



NATIONAL PRO BONO RESOURCE CENTRE

Submission to Treasury:

Scoping Study for a National Not-For-Profit Regulator

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**National Pro Bono Resource Centre
Law Building, UNSW 2052 NSW
www.nationalprobono.org.au**

National Pro Bono Resource Centre
Law Building, UNSW NSW 2052

T: +61 2 9385 7381
E: info@nationalprobono.org.au
W: www.nationalprobono.org.au

About the National Pro Bono Resource Centre ('the Centre')

The Centre is incorporated as a company limited by guarantee and was established at UNSW in 2002 following the recommendation by the National Pro Bono Task Force to the Commonwealth Attorney-General. The Centre exists to support and promote the provision of pro bono services. Its role is to stimulate and encourage the development, expansion and coordination of pro bono services as well as offering practical assistance in this regard.

The Centre is an independent, non-profit organisation that aims to:

- Promote pro bono work throughout the legal profession;
- Undertake research and projects to inform the provision of pro bono legal services;
- Provide practical assistance to pro bono providers (including information and other resources);
- Develop strategies to address legal need; and
- Promote pro bono law to community organisations and the general public.

The Centre receives financial assistance from the Commonwealth and States' and Territories' Attorney-General's Departments, and support from the Faculty of Law at the University of New South Wales.

The Centre has established an Advisory Council and consults widely with the legal profession, Community Legal Centres (CLCs), pro bono referral schemes, Legal Aid, Aboriginal and Torres Strait Islander Legal Services (ATSILS) and produces resources of immediate benefit to the legal profession and community sector.

1. Introduction

Many not-for-profits (NFPs) have sought legal advice through pro bono schemes to cope with the wealth of state and federal legal and reporting obligations of the current system and the complexity of seeking deductible gift recipient status. Therefore the Centre draws on its research into pro bono legal service providers who are receiving requests for assistance in such matters, in making comments which are particularly relevant to the consultation paper questions:

Q7 What impacts would simplifying and streamlining mechanisms for the assessment, granting and monitoring of concessional tax treatment have on the NFP sector? In particular on small and new NFP entities?

Q9 Does the current complexity of the taxation framework discourage entities from applying to access tax concessions?

This submission should be read in conjunction with the PILCH (VIC) submission that provides more detail on some of these matters.

2. Executive Summary

The Centre submits as follows:

- 1. Simplifying the current system would free up a significant amount of pro bono legal resources, given that its research shows that despite doing a lot of pro bono work in this area, law firms cannot meet the demand for pro bono assistance from organisations applying for Deductible Gift Recipient tax status.**
- 2. Having a complex regulatory system discourages NFPs from applying for tax concessions, particularly small and new NFPs, as they do not have the resources or the expertise to prepare an application for DGR status without expert legal assistance.**
- 3. Any new regulatory framework should not impose an additional and unnecessary administrative burden on NFPs.**

3. Submission

Free up pro bono legal resources for unmet legal needs

The Centre submits that simplifying the current system would free up a significant amount of pro bono legal resources. According to the latest survey of the legal profession done by the Australian Bureau of Statistics (ABS), Australian lawyers did over 950,000 hours of pro bono work in the 2007-2008 financial year¹. The Centre has conducted national surveys of the pro bono work of individual

¹ Results of the survey can be found at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/8667.0Main%20Features82007-08?opendocument&tabname=Summary&prodno=8667.0&issue=2007-08&num=&view=>

solicitors and barristers across Australia², and recently published the final report of its survey of Australian law firms with more than fifty lawyers³ which revealed that the firms who responded to the survey together provided a total of 322, 343 hours of pro bono legal work (the equivalent of 179 lawyers doing pro bono work full-time) throughout the year.

The results of the surveys of solicitors and barristers showed that 87 per cent of solicitors and 63 per cent of barristers reported doing pro bono work for community legal organisations and other not-for-profit organisations.

In Victoria, the great demand for pro bono assistance for NFPs has led to the establishment of a specialist legal service for community organisations. The Public Interest Law Clearing House (PILCH) has established PILCHConnect, which provides free or low cost assistance to NFPs across Victoria on a wide range of legal issues. The Centre's experience would indicate that there is a need for a similar service in each State and Territory, or, more appropriately, on a national basis. Research by PILCH (Victoria) and the Centre for Volunteering NSW highlight the problems caused by the current regulatory system and the resulting high-volume need for legal resources and legal assistance to NFPs.

The results of the Centre's recent survey of law firms with more than fifty lawyers revealed that applications for Deductible Gift Recipient (DGR) tax status ranked second on the list of areas of law and practice where pro bono assistance is widely provided (72 percent of firms who responded to the survey), but was also high on the list of areas where requests for pro bono assistance are often refused for reasons other than means or merit (34 percent of firms who responded to the survey). Most of the firms surveyed (69 percent) did the same or more work for organisations than they did for individuals.

This research indicates that a large proportion of scarce pro bono resources are being directed to assisting NFPs with their DGR status applications, and yet unmet legal need in this area remains high.

NFPs don't have resources to deal with complex system

While it can be vital for NFPs to be able to receive tax deductible gifts and donations, many do not have the resources or the expertise to prepare an application without expert legal assistance, especially given the complexity of the process. If, as the survey results indicate, NFPs are finding it difficult to obtain assistance with their DGR status applications, then this would certainly discourage them from applying to access tax concessions, particularly small and new NFP entities which may not be familiar with how to obtain such assistance.

Regulatory Burden

As a NFP operating within the current regulatory framework in NSW, the Centre would be concerned about any additional regulatory tasks over and above ones required by the existing Corporations Law framework. Any regulatory framework should not impose an additional and unnecessary

² Results of the surveys can be found at <http://www.nationalprobono.org.au/page.asp?from=8&id=175>

³ Twenty nine of the total 39 firms in Australia that have more than 50 lawyers responded to the survey (approximately 18% of the total Australian legal profession), including all of the large national firms. The results can be found at:

https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/National%20Law%20Firm%20Pro%20Bono%20Survey%20Final%20Report%20Dec%202010.pdf

administrative burden on NFPs. The proposed core rules would seem to impose an additional layer of regulation that should be avoided.

The Centre welcomes law reform which makes the DGR application process simpler, so that limited pro bono resources can be better deployed in other areas of unmet legal need.

National Pro Bono Resource Centre
13 August 2010