the majority of NFPs are members of one or more peak bodies. By using these existing networks, the specialist NFP legal service could have a broader reach. The peaks would also act as a ready source of feedback about on-going sector needs.

The new service will collaborate with the peaks to develop seminars and training specifically tailored to the needs of their members (eg, on proposed legislation affecting community health organisations, or amendments to the bankruptcy laws which financial counsellors need to understand).

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<sup>81</sup> The sample fee range given in the survey was \$50 (for an organisation with income of less than \$100,000) to \$600 (for income of greater than \$1 mil).

From PILCH's perspective, establishing relationships with peak bodies, as opposed to all of the peaks' members, would have the advantage of creating a smaller membership base. The peak could either absorb the PILCH fee from its own resources or pass it on as a small increase in their membership fee. Some peaks are very small and poorly resourced, and any fee will need to take account of this circumstance, as well as being scaled to reflect the number of member organisations it represents.

The payment by the peak of a membership fee could then entitle the peak and its member organisations to access a certain number of services per year. The peak itself can use PILCH's referral service to obtain legal advice on issues that directly affect its members and then disseminate that advice to its members so as to inform future work: eg., the National Association of Community Legal Centres will often request advice on matters that have the potential to affect all community legal centres.

#### **14.6 Fee-for-service income**

There is potential for a specialist NFP legal service to develop, over time, fee for service income from the NFP, government and legal services sectors. Care will need to be taken to ensure that such work does not detract from the ability to provide the core services but, as expertise and reputation in providing specialist NFP-orientated advice grows, there may be opportunities for fees to be charged for:

- larger, better-resourced NFPs for legal advice or discrete policy or training work;
- government departments for policy advice on a consultancy basis; and
- for professional training (eg, for lawyers and accountants) on NFP legal issues (see Heading 9.2).

#### **14.7 Mix of funding**

In order to ensure the long-term sustainability of a specialist NFP legal service, the aim will be to develop a mix of funding sources so that if any one source is discontinued, the continuation of the service will not be jeopardised. If corporate sponsorship (including significant in-kind IT/web design contribution) and/or philanthropic funding can be secured fairly quickly, then that funding will enable PILCH to complete the 'backroom' work needed before the service can be launched. Using funding in this way will strengthen the likelihood of government providing matched funding. Over time, it may be appropriate to consider a membership fee for certain services/certain NFPs.

## **15 CONCLUSIONS – NEXT STEPS**

At its March meeting, the PILCH Board resolved to:

- a. establish a specialist Not-for-Profit Legal Service to expand significantly the range of services which PILCH provides to NFPs in the manner recommended in this Report (in, particular under Headings 12, 13 and 14). The current PILCH referral service for those NFPs that satisfy the 'public interest' eligibility criteria will be maintained and enhanced; and
- b. form a 'Not-for-Profit Legal Service Establishment Sub-Committee' of the Board. The role of this Sub-Committee will be to assist with governance issues for the new service, in particular, to review any corporate and/or other funding arrangements for the service.

PILCH is currently:

- exploring collaborative arrangements with other NFP organisations;
- working on a more detailed implementation plan; and
- seeking funding to begin implementation of the new services for NFPs in the manner recommended in this Report.

Sue Woodward  
Policy Officer

PILCH (Vic) Inc.  
1 May 2007

**Attachment 1 - Consultations undertaken (as at 20 March, 2007)**

<b>Date</b>	<b>Action</b>	<b>Stakeholder category</b>
31 August 2006	Meeting with FAL Lawyers to discuss assistance for NFP on intellectual property matters.	PILCH member - Law Firm
1 September 2006 31 October 2006	Telephone discussion with Robyn Ayres from Arts Law Centre. Further telephone conference regarding membership model, telephone advice line etc.	Community Legal Service Advisor to arts NFPs
7 September 2006	Meeting with the new pro bono coordinator at Allens Arthur Robinson, Debbie Wong, to discuss the firm's involvement in the NFP Project and to arrange the seminar on intellectual property issues which affect NFPs to be held on 1 March 2007.	PILCH member NFP Seminar Series
27 September 2006	Meeting with the pro bono coordinator at Herbert Geer & Rundle, Henrik Lassen, to discuss the firm's interest in the NFP Project.	PILCH member NFP Seminar Series
4 October 2006	Meeting with the pro bono referral and project coordinators at Clayton Utz to discuss the firm's involvement in the NFP Project and topics for seminars being held in 2007 for NFPs.	PILCH member NFP Seminar Series
10 October 2006	Telephone discussion with John Corker, National Pro Bono Resource Centre, to discuss project, in particular his knowledge of overseas models having visited some agencies in the USA and Canada.	Government funded pro bono resource centre
12 October 2006	Meeting with a NFP group to discuss range of assistance required by a NFP during its establishment.	NFP group
17 October 2006	Meeting with Anton Herman, National Pro Bono Co-ordinator, Minter Ellison to discuss NFP project including possible additional referrals it may generate for member firms.	PILCH member
10 October 2006	Meeting with Elizabeth Cham, Chair, National Roundtable of Non Profit Organisations (former National Director, Philanthropy Australia) to discuss NFP project including possible funding options.	Key NFP coalition/peak
23 October 2006	Meeting with John Emerson, Freehills, to discuss NFP project and tax concessions available for a new NFP legal service entity.	PILCH Board member and member firm, leading charity law tax expert

<b>Date</b>	<b>Action</b>	<b>Stakeholder category</b>
24 October 2006	Meeting with Angela Savage at VCOSS to discuss NFP Project and existing VCOSS services.	VCOSS – Peak Body
24 October 2006	Attended the Victoria Law Foundation Pro Bono Secretariat and discussed the NFP Project with attendees and received feedback about the law firms' involvement in a potential specialist legal service for NFPs.	PILCH members
24 October 2006	Meeting with David Leonard from Dispute Settlement Centre of Victoria to discuss what assistance they provide to NFPs to resolve internal disputes which arise.	Government funded legal service
31 October 2006	Meeting with Meredith Carter, Senior Policy Advisor, Premier.	State government
1 November 2006	Attended a lunch hosted by Sparke Helmore for Tim Costello to discuss the NFP Project in the context of the lunch discussion regarding good corporate citizenship in communities in which businesses operate. We also discussed how corporations could support NFPs which in turn would strengthen the community.	Corporations
2 November 2006	Attended the Melbourne Cares Collaborators Group - Business & Community Partnership Broker Services to discuss the NFP Project and get the attendees feedback on what services the NFP/Community require.	Community/Pro Bono Services
6 November 2006	Meeting with Denis Nelthorpe, community sector consultant, to discuss NFP project.	Former PILCH Board member, consultant
9 November 2006	PILCH held the 3rd seminar on employment and industrial relations issues affecting NFPs with Maddocks.	NFP organisations
9 November 2006	PILCH held a consultation with 15 NFPs to discuss the NFP Research Project and to get their feedback on the style of service they would like via written surveys.	NFP organisations (at PILCH seminar)
14 November 2006	Attended training at Maddocks on performance management for corporates and NFPs	PILCH member
11 December 2006	Meeting with Tony Lang, Barrister who regularly advises NFPs to discuss NFP project.	PILCH member

<b>Date</b>	<b>Action</b>	<b>Stakeholder category</b>
18 December 2006	Meeting with Peter Seidel, Public Interest Partner, Arnold Bloch Leibler to discuss NFP project	PILCH Board member and firm member
16 January 2007	Meeting with Helen Alabaster re student perspective on how the FLAP (family Law assistance program) works as a student placement at Monash University (Oakleigh)	Student volunteer, part time employee PILCH
16 January 2007	Meeting with Kirsty Galbraith re student perspective on how the Professional Practice and Advanced Professional Subject works at Monash (Springvale)	Student volunteer PILCH
16 January 2007	Telephone conversation with Laura Sigel, Acting Director, Communications Law Centre about their advice and other services, in particular OzNet on-line legal advice	Specialist community legal centre
23 January 2007	Meeting with David Krasnostein, Chief General Counsel, National Australia Bank, to discuss NFP project especially from corporate member perspective.	Chair, PILCH Board PILCH member
29 January 2007	Meeting with Fiona McLeay, General Counsel, World Vision to discuss NFP project	Large NFP Former PILCH Board member
30 January 2007	Meeting with Robyn Ayres from Arts Law Centre re model and how any service could build on/complement their work.	Community Legal Service Advise arts NFPs
30 January 2007	Telephone discussion with John McIntosh, C-TAS regarding NFP project and seeking his experience of email charity tax bulletin and on-line advice service.	Private consultant specialising in charity tax and accounting advice
5 February 2007	Telephone discussion with Dr Anton Mischewski, Research & Policy Manager, The Centre for Volunteering NSW regarding his work on access to legal services & resources by NSW volunteer orgs.	Academic/ NFP
6 February 2007	Focus group of NFPs held at PILCH offices to get feedback about existing services and possible new services.	Range of 17 NFPs – small, large, peak, non-peak, PILCH and non-PILCH clients
19 February 2007	Meeting with TAC to discuss NFP project	Corporate member
16 March 2007	Meeting with Ms Rhonda Galbally, Executive Director Our Community to discuss the NFP Project.	Provider of support and other services to NFP sector
20 March 2007	Telephone discussion with Ms Jane Schwager, Director and CEO, Nonprofit Australia to discuss NFP project.	Provider of support services to NFP sector

## Attachment 2A - NFP survey form (as available on PILCH website)



Dear participant,

This is a quick (approx 5 minutes), informal survey to help us review our existing services for not-for-profit organisations and plan new services that we may be able to offer.

**How to complete the survey?** To complete on-line, please put your responses in **bold**: use 'x' next to the appropriate response box and a number next to the boxes in question 2. Then attach the completed (Word) document to an email to [policy.pilch@vicbar.com.au](mailto:policy.pilch@vicbar.com.au) ('NFP survey' as the subject line). Otherwise, print hard copy, complete and return by post to PILCH, PO Box 13121 Law Courts Melbourne, Vic 3000.

**How the data will be used?** The data will be used in a report being prepared by PILCH on options for legal services for community not-for-profit organisations. Your responses will be confidential. No identifying information will be used. If you would like more information about the project, the survey results, or if you wish to provide further comments please contact Sue Woodward: [policy.pilch@vicbar.com.au](mailto:policy.pilch@vicbar.com.au) or phone 9225 6657.

Thank you for helping us by providing feedback and ideas.

## 1. Existing services

1.1. Have you (ie, your organisation) ever rung PILCH for assistance?

☐ Yes

☐ No

☐ Don't know

1.2. If yes,

a. did your organisation obtain pro bono legal advice?

☐ Yes

☐ No

☐ Don't know

b. did your organisation obtain other assistance? Please specify (eg, referral to another service, referral to other resources)

.....

1.3. Any comment about the assistance received?

a. from PILCH

.....

b. if applicable, from the pro bono lawyer your organisation was referred to?

.....

c. Has your organisation received pro bono legal assistance not via PILCH, and if so please add a brief comment as to how this was organised (eg, via Board member)

☐ Yes, via.....

☐ No

☐ Don't know

## 2. New services

These are some ideas...maybe only a wish list! Please **rank in order** of what you see as being the greatest need, and cross any that you think duplicate an existing service.

### 2.1. Telephone advice and referral service

Assume that you would speak to a person (maybe a para legal volunteer) who would take down general details about the query. An in-house lawyer would call back to provide either advice, information about where to get assistance or to organise a referral to a private lawyer for more specialist advice (via current PILCH scheme for pro bono legal assistance).

☐

## 2.2. Website

- links to other services and resources ☐
- answers to 'frequently asked questions'  
(eg, do we need to incorporate as a separate body for this project?) ☐
- on-line, basic legal advice and referral service  
(ie, email version of telephone service described above) ☐
- email notification re changes to law relevant to not-for-profits ☐

## 2.3. Organisational legal 'health check'

eg, check of various compliance issues, structure, governance ☐

## 2.4. Law reform and advocacy

eg, standard form funding agreements, better legal structures ☐

## 2.5. Precedents

eg, a constitution accepted by the ATO as suitable re DGR status ☐

## 2.6. Seminar series

more low cost seminars, on a range of topics, say 8 each year ☐

## 2.7. Resources

available at low cost, possibly on-line, for topics where a need is identified ☐

## 3. **Cost**

3.1. If all of the above services were available, do you think your organisation would use them?

☐ Yes, regularly      ☐ No      ☐ maybe occasionally

3.2. Do you think your organisation would be prepared to pay an annual subscription in order to access these services, based on a sliding scale from, say, \$50 (income of less than \$100,000) to \$600 (income of greater than \$1 mil)?

☐ Yes      ☐ No

Any comment? .....

## 4. **About your organisation**

4.1. Is it a member of a peak body?      ☐ Yes (which one?.....)      ☐ No

4.2. Approx. annual income?

- ☐ less than \$500      ☐ \$500 – less than \$10,000      ☐ \$10,000–less than \$100,00  
☐ \$100,000 less than \$500,000      ☐ \$500,000 to less than \$1 mil      ☐ more than \$1 mil

4.3. Approx. no. of staff

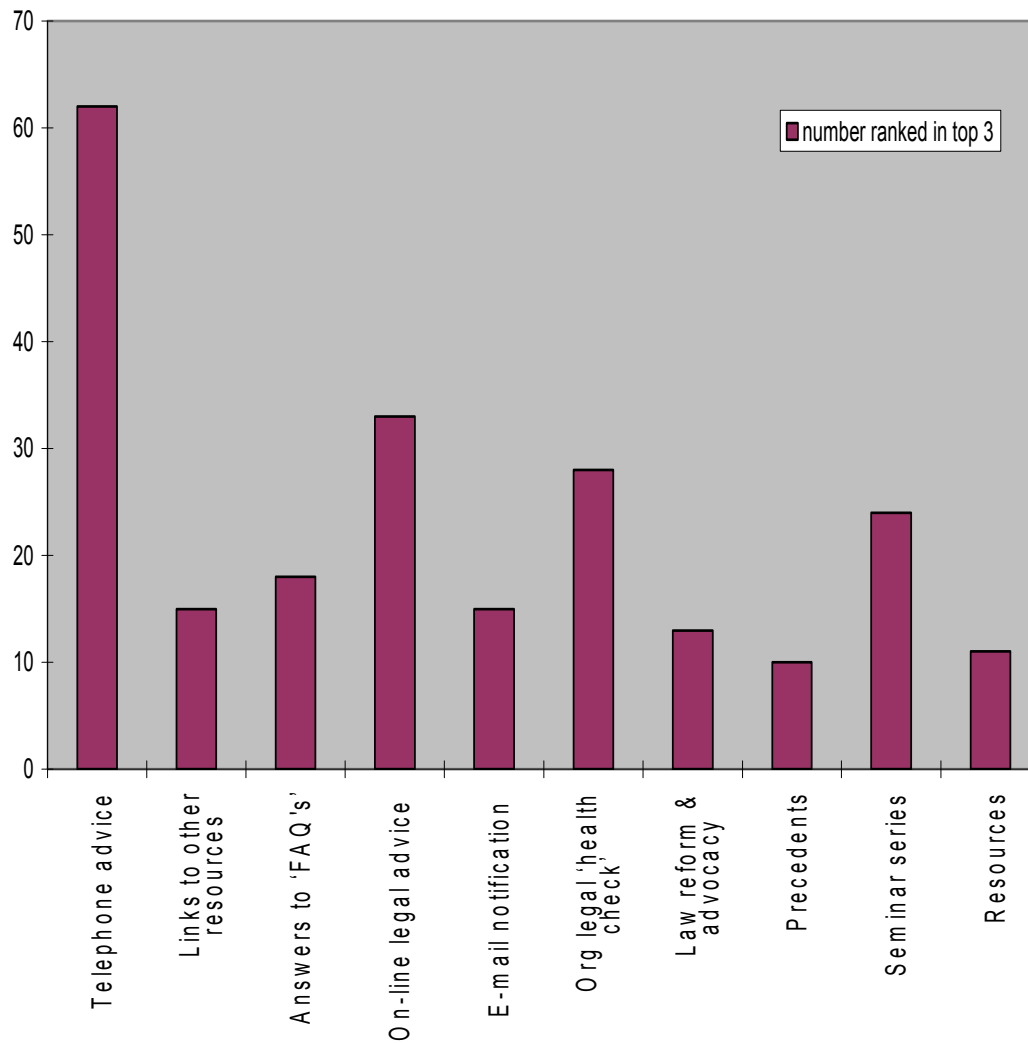
- ☐ none      ☐ 1 - less than 5      ☐ 5 – less than 20  
☐ 20 less than 50      ☐ 50 less than 100      ☐ 100+

4.4. Approx. no. of volunteers

- ☐ none      ☐ 1 - less than 5      ☐ 5 – less than 20  
☐ 20 less than 50      ☐ 50 less than 100      ☐ 100+      **Thank you**

**Attachment 2B – Summary of websites, bulletins etc. where NFP survey and focus group advertised**

<b>Organisation Type</b>	<b>Organisation</b>
<b>Umbrella Organisation</b>	PILCH (website, newsletter)
	Victorian Council of Social Services (flyer, e-bulletin)
	Info-x-change (all e-bulletin boards)
	ProBono News (e-bulletin)
	Ross House Association
	Collective of Self Help Groups
	Association of Neighbourhood Houses and Learning Centres Vic
	Australian Federation of Disability Organisations
	Women's Information and Resource Exchange
	Financial and Consumer Rights Council
	Express Media
	Community Housing Federation Victoria
<b>Government</b>	Department of Victorian Communities (website)
<b>Corporate</b>	PILCH members
	Our Community – e-bulletin
<b>NFPs directly</b>	Email to NFP & Community Orgs listed on PILCH database
	Volunteering Australia (website, e-bulletin)
	Email to Victorian Law Foundation grant recipients
<b>Media</b>	Small (free) article in The Age, Saturday 3 February, 2007
<b>Via PILCH assisted Orgs.</b>	Carers Victoria
	ALSO Foundation
	Multicultural Arts Victoria
	Al-Anon
	Wilderness Society
	Victorian Association for the Care and Resettlement of Offenders

**Attachment 2C: more detailed survey results****Detailed New Services Ranking**

**Attachment 2D – Focus group attendees**

<b>Name</b>	<b>Title</b>	<b>Organisation</b>
Annie Dunn	Community Enterprise Development Coordinator	Brotherhood of St Lawrence
Jo-Ann Tamlyn	Project Coordinator	Chronic Illness Alliance Inc
Bryan Woodford	CEO	Yooralla
Patricia Young	Convenor	Body Corporate Action Group
Patricia Laurie	Manager	Ross House Association
Alischa Ross	CEO/Director	Youth Empowerment against HIV/AIDS (YEAH)
Gary Gromb	Coordinator	Collective of Self-Help Groups
Neil Blenkiron	Media and Campaign Officer	Australian Federation of Disability Organisations
Jill Morgan	Executive Officer	Multicultural Arts Victoria
Stephen Hill	Manager Resources & Development	Carers Victoria
Holly Marigold	Sector Development Officer	Community Housing Federation of Victoria
Paul Morgan	Deputy Director	SANE Australia
Lyn Morgin	CEO	The ALSO Foundation
Maria McGarvie	Board Member	Caroline Chisholm Institute
Jacinta Cashen	President	VICCSO
Lisa Dunbar	Manager, Transitional Services	VACRO

### **Attachment 3A – Snapshot of specialist Australian services**

The models below are the most pertinent examples of currently operating niche services and the particular considerations that they raise are examined.

#### **ARTS LAW**

<b>Name:</b>	Arts Law
<b>Established:</b>	1984
<b>Jurisdiction:</b>	Based in NSW, but Australia wide advice
<b>Website:</b>	www.artslaw.com.au
<b>Services Offered:</b>	<b>Legal Advice</b> <ul style="list-style-type: none"> <li>• Telephone Advice (free) – call back system</li> <li>• Legal Advice Night's (LAN's)</li> </ul> <b>Referral Service</b> <ul style="list-style-type: none"> <li>• Referrals for paid and pro-bono work</li> </ul> <b>Mediation Service</b> (for individuals and orgs that become members) <b>Legal Information</b> <ul style="list-style-type: none"> <li>• Precedent access (members only)</li> <li>• CLE Seminars (free or paid in Uni and Tafe)</li> <li>• Research and advocacy for law reform</li> <li>• Publications [free and paid]</li> <li>• Fee-for-services drafting</li> </ul>
<b>Eligibility:</b>	Individuals and groups who: <ul style="list-style-type: none"> <li>• are not government</li> <li>• do not want second opinions</li> <li>• cannot afford to pay</li> <li>• do not have family law, immigration or criminal law matters.</li> </ul>
<b>Structure:</b>	8.5 EFT      4 Solicitors, 1 Executive, 2.5 Admin Support/Paralegal Occasional use of students and retirees Junior lawyers and final year law students as note takers/legal assistants for volunteer lawyers Panel of approximately 200 lawyers Relationship with 1 law firm to take on 10 requests a week in house Panel of accountants Personal relationship with 2 accounting firms
<b>Funding:</b>	~ \$700,000.00 total income: <ul style="list-style-type: none"> <li>• ~ \$70,000 - \$80,000 membership fees (individuals/groups)               <ul style="list-style-type: none"> <li>▪ \$99 pa - \$165 artist</li> <li>▪ \$220 pa – \$330 NFP income under 99K</li> <li>▪ \$550 NFP income over 1M</li> </ul> </li> <li>• ~ \$400,000.00 recurrent funding from Australia Council, Arts NSW and Australian Film Commission</li> <li>• ~ 300,000 in grants and fee-for-service</li> </ul>
<b>Outcomes:</b>	In 2006: ~ 800 – 900 referrals for private paid work ~ 4,000 CLE attendances at 110 seminars ~ 2,000-2,500 phone advice provided ~ 280-350 LANS ~ only 13% of the time phone queue closed because of too much demand

## COMMUNICATIONS LAW

<b>Name:</b>	Communications Law – provide advice via a website ‘Oznet Law’
<b>Established:</b>	1988 (was funded as a Community Legal Centre but we are advised that it no longer receives CLC funding)
<b>Jurisdiction:</b>	Based in Victoria, but advise Australia wide
<b>Website:</b>	www.oznetlaw.net
<b>Services:</b>	Include: <ul style="list-style-type: none"> <li>• Advice within 10 days via web, telephone or e-mail</li> <li>• Facts Sheets</li> <li>• Teaching</li> </ul>
<b>Eligibility:</b>	Free to all users but arranged by type: <ul style="list-style-type: none"> <li>• Individual</li> <li>• Business or Start-up</li> <li>• Community or Non-profit user</li> </ul>
<b>Structure:</b>	Company limited by guarantee. Research unit within VUT law school <ul style="list-style-type: none"> <li>• 1 director/principal solicitor</li> <li>• 1 solicitors/researchers</li> <li>• 0.5 admin – training and publications</li> </ul> Some student volunteers
<b>Funding:</b>	Expert legal group writes and revises site content - Oz net Law from: Federal AG, Gilbert and Tobin, Clayton Utz - total income for Communications Law Centre in 2003-2004 including: <ul style="list-style-type: none"> <li>• \$82,607 teaching income</li> <li>• \$114,636 research and consultancy</li> <li>• \$91,971 in grants including Australian Research Council, DCITA, the Australian Communications and Media Authority, the Reichstein Foundation, and John Fairfax Holdings.</li> </ul>
<b>Outcomes:</b>	facts sheets in 29 areas of communication law

### **Attachment 3B - Overseas model case studies and summary table**

The following are two brief overseas case studies considered relevant to potential new PILCH services. The summary table that follows the case studies provides a wider comparison of overseas models including further information on the case studies (it relies on information published by the organisations on their websites). It must be noted that PILCH has only searched for relevant models in major common law jurisdictions at this stage. Also, there are private providers of NFP management support and other services which have not been investigated, neither have other professions models of servicing the NFP sector.

The USA is by far the most developed jurisdiction in relation to servicing the specific needs of NFPs. Existing services in the USA collated by the American Bar Association highlights an interesting model of law school legal clinic service provision exists in many States.<sup>82</sup> A business law model which combines community economic development with an NFP program is also prevalent in the USA. Other jurisdictions like the U.K. and Canada have fewer and less developed services.

#### **Case Study 1 (USA): ProBono Partnership**

First established in 1997, ProBono Partnership is a tax-exempt public charity that provides free business legal services to NFPs serving the poor and disadvantaged. They provide legal advice on corporate structure and governance, contracts and leases, real estate, employment law, confidentiality issues, environmental law, intellectual property, state and federal reporting requirements, tax law and tax exempt status.

ProBono Partnership also works on 'pre-emptive strike' measures to assist organisations to recognise and fix potential problems before they arise through a series of workshops on topics like 'Legal Checkup' and Legal Topics' for NFPs. As well these workshops focus on areas with specific legal issues for NFPs like managing volunteer staff. Their program has a strong evaluation component including regularly measuring demand for services and administering client and volunteer satisfaction surveys.

#### **Case Study 2 (Canada) – ProBono Law Ontario**

ProBono Law Ontario runs a program Volunteer Lawyers Service which provides one-on-one legal advice and representation, on-line resources and legal education seminars for charities and NFPs. The service was launched in 1994 with assistance of United Way of Greater Toronto, the Ontario Bar Association and the County & District Law Presidents' Association amongst others. They are funded by the Ontario Law Foundation.

VLS specialises in business law important to NFP and charitable organisations, including incorporation, charitable registration, board governance, contracts, or trademark registrations. Their model does not have in-house lawyers, rather matches organisations to a lawyer, which take between two to four weeks.

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<sup>82</sup> Directory of Pro Bono Programs and Law School Clinics servicing Community Economic Development and Not-for-Profit Organisation Clients, NLADA Annual Conference, 060911, American Bar Association - Centre for Pro Bono. On-line directory information – see [www.abanet.org/legal/services/findlegalhelp/home.cfm](http://www.abanet.org/legal/services/findlegalhelp/home.cfm)

Name	Jurisdiction	Web	When est.	Services Offered	Eligibility Criteria	Structure	Revenue	Expenses	Outcomes
Probono Partnership	USA - Westchester County, NY, Fairfield County and New Jersey	<a href="http://www.probonopartnership.org">www.probonopartnership.org</a>	1997	i. free legal advice and Counsel ii. workshops and training sessions iii. plain English articles on relevant laws. iv. publications available through website v. model forms and documents	i. NFP, community service organisation, whose primary purpose is to operate ongoing programs or activities that benefit low-income, communities or that otherwise service the public interest and;  ii. unable to pay for legal services without significantly impairing resources for program delivery.	<ul style="list-style-type: none"> <li>Clearinghouse approx. 80%</li> <li>4 in-house attorneys approx 20% of workload</li> </ul>	Annual Gifts and Grants in 2005: <ul style="list-style-type: none"> <li>Corporations 36%</li> <li>Foundations 17%</li> <li>Law Firms 40%</li> <li>Government 3%</li> <li>Individuals 3%</li> <li>Other Orgs 1%</li> </ul> *Tax exempt, DGR equivalent	The total cost in 2004 was \$858,797.05: <ul style="list-style-type: none"> <li>68% being program delivery,</li> <li>19% Management and General Admin</li> <li>13% fundraising</li> </ul> \$817,900.00 was collected in contributions	In 2004 the program ran approx. 30 workshops and assisted approx. 299 clients.

Name	Jurisdiction	Web	When est.	Services Offered	Eligibility Criteria	Structure	Revenue	Expenses	Outcomes
DC Bar – Community Economic Development (CED) Pro Bono Project	USA – district of Columbia	www.dcbbar.org	1999	<p>i. clearinghouse and long term/full service relationships for legal advice and representation in such areas as employment law, real estate, corporate governance, contract review, intellectual property, and exempt organisations.</p> <p>ii. training sessions in partnership with other non-profit and gov. agencies on issues such as Board governance, employment law, non-profit regulation.</p> <p>iii. Sponsoring walk-in small business legal clinics.</p> <p>iv. Arranging legal counsel for low-income tenant associations.</p> <p>v. website links to resources</p> <p>vi. training and assistance to lawyers providing pro-bono</p>	<p>i. The organisation is a NFP charitable, religious, civic, community, or educational organisation and a substantial percentage of its activities are designed to provide direct services to persons of limited means living in the District of Columbia</p> <p>ii. The payment of legal fees would significantly deplete the organisation's ability to provide services or would be otherwise inappropriate</p> <p>iii. In the case of anyone seeking to start a NFP organisation, the person seeking assistance must have a business plan or attended a business training course at a recognized business training center</p> <p>Note: This program also assists small disadvantaged businesses.</p>	<ul style="list-style-type: none"> <li>▪ number of staff not available</li> <li>▪ approx 44 firms contributing pro bono assistance</li> </ul>	<ul style="list-style-type: none"> <li>▪ Run '5 for 5' campaigns asking 5 law firms to contribute \$5,000.00 each. In the fourth campaign 10 firms contributed.</li> <li>▪ Other agencies also provided - mainly Foundations and professional associations.</li> </ul>	<p>In 2005-2006 the total pro bono program, of which the CED project is only one part, was \$1,318,293.</p>	<p>Since 1998:</p> <ul style="list-style-type: none"> <li>▪ Matched 135 non-profit organisations with pro bono counsel for on-going legal represent'n.</li> <li>▪ Assisted over 275 small business owners through the small business clinics.</li> </ul>

Name	Jurisdiction	Web	When est.	Services Offered	Eligibility Criteria	Structure	Revenue	Expenses	Outcomes
Lawyers Alliance for New York -	USA – New York	www.lany.org/	1969	<p>i. <i>direct legal representation</i> on issues including corporate structure and governance, tax, real estate, employment.</p> <p>ii. <i>a Resource Call Hotline</i>, and</p> <p>iii. <i>educational programs for NFP</i> including workshops and publications</p>	<p>i. Their priorities areas are affordable housing and homeless services, economic development, children and youth services, immigrant communities, and elder services. In addition</p> <p>ii. two <i>special initiatives</i> to address emerging legal needs of the NFP sector: disaster relief and NFP accountability.</p>	<p>▪ 20 staff including 11 in-house attorney's</p> <p>▪ over 650 volunteer lawyers from over 100 law firms and corporate legal departments</p>	<p>▪ Law Firms \$753,100 37%</p> <p>▪ Foundations \$417,836 21%</p> <p>▪ Banks &amp; Corporations \$157,850 8%</p> <p>▪ Individuals \$193,602 10%</p> <p>▪ Public Grants &amp; Contracts \$169,933 8%</p> <p>▪ Other Earned Income \$249,057 12%</p> <p>▪ Special Events* \$78,550 4%</p> <p>Total Revenue \$2,019,928 100%</p>	<p>▪ Programs \$1,477,411 77%</p> <p>▪ Management &amp; General \$223,112 12%</p> <p>▪ Fundraising \$221,876 11%</p> <p>Total Expenses \$1,922,399 100%</p>	<p>▪ Service over 460 NFP each year</p>

Name	Jurisdiction	Web	When est.	Services Offered	Eligibility Criteria	Structure	Revenue	Expenses	Outcomes
ProBono Law Ontario (PBLO) – Volunteer Lawyers Service (VLS)	Canada – Toronto	www.volunteerlawyers.org	1994	<p>i. free legal advice and representation clearinghouse requested on-line and matched with lawyer within 2-4 weeks</p> <p>ii. on-line resources including a 10-point legal health check-up list amongst other lists, fact sheets, and powerpoint presentations.</p> <p>iii. legal education seminars and speaking engagements</p> <p>ProBono Law Ontario also has:</p> <p>iv. training and resources for lawyers</p> <p>v. holds conferences and has a best practice manual</p>	<p>i. charitable or NFP community based organisations whose mission is to service the public interest (environment, arts, social justice) or service socially and economically disadvantaged people and;</p> <p>ii. The merits of each application on a case-by-case basis including reviewing incorporation, list of board members, operating budget.</p> <p>iii. Does not assist organisations that fall under the category of mutual benefit not-for-profit corporations due to limited resources, these include trade associations, professional societies, gold clubs and social clubs.</p>	<p>▪ 500 volunteer lawyers which are matched with community agencies, one legal issue at a time</p> <p>▪ the VLS only has one full time director whereas PBLO has 5 staff and 2 consultants employed in 2005-2006.</p>	<p>The VLS in 2005-2006 received:</p> <ul style="list-style-type: none"> <li>▪ \$107,260 from Ontario Law Foundation grant</li> <li>▪ In-kind support from the Law Society of Upper Canada, LawPRO and Bar-eX.</li> <li>▪ Administration costs covered by PBLO whose total revenue in 2005-2006 was \$851,937.00</li> </ul>	<p>ProBono Law Ontario's total expenses in 2005-2006 were \$851,240 of which:</p> <ul style="list-style-type: none"> <li>▪ 68% was wages and consulting fees</li> <li>▪ 32% admin and general overheads</li> </ul>	<ul style="list-style-type: none"> <li>▪ Have assisted over 500 organisations since 1994</li> </ul>

Name	Jurisdiction	Web	When est.	Services Offered	Eligibility Criteria	Structure	Revenue	Expenses	Outcomes
LawWorks [previously Solicitors Probono Group (SPBG)] for Community Groups and In- Depth	England and Wales	<a href="http://www.lawworks.org.uk">www.lawworks.org.uk</a>	1997	<p>i. Seminar Series</p> <p>ii. Clearinghouse for legal advice provided within 3 weeks. Areas of speciality include employment law, company law, intellectual property and property law as well as charity law; tax/VAT law; insolvency and help in drafting contingency plans; insurance law; health and safety law; general contractual / commercial matters etc.</p> <p>iii. Additionally, LawWorks generally provides other services that NFP's can utilise like clinics.</p>	<p>i. small charities, voluntary and community orgs, social enterprises</p> <p>ii. The merits of each application on a case-by-case basis including reviewing operating budget, activities and who benefits.</p> <p>ii. do not accept requests from orgs whose primary object or purpose is the promotion of religion. Also do not help orgs whose focus is animal welfare or communities outside England and Wales unless the organisation delivers a real and tangible benefit to the community in a part of the UK.</p>	<ul style="list-style-type: none"> <li>The Community Group employs 3 full time staff.</li> <li>LawWorks has a total of 12 full time staff.</li> </ul>	<ul style="list-style-type: none"> <li>Funded by the Big Lottery fund 190,000 pounds over three years</li> <li>admin costs by lawworks generally</li> </ul>	Not available	Not available

Name	Jurisdiction	Web	When est.	Services Offered	Eligibility Criteria	Structure	Revenue	Expenses	Outcomes
ProBono UK.net	UK	www.probonouk.net	2003	i. The website was developed as one initiative of the AG's pro-bono committee to promote legal pro bono work generally, sharing information and resources and to develop an on-line community of like minded pro bono providers, whilst trying to map the pro bono work that takes place across the UK.	I i. anyone	n/a	Sponsored by ▪ Law Society; ▪ the Bar Council; ▪ ILEX; ▪ College of Law; ▪ secretariat support from Depart for Constitutional Affairs.	Not available	Not available
Professionals4 free	UK	www.professionals4free.org.uk	2000	i. find a broker service – which is an on-line matching service between community organisations and professionals. Accountancy Architect, Design and Graphics, Financial Services, Fundraising, Human Resources/Personnel, Legal, Management and Business Consultancy, Marketing, Property Services, Public Relations, Website Designer. ii. FAQ's iii. case studies iv. links v. helpline	i. voluntary and community groups looking for free help from professionals, ii. brokers of free professional services, who want to publicise what they do, and iii. professionals who want to volunteer their services.	In-kind work done by partnership of many orgs incl. Business in the Community, NCVO, Business Community Connections, TimeBank, Bar Pro Bono Unit, Home Office, ACU, Planning Aid, Price Waterhouse Coopers	Business Community and the Home Office Activities Communities Unit	Not available	Not available

#### **Attachment 4 – Example of website checklist**

As part of PILCH's new web-based services for NFPs, an interface will be developed as a first point of reference for many of the enquiries received from NFPs and potential NFPs. It will contain information and links for NFP's centered on commonly encountered legal and quasi-legal issues. The interface will assist NFPs to negotiate the often confusing and disjointed networks of information currently available, and provide easy to understand information so they can make an informed decision as to the best next step: eg, to decide if the issue is a legal one, if it is necessary/desirable to obtain legal advice (eg, by speaking to PILCH), what other services can help and/or where to get further information. The interface will also help reduce the time spent by PILCH staff and volunteers on very basic queries, so that they are better able to provide assistance with more complex legal issues that may need a referral.

The interface will have a variety of features such as a 'checklist' of issues for new NFP's to consider before incorporation (currently the most frequent inquiry). Below is an initial draft of such a checklist on incorporation: (draft prepared by Matt Tinkler, Minter Ellison seconded solicitor)

<b>Topic</b>	<b>Comments/FAQs</b>	<b>Links</b>
<b>Setting up a NFP</b>	<p>Issues to consider before you see a lawyer:</p> <ul style="list-style-type: none"> <li>• Has the organisation articulated its aims and objectives?</li> <li>• Are any funding arrangements in place?</li> <li>• Would a strategic alignment with an existing NFP org be more efficient?</li> <li>• If you have funds you wish to distribute to a particular cause – if so, have you considered establishing a sub-fund with the Melbourne Community Foundation?</li> </ul>	<p><a href="http://www.ourcommunity.org.au">www.ourcommunity.org.au</a></p> <p>Link to a list of existing NFPs in Vic with a function to allow searches by name &amp; services</p> <p>Link to peak sites, eg VCOS</p> <p>Direct link to PILCH seminars and materials</p> <p><a href="http://www.communityfoundation.org.au">www.communityfoundation.org.au</a></p>
<b>Business Structure</b>	<p>Choosing the best NFP - basic outline of pros and cons of various structures:</p> <ul style="list-style-type: none"> <li>• Incorporated Association;</li> <li>• Company Limited by Guarantee</li> <li>• or other (eg, co-op, aboriginal corp)</li> </ul> <p>Discussion of fees associated with incorporation and adhering to regulatory requirements.</p>	<p><a href="http://www.ourcommunity.org.au">www.ourcommunity.org.au</a></p> <p><a href="http://www.consumer.vic.gov.au">www.consumer.vic.gov.au</a></p> <p><a href="http://www.asic.gov.au">www.asic.gov.au</a></p> <p><a href="http://www.vcos.org.au">www.vcos.org.au</a></p> <p>Reference to fact sheets (member firms)</p> <p>Direct link to PILCH Seminar Series and materials</p>
<b>Grants &amp; Fundraising</b>	<p>Discussion of various funding issues:</p> <ul style="list-style-type: none"> <li>• Applying for DGR and PBI status and understanding the ATO's requirements for endorsement</li> <li>• Other charity tax exemptions;</li> <li>• Fundraising Appeal Act 1998.</li> </ul>	<p><a href="http://www.philanthropy.org.au">www.philanthropy.org.au</a></p> <p><a href="http://www.communityfoundation.org.au">www.communityfoundation.org.au</a></p> <p>Reference to fact sheets (member firms)</p> <p>Direct link to PILCH Seminars and materials</p>
<b>Management and Corporate Governance</b>	<p>Outline of issues to consider after incorporation eg:</p> <ul style="list-style-type: none"> <li>• Post incorporation contracts</li> <li>• Finance</li> <li>• Insurance</li> <li>• Risk management</li> <li>• Fraud Prevention</li> <li>• Employment &amp; industrial relations;</li> <li>• IP/IT</li> <li>• Media and advocacy</li> </ul>	<p><a href="http://www.ourcommunity.org.au">www.ourcommunity.org.au</a></p> <p>Reference to fact sheets (member firms)</p> <p>Direct link to PILCH Seminar Series and materials</p>
<b>Litigation</b>	<p>PILCH Legal Assistance Scheme</p> <p>Vic Bar Legal Assistance Scheme</p> <p>LIV Legal Assistance Scheme</p>	<p><a href="http://www.pilch.org.au">www.pilch.org.au</a></p>

**Attachment 5: - Referrals for legal assistance for NFPs and groups provided by PILCH (as listed in the PILCH Annual Reports, 2004-2006)<sup>83</sup>**

**July 2004 – June 2005**

3CR (Community Radio)	Gertrude Players
Aboriginal Family Violence Legal Service	Grampians Disability Advocacy Association Inc
Action for Community Living	Greater Shepparton Botanic Gardens Association Inc
Adoption Origins Inc	Green Wedges Guardians Alliance
Advocacy and Rights Centre	Hobsons Bay Community First
Aids Housing Action Group	Housing for the Aged Action Group
Ampersand	Huon Valley Environment Centre Inc
Anglicare	Islamic Council of Victoria Inc
Anglicord	Lilydale Community Child Care Inc
Animal Active	Link Community Transport
Animal Liberation South Australia Inc	Mechanics Institute of Dandenong
Arthritis Foundation of Victoria	Multicultural Arts Victoria
Australian Action on Pre-Eclampsia	Nauru Community Australia Inc
Australian Council of Adult Literacy	North West Nations Clans Aboriginal Corporation
Australian Sudanese Association in the North	Ordo Templi Orientis Inc
Bass Valley Performing Arts Camp	Otway Planning Association Inc
Carers Victoria Inc	Partnerships in Health Promotion Ltd
Centre on Housing Rights and Evictions	Proactive Learning Activity Yakka
Child Wise	Real Rights for Refugee Children
Chile Lindo Inc	Reflex Sympathetic Dystrophy Association of Australia Inc
Chronic Illness Alliance	RMIT Refugee & Asylum Seeker Project
Citizens Advice Bureau & Information Centre	Sandringham Children's Playhouse
Mentone Inc	Save the Ridge Inc
Clarendon Children's Centre	Self Help Addiction Research Centre
Collingwood Community Information and Drop-In Centre	Shepparton Heritage Centre
Community Child Care Association Inc	South West Community Legal Centre
Community Information Victoria Inc	Spare Lawyers for Refugees
Consumer Credit Legal Service Inc	St Albans Community Youth Club Inc
Consumer Law Centre Victoria	St Mary's House of Welcome
Council of Intellectual Disability Agencies (Vic) Inc	Sudalog Project
Craig Family Centre	Sustainable Population Australia
Credit Helpline	Tenants Union of Victoria
Dandenong Ranges Steiner School	The Star Community Cinema Association
Dart Centre for Journalism and Trauma	Uniting Church Centre
Dignity Financial Counselling Service	Uniting Care Harrison Community Services
Disability Justice Advocacy Inc	Upper Yarra Community House Inc
Disability Support and Housing Alliance	Victorian Aboriginal Community Controlled Health Organisation
Domestic Violence and Incest Resource Centre	Victorian Alcohol and Drug Association
Domestic Violence Victoria	Victorian National Parks Association
Elizabeth Hoffman House, Aboriginal Women's	

<sup>83</sup> As this is a list of the referrals it is not a list of all the organisations that have received assistance from PILCH (see Heading 4.1)

Family & Domestic Violence  
 Falun Dafa Association of Victoria Inc  
 Federation of Community Legal Centres  
 Federation of Natural and Traditional Therapists  
 Ltd  
 Fifteen Restaurant  
 Financial and Consumer Rights Council  
 Fitzroy Adventure Playground  
 Friends of Chicquita Park Residents  
 Friends of Gippsland Bush  
 Geelong Community Legal Service

Villamanta Legal Service  
 VIVAIDS  
 Voluntary Euthanasia Society of Victoria Inc  
 Wimmera Information Network Inc  
 Wimmera Uniting Care  
 Women's Liberation Halfway House  
 Xanana Technical Training Trust  
 Yarra River Keepers Association

## 2005-2006

(only some of the organisations that received referrals for pro bono assistance in 2005-2006)

3CR (Community Radio)  
 Aboriginal Family Violence Prevention & Legal  
 Service  
 Access Administration Project  
 Akademos Co-Operative Ltd  
 Al-Anon Family Groups Victorian Southern Area  
 Inc  
 Angel Light Link  
 Architects for Peace  
 Assisi Aid Projects  
 Australian Double Reed Society  
 Ballarat Citizens for Thoughtful Development  
 Churinga Support Services  
 Collective Of Self Help Groups  
 Community Child Care Association Inc  
 Consumer Credit Legal Service Inc  
 Consumer Law Centre Victoria

Diamond Creek Living and Learning Centre  
 Domestic Violence and Incest Resource Centre  
 Eastern Community Legal Centre  
 Fawcner Community House Inc  
 Indigenous Health Service  
 Lawyers for Animals  
 Multicultural Centre for Women's Health  
 National Association of Community Legal Centres  
 New Beginnings Substance Abuse  
 Pelvic Instability Support Group  
 Save the Golden Cypress Trees  
 Schneiderei Group Inc  
 Spare Lawyers for Refugees  
 VACRO  
 Westvale Community Centre  
 World Vision of Australia  
 Yarra River Keeper Association