A report on pro bono programs in the United States which deliver free legal, business and advocacy support to non-profit, community based organisations.

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Signed

Tabitha Lovett

Dated 25 August 2008
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Acknowledgements

During my fellowship I researched and visited a number of programs in the United States which promote and assist community development through the delivery of pro bono services to non-profit organisations. Whilst travelling and once back in Australia, I was able to disseminate that information to the staff at the Public Interest Law Clearing House, to assist with the planning and development of a new specialist legal service for non-profit organisations in Victoria called PilchConnect.

This research would not have been possible without the generous support of the Winston Churchill Memorial Trust of Australia and I am extremely grateful to the Trust. I am also grateful to the people I met in the United States who generously shared their experiences, discussed their services, recommended other services to research and also provided me with their program materials and publications which were received with great interest back home by the staff of PilchConnect.

I would like to say a particular thank you to Peter Seidel and Paula O'Brien for supporting my application to the Churchill Foundation and Justice Dessau for her encouragement and warmth. Thank you also to the secondees and staff at PILCH (Michelle Panayi, Kate Fischer and Susannah Sage-Jacobson) who continued the work of the Public Interest Scheme while I was away and Sue Woodward (Manager of PilchConnect) for the example she set in developing a broad, long-term strategy for assisting non-profits in Australia.

A special thanks to my family and friends and my partner, Matt Barrett, for his love and support.

The views expressed in this Report are entirely my own and do not represent the views of the PILCH Board or management, staff or PILCH members.

I would encourage anyone reading this Report to look at the Winston Churchill Foundation website if you have an idea for a project which would benefit from international research. The Fellowship provided me with a wonderful opportunity to attend international conferences in my field, research the services which had inspired the model for PilchConnect and also consider other ways in which pro bono legal services can be utilised to assist disadvantaged and marginalised individuals and the non-profit organisations which serve them.

Finally, thank you to each and every member of the non-profit community for their energy, initiative and compassion and the valuable, world-changing work they do every day.
Executive Summary

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The Churchill Foundation awarded me a fellowship to research and report back on pro bono programs in the United States which deliver free legal, business and advocacy support to non-profit, community based organisations.

This research was primarily relevant to the Public Interest Law Clearing House (PILCH) in Victoria which has recently established a specialist legal service, called PilchConnect, to provide legal and legally-related services to community based, non-profit organisations. PilchConnect is scheduled to be formally launched in October 2008.

This Report is divided into 4 sections.

- **Part A**: Legal Services for Non-Profits;
- **Part B**: Advocacy Services for Non-Profits;
- **Part C**: Business Services for Non-Profits; and
- **Part D**: The Case for Assisting Micro-Entrepreneurs

In the area of pro bono service delivery, the United States is a world leader. As pro bono referral services in Australia, like PILCH, continue to expand and develop new projects to focus on specific issues and groups in the community (such as human rights, self-represented litigants, elder law and the non-profit sector) and law firms and corporations in Australia increase their pro bono budgets and expand their corporate responsibility programs, it is timely to consider some of the ways in which the United States directs its pro bono resources to identify and meet the needs of the community.

My research in the United States was focused primarily on the services which assist the non-profit sector. During my conversations with pro bono brokers, volunteer lawyers, advocates and pro bono coordinators in the United States, it became apparent that the legal needs of the non-profit sector in Australia and in the United States are substantially the same. Both in terms of their most frequently asked questions around issues such as tax exemptions, employment law and protecting their intellectual property, and the legal issues they often fail to identify in relation to fundraising and liability for volunteers.
Having examined in detail the success achieved by the services in the United States in meeting the needs of the non-profit sector, I am confident that PilchConnect is perfectly placed and designed to grow into an organisation as large, successful and valuable to the non-profit sector as those I visited in the United States.

As non-profit organisations in both the United States and Australia work to fill gaps in government services, respond to natural disasters and crises and meet the needs of our community’s most disadvantaged and marginalised members, they increasingly find themselves advocating on behalf of their clients to ensure that their welfare and rights are protected and their voices heard. In this climate it is important for non-profits to be encouraged and supported in their advocacy efforts, and for such advocates to have access to pro bono assistance and guidance from professionals such as lawyers, to ensure their advocacy endeavours are strategic, targeted and effective. The United States has an impressive number of organisations which utilise the skills of pro bono lawyers to advocate for systemic change and this Report details a number of the strategies they use in partnership with grass-roots, non-profit organisations to achieve systemic change.

I have not reviewed in this Report all of the programs, services and organisations that I visited in the United States or all the people to whom I had the opportunity to speak. Instead, I have attempted to bring together the information and lessons learnt under specific headings. In each of the four parts of this Report I have set out the information I gathered and practices I observed in the United States and concluded with a number of recommendations for organisations working in relevant fields.

My fellowship gave me a new perspective on the way in which PILCH and other pro bono schemes and programs in Australia could operate and many ideas for how Australia could link in with and replicate some of the services and programs which are being successfully run in the United States. This Report is intended to contribute to a dialogue on the delivery of pro bono legal and law-related services to the community.

If you would like further detail about my research or you have any questions after reading this Report, please contact me at the Victoria Law Foundation on (03) 9605 8115, flovett@victorialaw.org.au or at flovett@aol.com.au
1. **Background and Impetus for the Research in the United States**

1.1 **The Public Interest Law Clearing House**

The Public Interest Law Clearing House (PILCH) Victoria, where I was employed at the time I applied for and undertook my fellowship, is an independent not-for-profit legal referral service. PILCH seeks to meet the legal needs of community groups, non-profit organisations and individuals from disadvantaged or marginalised backgrounds by matching eligible applicants with members of the legal profession to provide pro bono legal advice and assistance.

1.2 **Assistance for Non-Profit Organisations**

Since its establishment in 1994, PILCH has enabled non-profit organisations in Victoria to access free legal assistance by leveraging the pro bono services and programs of law firms, academics and barristers. In a typical year, well over a 100 non-profits are referred to PILCH’s members for free assistance. The organisations vary in size and type and present with a diverse range of legal questions and problems on which they require advice and assistance. As well as those matters which lead to a referral, assistance is provided to a further 200 or more organisations each year by helping them to define the nature of their issue and then connecting them to other services which are well placed to provide the assistance required, such as Consumer Affairs Victoria (for incorporation enquiries), Dispute Settlement Centre Victoria (for internal disputes) and goodcompany and Melbourne Cares (for pro bono, non-legal assistance)

1.3 **Seminar series for the Non-Profit Sector**

In 2006, as part of my role as PILCH Manager I began considering ways in which PILCH could increase the provision of pro bono legal services to the non-profit sector. I organised a series of half day training and information seminars for the non-profit sector on issues which commonly arise in the course of their administration, operation and governance. The 2006-2007 seminars covered the following topics:

- Best Practice Governance for Non-Profits
- Taxation Issues affecting Non-Profits
- Employment Law issues affecting Non-Profits
- Intellectual Property for Non-Profits
- Fraud Prevention for Non-Profits
- Financial Literacy

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1. See http://www.pilch.org.au
2. See http://www.consumer.vic.gov.au
For 2008, on the strength of the 2007 series and with new ideas from organisations in the United States, I developed a regular, monthly program of seminars and workshops on:

- Legal Health Check for Not-for-Profits (February)
- Board Members: Roles, Responsibilities, Liabilities and Protections (March)
- Employment Law for Not-for-Profits (April)
- Employee Evaluations and Terminations (May)
- Risk Management and Insurance Basics for Not-for-Profits (June)
- Legal Issues in Managing Volunteers (July)
- Screening and Background Checks, Working with Children Legislation (August)
- Copyright, Trademark and other Intellectual Property Issues for Not-for-Profits (September)
- Should Your Organisation apply for Tax Exemptions? (October)
- Legal Issues around Fundraising and Revenue Generating Activities (November)
- Employment Manuals and Polices (December)

1.4 Importance of the Non-Profit Sector

The non-profit sector plays a vital role in our society. Until fairly recently, the Australian non-profit sector was known as the ‘hidden sector’ because there was a lack of accurate estimates of its size and contribution. Recent reports released by Australian Bureau of Statistics show that, in economic terms alone, the sector is significant:

- Australia’s 40,976 registered non-profit organisations received $74.5 billion in income in 2006-2007;
- In 2006-2007 non-profit organisations incurred $63.3 billion in expenses and labour costs, accounted for 47% of total expenses;
- In comparative terms, non-profits add more to the GDP than the mining industry;
- At the end of June 2007, registered organisations employed 884,476 people with more than half of these employed in social services (27% or 240,667 people) and education and research (24% or 216,211 people) organisations;
- Permanent full-time employees accounted for 40.8% (360,850 people) of total employment in the sector and permanent part-time and casual employees 33.5% (296,554 people) and 25.7% (227,072 people) respectively;
- In addition to paid employees, there were 2,434,815 volunteers during 2006-2007; and
- Industry value added by these organisations was $35.1b for the 2006-07 financial year and capital expenditure was $8.5b for the same period.

As well as this economic contribution, the non-profit sector makes a significant contribution to our society. Professor Mark Lyons, a leading academic commented:

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6 Registered non-profits are those organisations registered with an ABN on the Australian Business Register.
7 ABS
Non-profit 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. Non-profit organisations also sustain and shape a democratic political system. They are the ‘elementary schools of democracy’. While the vast number of non-profit organisations that do not employ people may not contribute greatly to the economy, they contribute greatly to the non-profit sector’s social and economic impact.\(^8\)

1.5 New Specialist Legal Service for Non-Profits

In early 2007, the Board of PILCH agreed the organisation should establish a new specialist legal service for non-profit organisations which would build on the Public Interest Scheme’s existing referral service and seminar program for non-profits. As the specialist service would be the first of its kind in Australia, we looked at the pro bono programs and services which had been established overseas to assist the non-profit sector to inform our proposal for the best service delivery model for the new service.

Through that research we discovered that the United States was the leader in this area of service delivery and had a number of programs and specialist services which were established to strengthen the community sector by providing non-profit organisations with legal assistance through training, referrals to legal practitioners for pro bono advice, direct advice over the telephone and also publications.

1.6 Churchill Fellowship Research

On the strength of that web-based research, I applied for a Churchill Fellowship in February 2007, to travel to the United States (US) to meet and undertake placements with the US organisations in order to report back on the implementation of their services and lessons learned, to assist with the development of PILCH’s new service for non-profits. In July 2007, I was awarded the Fellowship by the Churchill Trust.

1.7 Establishment of PilchConnect

A new specialist legal service for non-profits, which is now called PilchConnect, was established in November 2007 and will be formally launched in September 2008. A detailed Research Report\(^9\) scoping the need and proposed model for the service is available on the PILCH website www.pilch.org.au

In summary however, PilchConnect’s key objectives are to:

1. Provide non-profit organisations with high quality, accessible, tailored, free and/or low-cost legal and legally-related:
   - information;
   - advice; and
   - training.

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2. Enhance the capacity and efficiency of the non-profit sector by offering high quality legal and legally-related training and resources to those dealing with and providing services to non-profit organisations and volunteers.

3. Become a specialist hub of non-profit legal and legally-related knowledge and practice.

4. Engage in systemic advocacy and law reform in areas of relevance to the non-profit sector.

5. Provide access to pro bono specialist legal advice for eligible non-profit organisations via the Public Interest Law Scheme that will continue to be administered by PILCH.

1.8 International Research

I left on my Churchill Fellowship in late February 2008 and travelled around the United States attending three public interest, pro bono legal conferences and visiting a number of the legal services which provide assistance to the non-profit sector in their geographic area. In the process I learnt a great deal about the environment in which the legal services which leverage pro bono services in the US operate, in particular the services which are focused on community development. I have been able to pass on this information (and a large amount of the services’ materials and publications) to the manager of PilchConnect.

Some of these lessons and materials are directly transferable to the Victorian context. The different pro bono environments in which the Victorian and United States services are operating however, has made some of the lessons less relevant, or in some cases, given PilchConnect is a new service currently staffed by two lawyers, difficult to immediately replicate. There were also:

- Legislative differences,
- Differences in geography, population density and demographic factors of the non-profit client groups; and
- Differences in the size and capacity of the legal profession in the US compared with Australia.

One of things I found most surprising about the pro bono environment in the US is that there are not enough non-profits requesting legal advice to satisfy the demand from law firms for new pro bono matters. It makes it a very competitive environment for the legal services as they all rely on donations from the legal profession to cover their administration costs and need to provide a steady stream of pro bono opportunities to the law firms to provide value for money.

In New York State it is particularly competitive, with five Universities with business law student clinics which assist non-profits, three large organisations (New York Lawyers for the Public Interest and Lawyer’s Alliance of New York both of which refer non-profits in New York City, as well as Pro Bono Partnership which works with corporations and law firms outside of New York City in the Tri-State area) and a community development program administered by legal aid. Although, New York
City and New York State are unique in terms of their population (the population of New York State alone is almost the same as Australia) the pro bono services I visited in California, Georgia, Minnesota, and Washington D.C also reported that there is a great demand from law firms for non litigious, transactional law matters for public serving, non-profit organisations. Transactional law matters include for instance, governance and tax advice, employment law, insurance and intellectual property. As a result, recruiting new non-profit pro bono clients becomes a Key Performance Indicator for the service’s lawyers. This is quite different to the environment in Australia where lawyers and law firms, although undertaking an impressive amount of pro bono work each year, are not actively competing against one another for more pro bono matters to meet their pro bono budgets or targets. On the basis of my research and discussions with the US pro bono services, I understand that the demand for transactional, pro bono matters by US firms is due to a combination of factors:

1. a proud tradition in the legal profession of ‘helping the helpers’ by providing free legal advice to charities and community based, non-profits;
2. the growth in the last two decades of corporate, business law practices within the larger firms;
3. an increasing focus by companies on their corporate responsibility programs which has led to in-house corporate counsel being encouraged to volunteer their time through formalised partnerships and pro bono programs; and
4. (as an added incentive) the American Bar Magazine’s annual ‘Top Twenty’ list which determines a firm’s ranking on the list according to a number of factors one of which is the amount of pro bono work undertaken by the firm.

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10 A survey of 887 solicitors conducted by the National Pro Bono Resource Centre revealed that about $250 million of work was undertaken on a pro bono basis by Australian solicitors in 2007 and the figure continues to rise. On average this amounts to every solicitor giving one week each year of their time free of charge to the community. The survey launched on 19 February 2008 covered solicitors from all states and territories, from the big and small end of town, from city to country and remote areas.
Part A - Legal Services for Non-Profits

1. Main Findings

In relation to providing non-profit organisations with pro bono legal advice and assistance, the main findings which I passed on to PilchConnect were:

(a) The service delivery model that PilchConnect has adopted is similar to the model used by the leading organisations in the United States established to assist non-profits, (i.e. Lawyers Alliance for New York and Pro Bono Partnership).

(b) The current educational seminar series for non-profits developed by the Public Interest Scheme and now run by PilchConnect is on par with the educational programs run by the organisations in the United States. Opportunities to expand the seminar and workshop program’s reach into rural, regional and remote areas in Victoria and throughout Australia using podcasting or ‘webinars’\textsuperscript{11} should be explored.

(c) The publications produced by the majority of the legal services for non-profits in the United States were developed in response to changes in legislation or demand from the sector. Lawyers Alliance for New York however, publishes a full range of publications which it has developed over 35 years, which are sold to the community for a profit. Lawyers Alliance for New York’s publication list provides a useful reference for PilchConnect when designing its suite of future publications.

(d) The majority of legal services for non-profits in the US have their own websites which provide access to their seminar schedules and a variety of facts sheets. The most developed web resource in the US however, is Pro Bono.net\textsuperscript{12} for lawyers and Lawhelp.net\textsuperscript{13} for the public which is updated by regular contributors. The section on the site relating to law affecting non-profits is maintained and updated by Lawyers Alliance for New York.

(e) A number of the legal services for non-profits conduct different versions of ‘organisational health checks’ for their non-profit clients. The form and process of undertaking the health check varies from service to service. Some services take the non-profit through a written checklist; other services invite non-profits to attend a seminar where lawyers provide an overview of the legal issues which may impact on

\textsuperscript{11} Webinars is the term used in the United States to describe seminars which can be attended via remote access on the internet. Many organisations use a system called WebEx to deliver training online.

\textsuperscript{12} See http://www.probono.net/

\textsuperscript{13} See http://www.lawhelp.org/
the organisation’s day-to-day administration and governance to assist them to identify further assistance required; other services facilitate long-term partnerships between their non-profit clients and volunteer law firms so that the law firms act almost as “pro bono general counsel” to the non-profit and are positioned to identify and answer the non-profits legal issues as they arise; other pro bono services will send an “audit team” consisting of volunteer paralegals, law clerks and a supervising lawyer to the non-profit to review the organisation’s constituent documents, insurance and staff policies and identify gaps and develop strategies for better risk management.

2. Specialist Legal Services in the US for Non-Profit Organisations

2.1 Organisations

While in the US I researched and met with the following legal services which provide or facilitate pro bono legal services for non-profit organisations:

1. The D.C Bar Pro Bono Community Economic Development Project\(^{14}\) (Washington DC);
2. Volunteer Legal Services Hawaii\(^{15}\)
3. Public Counsel Law Center\(^{16}\) (Los Angeles)
4. New York Lawyers in the Public Interest\(^{17}\) (NYLPI)
5. Lawyers Alliance for New York\(^{18}\)
6. Pro Bono Partnership\(^{19}\) (New Haven, Connecticut, Georgia)
7. Texas C Bar\(^{20}\) (Texas)
8. Philadelphia Law Works\(^{21}\)
9. Legal Corps\(^{22}\) (Minneapolis)

After undertaking placements and sitting in on client interviews, meeting with their volunteer attorneys, attending their educational training and seminars for non-profits and reading their publications, I was able to provide PilchConnect’s Manager and lawyer with an overview of all the organisations above to inform the future development and direction of PilchConnect. Lawyers Alliance for New York and Pro Bono Partnership (5 and 6 above) however are the closest, in terms of aims, objectives and services to PILCH’s vision and strategic plan for PilchConnect. The other organisations (1-4 and 8-9) are either smaller than Lawyers Alliance and Pro Bono Partnerships or serve a broader client group which includes, but is not limited to non-profits. In fact in most cases they provide a similar range of services (i.e. referrals to volunteer lawyers, educational seminars and some materials for distribution at

\(^{14}\) http://www.dcbar.org/for_lawyers/pro_bono/about_the_program/serving_the_community/ced.cfm
\(^{15}\) http://www.vlsh.org/
\(^{16}\) http://www.publiccounsel.org/overview/cdp.html
\(^{17}\) http://www.nylpi.org/
\(^{18}\) http://www.lawyersalliance.org/communities.php
\(^{19}\) http://www.probonopartnership.org/
\(^{20}\) http://www.texascbar.org/
\(^{21}\) http://www.phillyvip.org/legal_help/lawworks.php
\(^{22}\) http://www.legalcorps.org/
seminars and online) to non-profits as the original Not-for-Profit Project which PILCH’s Public Interest Scheme ran prior to the establishment PilchConnect.

Upon my return there were numerous opportunities to pass on my findings to PilchConnect and discuss the lessons and experiences shared by the staff of the US services. I have summarised what I learnt from the US below but would be happy to answer any questions the reader may have which are not covered in this Report.

2.2 Pro Bono Partnership and Lawyers Alliance for New York

As discussed above, Lawyers Alliance for New York (LANY) and Pro Bono Partnership (PBP) are both based in New York State and provide services to the community sector via a similar service delivery model to the one PilchConnect is in the process of establishing.

Both organisations assist non-profits through a combination of:

1. Referrals to the private legal profession;
2. Direct legal representation from lawyers employed by the organisation;
3. Telephone Resource Hotline;
4. Expert Panels;
5. Educational programs (i.e. seminars and workshops); and
6. Publications.

2.3 Methods of Service Delivery

2.3.1 Referrals

(a) Referrals placed by Email

The majority of the pro bono providers I met with in the US place new matters through a weekly or monthly email and will only use direct referrals (i.e. by first calling a firm to discuss the referral and then sending a follow up email with a referral memorandum attached) if the matter is urgent, or the client has an prior established relationship with a law firm or corporate group.

Pro Bono Partnership (PBP) for instance distributes its requests for assistance via an email list entitled "Volunteering Opportunities" which it circulates once a month. PBP distinguishes itself from its competitors by placing the majority of its matters with corporate legal departments rather than law firms. PBP posts its volunteering opportunities on its website and also circulates it to corporations who have expressed a willingness to accept matters. If matters are not picked up within 2 weeks, or they have an urgent completion date, PBP will circulate the matter to the law firms in the area. There is such a large demand from law firms in the New York State area for transactional matters that PBP can use the firms as a fall back option to place matters. For instance, PBP reported it could probably service its entire client group just through placing referrals with the three large firms in the area. However, because PBP’s mission is to provide pro bono, volunteer opportunities for the lawyers employed in-house at PBP’s corporate supporters, PBP’s staff will go to great lengths to place matters with the corporations first and will provide them with additional support throughout the matters’ progress to alleviate any pressure on the volunteer lawyer.
In some cases PBP will even take a matter back and place it with another lawyer if the in-house counsel is unable to see the matter through to completion.

(b) Arguments for and against Email Distribution System.
   (i) Advantages - it provides a whole range of matters in a variety of areas of law for a pro bono coordinator or lawyer to choose from, and it reduces the amount of time spent referring matters. This advantage is largely a product of the favourable supply and demand ratio which is not necessarily replicated in Australia.

   (ii) Disadvantages – both New York Lawyers for the Public Interest (NYLPI) and PBP which place matters by email distribution systems reported that there have been instances where a pro bono coordinator will ring to accept a matter only to be told it has already been accepted by another firm, which can put the coordinator ‘offside’ if s/he has already spent time undertaking conflict checks and locating a lawyer within the firm who has capacity to provide the advice sought. Apart from those rare incidents NYLPI and PBP believe the email placement process works well.

(c) Application Process
PBP, NYLPI and LANY’s application process differs from PILCH’s in that firstly, they make their application forms available on their websites whereas PILCH will only send out an application if, after completing an initial screening process over the telephone, they believe the applicant is eligible for assistance and second, PBP and LANY’s lawyers will meet with the potential client in person to review their constituent documents and discuss the applicant’s legal issue(s). The organisation’s lawyers then assess the applicant’s eligibility for pro bono assistance after the initial meeting.

(d) Eligibility Guidelines
In determining a non-profit’s eligibility for pro bono assistance, each of the organisations take into consideration similar questions to those considered by PILCH’s Public Interest Scheme and determines each matter’s eligibility on a case-by-case basis.

Factors which will influence the organisation’s decision include whether:
   1. the non-profit is in a financial position to pay for legal services;
   2. paying for legal assistance would divert resources away from the non-profits programs;
   3. the non-profit has paid for assistance in the past; and
   4. the non-profit has a lawyer on its Board.

(e) Retainer Letters
After a PBP staff attorney has met with a representative(s) of the non-profit and assessed that the organisation is eligible for assistance, the staff attorney will send out a retainer letter which they ask a Board Member of the non-profit to sign. Their retainer letter confirms that the applicant is now a client of PBP. This is different to
PILCH’s procedure whereby it sends an ‘Acceptance Letter’ which confirms that the client has been successfully referred and the arrangement between the client and the pro bono lawyer ‘will proceed as a normal lawyer/client relationship’ which means that the client becomes an ordinary client of the firm, except they are not paying the usual legal fees.’

(f) First Meeting with the Volunteer Lawyer
Once PBP, LANY and NYLPI have placed a matter with a pro bono lawyer, they arrange and attend the first meeting between the client and the volunteer lawyer. PBP will skip this aspect of the referral process if the non-profit representative is ‘sophisticated’ and the staff attorney is confident that the non-profit is ready to proceed unassisted. The PILCH in NSW follows the same practice. PILCH (Vic) believes the preparation of a detailed referral memorandum setting out the background of the matter and the assistance sought is an effective use of time.

(g) Progress Updates
PBP emphasises to its corporate volunteer lawyers that it will stay involved in the matter as much as required. At a minimum PBP tries to undertake progress updates at least once a month and also tries to ensure that matters ‘do not fall through the gaps.’ PILCH currently undertakes a progress update every 2 months.

(h) Filing Systems
PBP in most cases will open a hard file for each new matter however, in some cases if the matter is straightforward or it is for a client who has been assisted previously, PBP will only keep a virtual file. A virtual file means that any documents sent by the client are scanned and saved to a computer folder and the staff attorneys keep track of the matter’s progress on the database file. By contrast, PILCH currently enters every new inquiry on its database and opens a ‘hard file’ for each new application form received.

2.4 The Role of Lawyers Employed by the Services

2.4.1 PILCH’s Current Practice
PILCH employs a number of solicitors to manage and staff its pro bono schemes, services and projects. PILCH’s member firms also second solicitors to PILCH to assist with referrals, law reform and projects. At present PILCH’s staff and secondees do not provide legal advice or representation to clients. The strategic plan for PilchConnect however, envisages employing a solicitor(s) to provide information and advice in-house via a telephone advice service.

The Public Interest Scheme which currently processes the inquiries received from the non-profit client group has found that a number of the inquiries are relatively straightforward and could be answered over the telephone by in-house lawyers provided they had experience in that area or were given guidance from identified experts at PILCH’s member firms. As a result PilchConnect has recently applied for funding from the Legal Services Board for a telephone advice service and is currently establishing a Telephone Resource Hotline.
2.4.2 Telephone Resource Hotlines in the US

A relevant and comprehensive study of telephone legal advice services for low income and disadvantaged people was undertaken by Elizabeth Shearer. Ms Shearer researched and visited a number of legal services in the UK and US on a Churchill Fellowship and her Churchill Report\(^{23}\) is available on the Foundation’s website. Rather than duplicate her research, which is extensive and still current, I looked at the ways in which telephone advice lines were being used in the US to assist non-profits as a specific client group with unique legal issues and, any relevant lessons which could be passed on to PilchConnect.

(a) Pro Bono Partnerships Telephone Service

PBP’s Resource Hotline grew organically. Rick Hobish the Executive Director of PBP (who was previously the Director of LANY) explained that when he first opened PBP’s doors the ‘phones were not ringing off the hook’ but as word began to spread of PBP’s existence the organisation was contacted by non-profits with questions which he could answer over the telephone. If he received questions that he could not answer he would either contact one of the law firms to obtain the answer and then call the client back or if it was more complex question, he would refer it to the volunteer lawyer as a formal referral for the firm to complete.

(b) Staffing the Hotline

When PBP was first established it had only a small staff (the Executive Director and administrative support). As the Executive Director was able to secure further funding for PBP (through voluntary donations from corporations, law firms and individuals) he employed two staff attorneys to provide the whole range of PBP’s current services (i.e. answer telephone inquiries, place referrals and run seminars). Neither of the lawyers he employed had backgrounds in non-profit law but Mr Hobish said they ‘picked it up as they went along’ and were able to take the clients inquiries and run them past Mr Hobish or the law firms’ volunteer attorneys and, in that way, develop sufficient expertise to navigate their way through future telephone inquiries.

(c) Insurance and disclaimers

PILCH has always been concerned that the provision of legal advice via a telephone advice line would expose the organisation to greater liability. In the past the organisation has not provided direct legal services but rather acted as a referral agency matching eligible clients with volunteer lawyers. I asked Mr Hobish whether the lawyers at PBP provide their advice over the telephone with any disclaimers (regarding reliance on the advice) and what is their exposure to liability. The lawyers at PBP confirmed that they do not read out a disclaimer to the client over the phone, however, they are in the process of preparing one for their website and are careful to remind the client that they are being provided with ‘legal information’ rather than

‘legal advice.’ I asked PBP about the insurance it has in place to cover its telephone information service and the organisation’s office manager confirmed it was the standard Lloyd’s policy which most of the community legal centres have in the US. PBP has a disclaimer on the materials distributed at its seminars and workshops.

(d) Recording Telephone Inquiries
I asked PBP if they record all the telephone inquiries and information provided on a database. PBP confirmed that their approach is a little inconsistent, but on the whole they try and capture the information on an excel spreadsheet.

PBP has a staff of 13 which is spread over four offices in New York State. The 13 staff includes a book-keeper and Executive Director in the main office in White Plains and administrative support and staff attorneys in the four offices.

2.4.3 Lawyers Alliance New York
In contrast to PBP, LANY has a much larger staff of 19 and employs a greater number of in-house lawyers as well as having 4 lawyers on secondment from law firms. As a result LANY answers more inquiries through its Resource Call Hotline than PBP and provides general information over the telephone to:

- Non-profit staff;
- Board members;
- Other lawyers;
- Regulators; and
- Members of the general public.

LANY’s Resource Call Hotline operates by allowing callers to leave a message with their question(s). Staff attorneys at LANY will then return the call with either an answer or, if the matter is more complex, will make a referral to a pro bono lawyer for further assistance.

2.5 Expert Panels
One practice employed by LANY which the staff highly recommended for PilchConnect, is the establishment of expert panels on discrete areas of law (such as employment law) to respond to urgent inquiries from non-profit organisations. To set up an expert panel, LANY will approach a number of lawyers in a particular area of expertise to be placed on a list. That way when clients call with urgent requests for assistance in that area, the lawyer at LANY can call the lawyers on the list in ‘batting order’ until they find one with capacity to take the matter on and answer the client’s inquiry as a matter of urgency. This is particularly useful for legal questions in practice areas such as employment law where the inquiry may involve urgent questions relating to an organisation’s obligations to a staff member (arising from termination of employment, interpretation of an employment contract or the application and relevance of new industrial legislation) which need to be answered within a short timeframe.

The lawyers at LANY usually form an Expert Panel if they receive a large number of inquiries in one particular practice area. Lawyers on the panel are required to
commit to taking on at least 3 matters per year. LANY will ensure that the pro bono coordinator at the volunteer lawyers’ law firm is aware that one of their lawyers is on the Panel and will then pre-approve him/her taking on urgent matters directly from LANY rather than having to go through the usual referral approval procedures.

2.6 Educational Programs (Seminars and Workshops)

In 2005, when I was looking at ways to expand the Public Interest Scheme’s services to the non-profit sector (prior to the establishment of PilchConnect), one of the ideas I adopted from the services in the US was to hold educational seminars for non-profits which, as well as providing an overview of the legal issues which may impact on their operation, would also assist them to self-diagnose issues on which they may require further assistance. PILCH and the US Services’ experience is that often the smaller non-profits, which rely on a volunteer work force, often mistakenly believe that they only require legal advice if they are being sued rather than understanding that legal advice can also cover a whole range of transactional issues to strengthen the organisation’s governance and operation and protect it from legal disputes or claims arising. A good example is advice on how to avoid breaching another organisation’s intellectual property and how to protect its own.

(a) LANY’s Educational Seminars

LANY has an extensive schedule of workshops and seminars which are presented by its staff attorneys in conjunction with volunteer lawyers from member firms.

LANY presents its workshops twice a month and repeats topics such as:
- Executive Compensation and Related Third Party Transactions
- Incorporation, Tax Exemption and Fiscal Sponsorship (6 times a year)
- Collaboration, Contracts and Strategic Alliances
- Fundraising Law and Regulation
- Role of the Board in Corporate Governance
- Legal Issues for Nonprofits Working with Volunteers and Interns
- Joint Ventures for Housing Organisations
- Employment Law and Personnel Management
- Mergers and Strategic Alliances
- Creating a Successful Community Lending Program
- Preventing and Responding to Harassment in the Workplace
- Legal Aspects of Purchasing and Selling Real Estate

A full schedule of LANY’s seminars is available on its website.24

(b) Pro Bono Partnerships Education Seminars

PBP views its workshops as a great marketing tool and ‘outreach’ service and holds a large number of seminars each year. In order to market their activities and services PBP will make contact with umbrella organisations (similar to peak organisations in Australia) of various sections of the community sector (e.g. child care or health services) and offer to run training for the umbrella organisation’s members on legal

24 http://www.lawyersalliance.org/workshops.php
issues arising in their particular field which are often unique to that sector. For example, a youth organisation may be interested in attending training on legal liabilities arising from the dispensing of medication to children and what precautions the organisation must take to keep medications out of reach of other children, which would concern most non-profits.

PBP confirmed that targeted, tailored training is an effective service to offer umbrella organisations and PBP’s Executive Director recommended it as a strategy for PilchConnect to replicate to increase revenue. PBP has recently been awarded substantial grants through philanthropic foundations and umbrella organisations to provide seminars and legal advice to childcare services and domestic violence shelters and has prepared specific training on legal issues which may affect organisations in these fields.

2.7 Publications

LANY is the only service for non-profits that I visited in the US that publishes an extensive library of resources for non-profit organisations to purchase.25 LANY, as mentioned earlier, has a large staff which gives the organisation greater capacity than other organisations with which I met (which have a staff of 3, 4 or 5 lawyers) to produce publications. The other services publish and distribute fact sheets and ‘new law’ alerts to inform the sector and market their services. LANY’s library of publications provided a useful reference for PilchConnect when it compiled a list of topics to cover on the new web portal.

2.8 Web Portals

PilchConnect is being developed in stages. The first stage aims to have an extensive web portal with links to other services, fact sheets and precedents ready for launch in September 2008.

In the United States I met with an organisation that manages and updates an extensive web based portal called Pro Bono.Net26. Pro Bono.net connects the community to free legal resources and services, and also connects lawyers to pro bono opportunities, training events, mentors and searchable libraries of practice

25 A full list of LANY’s publications and order forms is available online at http://www.lawyersalliance.org

The current publications list includes: (1) Advising NonProfits; (2) Getting Organized; (3) Building Successful Collaborations: A Guide For NonProfits; (4) Changing The Name Of A New York Not-for-Profit Corporation; (5) Creating Low-Income Housing In New York’s Purchases Of Privately Owned Buildings By Low-Income Tenants; (6) Disaster Relief And Recovery: The Role Of NonProfits Beyond Ground Zero And The Legal Implications And Their Work; (7) Employment Law Guide For NonProfit Organisations; (8) Extra Credit: A Legal Guide For NonProfits Offering In-School and After School Programs; (9) Fiscal Sponsorship Arrangements (10) Joint Ventures For Housing Organizations; (11) Mergers and Strategic Alliances For New York Not-For-Profit Corporations; (12) Running It Right: A Legal Manual For Child Care Centers; (13) Serving On The Board Of A Not-For-Profit Corporation: A Layperson’s Guide; (14) Serving On The Board Of A Not-For-Profit Day Care Center: A LayPerson’s Guide; (15) The Volunteer Workforce: Legal Issues and Best Practices For NonProfits.

26 See http://www.probono.net/
resources and precedents. The section on the site relating to law affecting non-profits is maintained and updated by Lawyers Alliance for New York.

Pro Bono.net provides a useful model to inform the ongoing development of PilchConnect’s web portal.

2.9 Organisational Health Checks
As well as providing referrals, seminars and publications a number of the US community development services also provide a form of ‘organisational health check.’ PilchConnect also proposes to develop and trial an organisational health check for non-profits. The ‘health checks’ are intended to assess an organisation’s legal health, by looking at its constituent documents, policies and procedures for staff and clients, employment contracts, insurance polices and risk management strategies, funding agreements and partnerships with other non-profit or government agencies. The results of the assessment are then analysed to determine whether an organisation needs or would benefit from, further legal advice or assistance to update its documents, polices or contracts. LANY uses an ‘Assessment Tool’ which is a list of questions for non-profits. Another organisation called Power of Attorney prepared a document entitled ‘Does your organisation need a lawyer’ which a number of the services in the US use as the basis of their health checks. Baker & McKenzie, a firm based in the US with offices in Australia (and a member of PILCH) works in partnership with a US pro bono broker service to conduct ‘legal audits.’ The pro bono broker explained that it now call its audit a ‘health check’ rather than an ‘audit’ to encourage the non-profits to participate in the process. It reported that people tend to associate the term ‘audit’ with a negative and unwelcome experience whereas a ‘health check’ is viewed as ‘proactive and empowering.’

2.10 Fundraising and Charging Administrative or ‘Placement’ Costs
(a) Lawyers Alliance for New York
LANY’s funding comes from a range of sources including: fees it charges non-profits; donations from law firms, corporations and individuals; and specific fundraising events. For the 2006-2007 financial year, LANY revenues were US$2,344,046.00 (including anniversary campaign funds for endowment and programs) which covered its annual expenses of $2,276,196.00. In comparison, Pro Bono Partnership’s revenue was $1,086,176.00.

LANY charges new clients a one off fee of $375.00 to cover a portion of administrative costs of screening and placement. LANY does not charge a fee for each application, rather the fee is charged once the client is assessed as being eligible for assistance and referral. There is no charge for the legal services provided by the volunteer lawyers who have accepted the matter to assist on a pro bono basis. In some matters LANY’s staff attorneys will provide the assistance in-house and will charge a below market rate on an hourly basis.
When I asked one of the staff attorneys if she could recall any of the clients electing to take their request to one of the alternative pro bono providers operating in New York which do not charge placement fees (i.e. NYLPI and Legal Aid’s referral service) she confirmed that she was not aware of any client going elsewhere as a result of LANY’s screening fee, and that LANY is always open to working out a payment plan that the client is able to manage.

(b) Pro Bono Partnerships
PBP does not charge non-profits for its screening and referral process, however, they do charge new non-profits seeking assistance to incorporate or apply for tax exempt status, $500. PBP confirmed that this is less a fundraising strategy than a method of ensuring that start-up organisations have thought through their applications and are ready to operate as registered legal entities with reporting obligations. It is both PILCH and the US pro bono services experience that the majority of unincorporated groups which request pro bono assistance to incorporate and apply for tax exempt status have rarely taken sufficient steps to inform themselves of the steps involved and often mistakenly believe that once endorsed to receive tax deductible gifts, the donations will automatically flow. This assistance with the ‘start-up’ process is the only service for which PBP charges. PBP’s other services, including its educational seminars and workshops, are provided free of charge.

2.11 Involving In-house Counsel in Pro Bono Referrals for Non Profits
2.11.1 PILCH’s Current Practice
PILCH has been fortunate in the last four years to recruit a number of new corporate in-house legal teams as members. Although their membership fees provide welcome financial support, it can be difficult to find opportunities for in-house lawyers to get involved in pro bono matters. Currently in Australia, a corporate practicing certificate (taken out by in-house legal practitioners) restricts a practitioner to only provide advice to his/her company. This makes it difficult for PILCH to refer clients to corporate firm members for pro bono advice.

2.11.2 Strategies to Involve In-house Legal Teams in Pro Bono
At a session at the Equal Justice Conference in Minneapolis entitled ‘Winning Combination: Corporate Law Departments, Law Firms and Legal Service Providers’, a panel of law firm and corporate lawyers and pro bono program managers, discussed the obstacles which in-house lawyers face when undertaking pro bono work. These included smaller legal teams, less training on the law which affects pro bono clients and restricted practicing certificates. The panellists also highlighted the steps they had taken to overcome these obstacles, such as:

- developing partnership projects between corporate in-house teams and law firms so the corporate lawyers can access the firm’s administrative systems, libraries and resources;
- holding training for the corporate lawyers on relevant legal practice areas; and
- where necessary, setting up co-counsel arrangements between the in-house lawyers and law firm attorneys or attorneys from the community legal group.
administering the program so the partner lawyers can go on the record and provide guidance to the corporate counsel.

The key message was that corporate legal teams have prior experience in working with law firms (having briefed them to assist with the company’s projects, contracts, risk assessment and litigation) – and this experience in instructing a law firm, delegating responsibility for tasks, scoping the assistance required and establishing reporting systems and authority for ‘sign off’ – is not dissimilar to the experience of collaborating on a pro bono project.

2.11.3 Pro Bono Partnership
Pro Bono Partnership identifies and distinguishes itself from its competitors (such as LANY and NYLPI) by focusing almost exclusively on providing pro bono opportunities to in-house counsel based in New York State outside Manhattan. Post 9/11, a number of corporations moved their headquarters upstate outside Manhattan. Rick Hobish, who was at the time executive director of LANY, was asked to establish Pro Bono Partnerships specifically to provide pro bono opportunities to those companies’ in-house legal staff by matching them with non-profits operating in the companies’ new neighbourhood. This provided professional and personal development opportunities to the lawyers but also enabled them to be part of a company wide corporate social responsibility program and develop links within the upstate area.

PBP try and refer at least 50% of their matters to corporate counsel and face the same obstacles that PILCH does when involving new corporates. These include smaller legal teams with tighter budgets and timeframes and also limitations on practicing certificates. In the US, an attorney who is admitted in one state is not able to provide advice to a client in another state. In cases where an attorney is employed in-house and transferred to work in the company’s office in another state, they may however decide not to apply for admission in the new State as, provided they are only providing advice to their company which has offices in the state in which they are admitted, they are not required to do so. This can pose a problem however, if they are asked to work on a pro bono matter where the client is registered in the other State in which they are not admitted to practice. PBP will overcome these obstacles by entering into co-counsel arrangements with the corporate lawyers or by partnering them with law firms or other attorneys in the company who are admitted to practice in the State.

3. Student Clinics
3.1 Potential for Students to Become Involved in Advising Non-Profits
The majority of pro bono brokers with which I met have student internship programs like PILCH, where law students take inquiries and assist with research and preparing correspondence to clients. The US Universities’ Law Schools also have a large number of subjects with a clinical component. The Clinics provide students with client contact and opportunities to develop practical legal skills (such as opening and managing a file, researching and providing advice) and the Universities direct significant resources towards funding and supervising the clinics. Lawyers in
the US are not required to undertake article clerkships (now called traineeships in Australia) before being admitted to practice; therefore students consider professional development through clinic participation to be a vital component of their degrees and preparation for practice.

The variety of practice areas covered by student clinics is impressive, ranging from clinics focusing on elder abuse, immigration, education, housing, health care, policy, consumer protection and disability rights through to transactional business law clinics for non-profits and small businesses. The transactional law clinics are very popular amongst the student body, particularly for those students who have business degrees or who want to practice business law with corporate practice groups.

3.2. Specialist Projects and Clinic for Law Students to assist Non-Profits

There is a great opportunity to build on PILCH’s existing student volunteer program by forming specialist projects for students to work with PilchConnect. A Tax Clinic for example may work well. PILCH receives a large number of requests from non-profits which have been advised they require deductible gift recipient status (DGR) to attract donations and philanthropic funding. These non-profits often contact PILCH seeking assistance to apply to the Australian Taxation Office (ATO) for tax exempt status or, if they have already applied to the ATO and been rejected, assistance to amend their constituent documents in order to come within ATO guidelines for endorsement. It may be possible for PILCH to recruit a group of law students studying tax law at PILCH’s University members who, with training and assistance from PILCH’s member firms’ tax groups, could review a non-profit’s mission, programs and constituent documents and either:

(a) assist them to fill out the ATO’s application for tax exempt status (if they clearly fall within one of the ATO’s categories) or;
(b) prepare a preliminary opinion about the organisation’s eligibility which PILCH could provide to the member firm that accepts the referral to provide tailored, one-on-one pro bono tax advice.

As well as providing a rewarding development opportunity for law students it would act as an effective filter for tax inquiries and free up the tax law specialists at the firms to:

(a) advise on more complex tax matters which require specialist expertise;
(b) run strategic litigation to test the ATO’s interpretations of the Tax Assessment Act 1997 and the Tax Administration Act 1953, where appropriate; and
(c) prepare fact sheets and updates on tax issues for PilchConnect’s web portal which would assist non-profits to understand the ATO’s guidelines and cover aspects of the ATO’s criteria decision making process with regard to granting deductible gift recipient status which are not covered in the ATO’s online fact sheets.
4. Developing Thematic Priorities

One of the important lessons I learnt from spending time at LANY and NYLPI is the benefit of having established programs or thematic priorities to:

(a) assist the organisation’s lawyers to develop expertise and build networks within particular areas of the community sector;
(b) enhance the organisation’s reputation; and
(c) assist members of the community (both individuals and non-profits) to identify which pro bono service provider best matches their need.

4.1. New York Lawyers for the Public Interest

For example NYLPI combines its Pro Bono Clearinghouse (which, similar to PILCH’s Public Interest Scheme refers community groups and non-profits to law firms for pro bono advice and assistance), with an in-house practice that blends strategic litigation, community organising and advocacy.

NYLPI’s in-house lawyers focus on three discrete projects:

- Disability Rights Project\(^{28}\) - which protects and promotes the civil rights of people with disabilities;
- Environmental Justice and Community Development Project\(^{29}\) - which provides advocacy and legal assistance to low-income neighbourhoods and communities of colour that bear an unfair burden of environmental threats; and
- Access to Heath Care\(^{30}\) - which works to ensure access to quality health care for people in medically underserved communities or facing barriers due to limited English proficiency, racial and ethnic discrimination.

As well as undertaking advocacy and media campaigns, the three projects’ directors and lawyers will also look for opportunities to engage in strategic litigation and to co-counsel with NYLPI’s member firms.

4.2. Lawyers Alliance for New York

Although, LANY does not engage in or refer matters for strategic litigation, it has also identified that in order to maximise community benefit and impact, it is beneficial to establish and promote its priorities and areas of expertise.

LANY has five program priorities, each of which covers an issue in which non-profits play a critical role:

- Affordable housing and homeless services\(^{31}\)
- Economic development\(^{32}\)

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\(^{27}\) Strategic litigation uses the justice sector to achieve legal and social justice through test cases and is as concerned with social justice as much as individual justice.

\(^{28}\) See http://www.nylpi.org/area_2.html

\(^{29}\) See http://www.nylpi.org/area_4.html

\(^{30}\) See http://www.nylpi.org/area_3.html

\(^{31}\) See http://www.lawyersalliance.org/affordable_housing.php
- Children and youth services\(^{33}\)
- Immigrant communities\(^{34}\) and
- Elder services\(^{35}\)

In addition, LANY has developed two special initiatives to address emerging legal needs of the non-profit sector disaster relief\(^{36}\) and non-profit accountability\(^{37}\).

The staff attorneys at LANY are each given a program to manage, promote and conduct outreach seminars and services.

4.3 Identifying Future Priorities Areas for PilchConnect

PILCH has the advantage of housing a number of pro bono schemes and projects under the one roof and has developed significant expertise and networks in these areas. For instance PILCH’s:

- Homeless Person’s Legal Clinic\(^{38}\) partners and works closely with crisis accommodation services and the affordable housing sector;
- Human Rights Law Resource Centre\(^{39}\) collaborates with a number of Australian and international non-government organisations concerned with the protection of human rights;
- Victorian Bar Legal Assistance Scheme\(^{40}\) has developed expertise in coronial inquests and migration law; and
- Seniors’ Rights Victoria\(^{41}\) – a free service that has been established to help prevent elder abuse and safeguard the rights, dignity and independence of older Victorians is a partnership between PILCH and the Council of the Aging (COTA).

These programs and partnerships provide some ready, identified priorities and networks for PilchConnect. PILCH’s managers and staff are well positioned to promote PilchConnect’s services to their own client base. For example, the Homeless Person’s Legal Clinic as well as engaging in joint advocacy with welfare agencies could also encourage such non-profits to utilise PilchConnect’s services to strengthen their own organisation’s governance, administrative and day-to-day operation through attending PilchConnect educational seminars and, where required, seeking tailored advice through the pro bono referral service.

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32 See http://www.lawyersalliance.org/economic_development.php
33 See http://www.lawyersalliance.org/children_youth_services.php
34 See http://www.lawyersalliance.org/immigrant_communities.php
35 See http://www.lawyersalliance.org/elder_services.php
36 See http://www.lawyersalliance.org/disaster_relief.php
37 See http://www.lawyersalliance.org/accountability.php
41 See http://www.cotavic.org.au/seniors_rights_victoria
5. **Recommendations presented to PilchConnect**

As discussed, once back in Australia I provided a report on the US services and presented the following recommendations to PilchConnect’s manager and senior lawyer for discussion and their consideration.

**R1 - Referrals: Consider the future of PILCH’s Public Interest Scheme’s Referral Service for non-profits including whether:**

- Responsibility for making referrals should be moved from the Public Interest Scheme to PilchConnect to form part of the suite of services provided by PilchConnect to the non-profit sector?
- The referral process should be changed from PILCH’s current practice of direct placement of matters with lawyers to email distribution?
- The current guidelines to assess a non-profit’s eligibility should be revised and presented on PilchConnect’s website in anticipation of an increase in requests for referrals following the launch of PilchConnect’s web portal in October?
- PilchConnect should consider charging administrative or screening fees in the future to provide for further staff salaries and the growth of the Service.\(^{42}\)

**R2 – Direct Representation:** Consider whether lawyers employed by PilchConnect should perform some legal services in-house on a reduced fee basis similar to the model used by Lawyer’s Alliance for New York.

**R3 – Telephone Resource Hotline:** Consider whether (subject to funding) a dedicated lawyer should be employed by PilchConnect to answer telephone inquiries through a Resource Hotline and whether s/he could also supervise the referral service if it is moved to PilchConnect. Also consider whether PilchConnect should request the secondment of a senior lawyer (3-5 years experience from a corporate advisory or tax practice group) preferably for 6 or more months from one of PILCH’s member firms to provide advice to non-profit clients through the Resource Hotline.

**R4 - Expert Panels:** Establish panels or lists (in areas of identified need) comprising 10 or so lawyers with expertise in a particular area of law, who are given approval upfront by their pro bono committees to take on urgent matters directly from PilchConnect (bypassing the usual pro bono committee/coordinators approval processes) and deal directly with clients. Examples of areas of law which could be covered include employment law, OH&S and requirements for annual general meetings.

**R5 - Educational Seminar Programs:** Evaluate and expand the existing seminar program for non-profits to repeat popular topics (such as tax exemptions and legal liabilities arising from volunteer programs) and also design ‘sequel’ seminars. For

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\(^{42}\) Lawyers Alliance for New York charges $375 per referral and Pro Bono Partnership charges $500 for start-ups to deter them from incorporating prematurely.
example, one seminar may cover the legal liabilities arising from volunteer programs based at a non-profit - followed by a sequel seminar covering the legal liabilities of running an external volunteer program which visits clients at their homes and involves transportation and other risks not relevant to an internal volunteer program. PilchConnect should also explore options for making seminars accessible online through interactive programs such as WebEx (which allows participants to attend live seminars remotely) or through recorded podcasts.

**R6 – Publications:** Map the publications currently available for non-profit community organisations in Australia and compare it with the list of publications made available by the larger organisations in the US such as Lawyers Alliance for New York. PilchConnect can then identify gaps in the range of publications available in Australia and apply to relevant funding bodies, such as the Victoria Law Foundation, for grants to prepare new publications for online and hard copy production.

**R7 – Web Portal:** Develop the PilchConnect web portal to provide precedents, links and fact sheets for the community sector and also relevant precedents, links and updates for the lawyers who accept referrals to assist the sector on a pro bono basis. Explore the use of new technology programs such as A2J Author to determine if they can be adapted to suit these materials.

**R8 – Student Clinics:** Investigate the establishment of specific student projects at PILCH to assist non-profit clients.

**R9– Establish Thematic Priorities:** Utilise the managers of PILCH’s other projects to promote PilchConnect’s services to their stakeholders and client base and, in doing so, assist PilchConnect to identify thematic priorities.

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43 See http://www.webex.com/
45 A2J Author™ is a software tool that enables non-technical authors from the courts, clerk’s offices, legal services programs, and website editors rapidly to build and implement customer friendly web-based interfaces for document assembly. The A2J Guided Interviews™ created with A2J Author™ are currently used for self-represented litigants to allow them to easily complete court documents which are then ready to be filed with the court. Currently, A2J Author is used in 22 states, the U.S. Virgin Islands, and Ontario, Canada.
Part B – Advocacy Services for Non-Profits

Non-profits have championed many of the most important advances we enjoy in our society today. Without their leadership and advocacy efforts, we would not have achieved our vast environmental and consumer protections or won the civil rights and women’s rights struggles of the last century.

These organisations promote changes in government, industry and other institutions in order to affect the lives of ordinary people in America and around the world. They provide a mechanism for people to confront important issues in their families and communities, and empower them to make needed changes. Nonprofits amplify the voices of the underrepresented members of our society. They tackle the seemingly unsolvable problems that government and business avoid. They regularly immerse themselves in the public policy arena through tireless advocacy on behalf of the causes they champion – Investing in Change, A Funder’s Guide to Supporting Advocacy – Alliance for Justice

1. Background and Impetus for the Research in the United States

In 2007, the Reichstein Foundation46, whose motto is ‘change not charity’, funded PILCH, the Victorian Council of Social Service (VC OSS) and the Federation of Community Legal Centres (FCLC) to investigate where community groups in Victoria could obtain ‘face to face’ capacity building support in advocacy project development and, to consider whether there were gaps in the provision of this support. In the course of preparing the report for the Reichstein Foundation, we surveyed and met with advocacy consultants, pro bono providers, law firms, peaks, advocacy organisations and community legal centres.

As a result of the research undertaken for this project and feedback from the participants, PILCH, VC OSS and FCLC concluded that community organisations in Victoria needed further access to support and assistance from experienced advocates and advocacy bodies to engage effectively in systemic advocacy. The Reichstein Foundation and the project’s partners concluded they would all continue to look for ways to increase advocacy support for non-profit organisations so that these organisations could in turn:

(a) Devote time to advocacy projects as well as direct service delivery;
(b) Identify structural issues which could be the subject of an advocacy campaign or project;
(c) Undertake successful, systemic campaigns on a broad range of social issues;
(d) Undertake forms of systemic advocacy to address issues and obtain assistance where required, to prepare media releases, articles in newspapers, letters to and meetings with responsible persons in government or other agencies;

46 See http://www.reichstein.org.au/
(e) Prepare submissions to parliament, government and other inquiries on issues within the knowledge and expertise of the community organisation or consumer group; and

(f) Generally improve their advocacy capacity.

2. **Advocacy Undertaken by PILCH and PilchConnect**

In addition to its work as a pro bono referral service, PILCH engages in targeted law reform and advocacy work, and provides community education and training. PILCH’s advocacy has been focused on a variety of areas, including improving access to justice and legal aid budgets, homelessness and the affordable housing crisis, the introduction of a National Charter of Human Rights, migration policy and law, family violence and anti-terror legislation.

PilchConnect, PILCH’s new specialist service for non-profit organisations, also undertakes law reform and advocacy with a particular focus on the regulation of the not-for-profit sector.

As PILCH’s reputation for facilitating pro bono referrals and undertaking advocacy has grown, the organisation has increasingly received requests from non-profit groups looking for assistance to engage in advocacy and law reform projects themselves using a variety of methods and in response to a variety of issues (for instance in opposition to the development of energy projects which are considered detrimental to the environment and opposition to legislation or government policy which is considered discriminatory).

As a result I resolved to research and visit organisations and foundations in the US which assist community organisations to engage in strategic advocacy projects and campaigns, in order to learn more about their methods and successes and consider ways in which to improve or increase advocacy support for non-profits in Australia.

3. **Advocacy Organisations in the United States**

While in the United States I met with or researched the following services which provide advocacy support to non-profit organisations:

1. Alliance for Justice\(^{47}\)(Washington DC)
2. New York Lawyers for the Public Interest\(^{48}\)
3. Texas Appleseed\(^{49}\)
4. Changemakers\(^{50}\)

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\(^{47}\) See [http://www.afj.org](http://www.afj.org)

\(^{48}\) See [http://www.nylpi.org/communitylawyering.html](http://www.nylpi.org/communitylawyering.html)

\(^{49}\) See [http://www.texasappleseed.net/content](http://www.texasappleseed.net/content)

\(^{50}\) See [http://www.changemakers.org/index.php?s=2](http://www.changemakers.org/index.php?s=2) - Changemakers envisions a world where philanthropy is accessible to all and in service to community. Through education, advocacy and public policy, Changemakers promotes engaged and effective strategies for giving that strengthen civil society and helps individuals connect their values to their giving in order to maximize community benefit.
4. What do we mean by ‘Advocacy’ or ‘Community Lawyering’?

In the US, the term ‘advocacy’ is often assumed to mean the act of ‘advocating’ for a client in court and the term ‘community lawyering’ is commonly used instead. New York Lawyers for the Public Interest (NYLPI) describes ‘community lawyering’ as the ‘process of lawyers working with community groups to achieve systemic change through creative, strategic litigation, grassroots organising, targeted public relations and alliances with funders and policy makers.’

Alliance for Justice describes the term ‘advocacy’ as encompassing a ‘broad range of activities that can influence policy – from researching, organising and building communications strategies to lobbying, networking and educating voters.’

Changemakers in Australia, which is based on the model of Changemakers in the US, submit that ‘advocacy comes in many guises. It can range from organising local residents in response to a neighbourhood issue, running a public education campaign, providing in-depth research or, when asked, helping governments to draft public policy. It can also be about influencing decision-makers, either directly or indirectly, to modify existing programs or create new initiatives that lead to systemic change. Whichever way it is done, it is likely that at least some form of advocacy will be integral to the success of people aiming to bring about positive social change.’

5. Advocacy Support available for non-profit organisations in the US

5.1 Forming Partnerships

Organisations such as NYLPI and Appleseed in the US engage in advocacy around identified issues or priorities primarily concerned with the protection of low-income, disadvantaged and/or marginalised members of the community. Rather than providing support to community groups to skill and assist them to undertake campaigns in their own right, they prefer to partner with community ‘grass roots’ organisations to mount advocacy campaigns together, or to form a coalition of groups interested in the issue, to consider strategies for change.

5.2 Screening requests from community groups for assistance

The lawyers at NYLPI and Appleseed reported that it is often the case that one project or high profile court case will ‘put their name on the map’ with regard to a particular issue, at which point they will receive a number of requests for assistance from groups campaigning around the same issue (for instance, environmental protection, disability rights and affordable education and health care). Rather than assist each and every group that approaches them, NYLPI and Appleseed will consider each request carefully and carry out further research and consultations to determine which campaigns or projects would benefit from a partnership with pro bono lawyers and also whether the lawyers at NYLPI and Appleseed have the relevant expertise to bring to the project and justify the allocation of their time.
The websites for NYLPI and Appleseed\textsuperscript{51} provide links to a number of publications and reports on successful collaborations and campaigns around discrete projects and issues.

6. Appleseed

Appleseed has 16 offices around the US. Nationally, Appleseed is a non-partisan, non-profit organisation made up of a network of public interest law centres working to identify and address injustices in their communities and build a just society through education, legal advocacy, community activism and policy expertise, addressing root causes and producing practical solutions. Similar to PILCH it achieves this by leveraging the support of law firms, corporate counsel, law schools, civic leaders and other professionals and identifying ways for them to assist either through submissions to government or by developing discrete advocacy projects.

Although each office is part of the Appleseed network, the 16 organisations have developed their own distinctive priorities and programs in response to local need, particularly as experienced by low-income communities.

Representatives from four of the Appleseeds in the US presented sessions about their organisation’s work at the three legal conferences I attended in the US. A representative from Washington Appleseed presented a session on advocacy and policy at the Pro Bono Institute Seminar in Washington; a representative from Georgia Appleseed\textsuperscript{52} presented a session at the Working in the Public Interest Conference in Athens, Georgia, while a lawyer on secondment to Texas Appleseed\textsuperscript{53} spoke at the Equal Justice Conference in Minnesota. In between sessions at the conference in Minnesota, I had the opportunity to sit down with the lawyer from Texas Appleseed and find out more about the centre’s program.

7. Texas Appleseed

7.1 Staff

Texas Appleseed has eight staff, both part-time and full-time, lawyers and non-lawyers including an Executive Director (with a legal background) two Policy Analysts with backgrounds in policy, a Development Director, Media Relations Officer and an Office Administrator.

7.2 Thematic Priorities

Texas Appleseed has three thematic priorities:

1. Access to justice
2. Access to financial services
3. Access to education

\textsuperscript{51} See http://www.appleseednetwork.org
\textsuperscript{52} See http://www.gaappleseed.org
\textsuperscript{53} See http://www.texasappleseed.net/content
7.3 Identifying New Projects

The staff at Texas Appleseed will start by identifying a problem in their local area, such as predatory lending and breaches of fair lending practices at which point it will consider, ‘what aspect of this issue can we take on?’ The organisation is limited to focusing on aspects of the issue or problem which lawyers can assist, either through strategic litigation or advocacy.

7.4 Project Strategies

Texas Appleseed’s staff will then prepare a report using a combination of qualitative analysis, interviews and statistics to show what the problem ‘looks like.’ Based on that research they will make recommendations, highlight possible solutions and identify strategies and mechanisms for achieving the solutions—such as writing opinion pieces, holding a media conference and running public education seminars and forums. Appleseed’s staff will also prepare a manual for any lawyers involved in a project on a pro bono basis.

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**Case Study A: Justice for Defendants with Mental Impairments**

Texas Appleseed prepared a manual for lawyers representing clients with mental illness or mental retardation as well as materials for their families to acquaint them with the legal system. Texas Appleseed has updated the manual twice and also provided extensive training across Texas and in Louisiana following Hurricane Katrina. Texas Appleseed also publishes a series of monographs for judges on legal issues affecting persons with mental illness and retardation in the criminal justice system.

**Case Study B: Challenges facing Texas’ Foster Care System**

One of Texas Appleseed’s Board members identified that there was a problem with the foster child care system in Texas, as half the children placed into foster care are not adopted and remain in foster care until they ‘age out’ (reach legal age of adulthood). Texas has more than 200 counties each with its own set of rules and Texas Appleseed’s staff realised that given the complexity of the problem it would need to identify a ‘bite size’ piece which it could tackle (given there are a large number of community organisations involved in foster care). The area of legal services and ensuring adequate representation for children in foster care was the obvious fit with Texas Appleseed’s priorities and networks and it organised a roster of lawyers to represent foster children in the juvenile justice system to ensure they had access to high quality, pro bono representation. Texas Appleseed also considered whether it should initiate a class action to sue the government, state by state, for not providing proper oversight to children in their care. Ultimately, the staff concluded that a class action was not the right approach. Subsequently one of Texas Appleseed’s Board Members was named to the Supreme Court’s newly formed Judicial Commission on Children, Youth and Families and its Executive Director was asked served on the Commission’s Collaborative Council of advisors. On their recommendation, Texas Appleseed briefed two law firms to conduct a state-wide study examining the challenges facing children in long-term foster care and exploring best practices that will help the courts and the legal system improve outcomes for the children.
7.5 Getting Pro Bono Lawyers involved

Texas Appleseed’s experience is that firms will often prefer to be involved pro bono in a research project where they can set the parameters of their commitment (including deadlines and resources) rather than commit to undertaking strategic litigation which can tie up the firm’s lawyers for years preparing court documents, meeting court-set deadlines and appearing at hearings with uncertain outcomes and the risk of setting bad precedents if they lose.

To assist firms which accept referrals to prepare a project report, Texas Appleseed’s staff lawyers will provide the firm with a project memo identifying:

1. The issue and its background;
2. The type of report Texas Appleseed wants produced;
3. The people and organisations which the firm should interview to form the basis of the report; and
4. The timeline and scope of the project.

Once a firm has been briefed and the research is underway, Texas Appleseed will establish a Consultant or Advisory Committee involving experts in the field.

The lawyer who I interviewed from Texas Appleseed, reported that the time-frame for each project will depend on the scope of the project, however in most cases a large project will involve a year of consultations, research and preparing a report with recommendations and the following year will be spent advocating for the recommendations to be adopted and implemented by the relevant bodies.

Case Study C: Fair Defense Act 2001

The lawyer from Texas Appleseed explained that their Fair Defense Project ‘really helped put Texas Appleseed on the map’. Texas Appleseed helped build a reform movement, which ultimately resulted in the passage of the Fair Defense Act in 2001. This law fundamentally changed the way in which lawyers are appointed to represent low-income people accused of crime in Texas. The Act has been hailed by legal experts as the most important piece of indigent defense legislation in the country in the last quarter century. Since the passage of the Fair Defense Act, indigent defendants in many Texas counties are now getting better-qualified attorneys appointed to their cases more quickly. In addition, many counties now appoint attorneys from a rotating list, instead of relying solely on judge’s discretion — thereby removing the risk of favouritism and cronyism in those appointments. This work has formed the foundation of Texas Appleseed’s ongoing work to provide better legal representation to juveniles and to persons with mental disabilities.

7.6 Appleseed’s Board

Texas Appleseed’s Board is made up of private lawyers who approach any new project proposed by the organisation’s staff, with caution. Once the staff at Appleseed have identified an issue they think should be the subject of a new campaign, they will prepare a presentation or project brief for the Board explaining
why they think the issue is important and ways in which Appleseed could become involved. At other times members of the Board have highlighted an issue affecting the local community which they think could be the subject of a new project for Appleseed and the staff have then conducted further research and reported back to the Board with suggestions for further action to be undertaken.

From a risk management perspective, the lawyer from Texas Appleseed reported that the Board is keen to protect Appleseed’s reputation and before approving a new project will ask whether the organisation has:

1. sufficient resources, relevant expertise and skills to undertake the project;
2. identified a firm which is interested in being involved;
3. explored avenues for funding the project; and
4. considered any potential consequences or ‘fall out’ for the organisation.

The Executive Director will ensure all these issues have been considered and ‘ticked off’ before taking a new proposal to the Board.

8. **Identifying advocacy lessons which can be replicated in Australia**

In conversation with the lawyers who have been involved in resourcing and progressing advocacy projects and campaigns, they all commented that it is difficult to distil or translate their projects into general lessons or strategies to guide other non-profit organisations to conduct advocacy projects independently. This is because, what may work for one organisation and campaign may not work for another and the nature of advocacy requires a strategic and tailored approach to be developed for each new project to identify the relevant players, the parties with influence and the best combination of tactics and strategies to be employed to effect change.

While talking to the organisations about the campaigns they had undertaken and the strategies with which they had achieved change, I became increasingly interested in the work Alliance for Justice in Washington D.C had undertaken to create practical tools to assess, increase and improve an organisation’s advocacy capacity.

9. **Alliance for Justice**

In the lead up to my fellowship, Christa Momot from the Reichstein Foundation drew my attention to the work of Alliance for Justice which was established in 1979, as a national association of environmental, civil rights, mental health, women’s, children’s, and consumer advocacy organisations, to work towards:

- advancing the cause of justice;
- strengthening the public interest community’s ability to influence public policy; and
- fostering the next generation of advocates.
In particular, the Reichstein Foundation was interested in the work undertaken by Alliance for Justice to encourage philanthropic foundations to fund advocacy projects and in doing so, build the capacity of organisation’s to undertake advocacy.

9.1 Building Advocacy Capacity

During a meeting with Alliance for Justice in Washington, two of the organisation’s staff lawyers took me through two tools which had been developed in response to multiple requests from organisations for assistance to build and strengthen their advocacy capacity and, from philanthropic foundations to help them assess a grant applicant’s ability to undertake advocacy.

The two tools (which can be purchased from Alliance for Justice’s website) are the:

1. Advocacy Capacity Assessment Tool; and
2. Advocacy Evaluation Tool

9.2 Advocacy Capacity Assessment Tool

The Advocacy Capacity Assessment Tool uses nine indicators of capacity:

1. decision making structures
2. advocacy agenda
3. organisational commitment to and resources for advocacy
4. advocacy base
5. advocacy partners
6. advocacy targets
7. media skills and infrastructure
8. advocacy strategies
9. knowledge, skills and systems to effectively implement strategies

9.2.1 Measures of Capacity

For each broad indicator of capacity, the tool then lists specific ‘measures’ of what capacity in this area ‘looks like.’

Each measure is assessed according to five qualitative descriptions:

1. True, and functioning well
2. True, but needs strengthening
3. Not true, but in process
4. Not true, but under consideration
5. Not true, and not desired.

For example, for the first indicator of capacity ‘decision-making structures’ the questionnaire provides a number of measures such as, ‘does the organisation have in place a decision-making structure that supports and manages its advocacy work.’ The measure is then answered by using the qualitative descriptions 1-5 above (e.g. true or not true etc) to answer specific statements such as:

See http://www.advocacyevaluation.org/
(1) This organisation has a structure for policy advocacy (e.g. a public policy committee, the board and advisory committee).

(2) This structure communicates or meets in person or by phone regularly and is actively involved in guiding the organisation's advocacy work.

(3) Members of this structure have knowledge and experience in advocacy.

9.2.2 How Foundations can use the Tool

Alliance for Justice encourages foundations to sit down with current and prospective grantees and go through the nine indicators of capacity and:

- Assess the advocacy capacity of a prospective or current grantee and identify priority areas for capacity-building;
- Work with a grantee to develop a plan for building its advocacy capacity and to evaluate progress toward meeting capacity-building objectives;
- Become familiar with measures of an organisation’s capacity to effectively engage in advocacy work;
- Spark discussions among foundation’s staff and board, as well as grantees, about advocacy and building effective advocacy organisations;
- Determine a prospective grantee’s level of commitment to engaging in advocacy, especially if it a new strategy for the organisation; and
- Consider the foundation’s overall strategy towards funding advocacy.

Alliance for Justice encourages organisations and foundations to modify or customise the tools to suit their own projects and objectives.

9.3 Evaluating Advocacy Outcomes

The second tool, the Advocacy Evaluation Tool, was designed by Alliance for Justice to help organisations identify and describe their advocacy achievements both before and after receiving a grant.

After reviewing and completing the two tools with reference to one of PILCH’s advocacy projects with which I had been involved, I realised how useful it would be for any organisation engaging in advocacy to complete before and after each new project. Even advocacy projects which have not been funded by foundation grants require significant commitment and energy and can become expensive projects to undertake in terms of the organisation’s resources. Arguably therefore an organisation’s time and focus should not be directed towards advocacy projects or writing submissions unless consideration has been given to the potential outcomes of the work and the benefit thoroughly assessed.

Even an organisation like PILCH, which is experienced in undertaking advocacy, has not yet established a consistent method or system to report, assess or measure the success or outcomes of its submissions and other forms of advocacy, such as press releases.

Alliance for Justice recognises that evaluating advocacy requires a different approach than that which may be used to evaluate other kinds of work by organisations, such
as direct service delivery. The Advocacy Evaluation Tool was designed by Alliance for Justice with these differences in mind and to help overcome the difficulties associated with evaluating advocacy outcomes.

For instance, the tool is intended to help organisations articulate their advocacy goals, strategies to achieve those goals and, their benchmarks to evaluate progress and outcomes. The tool is intended to measure effectiveness by evaluating the organisation’s commitment, the evolution of the advocacy and advocacy capacity-building objectives, relevant benchmarks throughout the project and the lessons learned from the effort. This also makes it easier to pass those lessons on to new staff and volunteers starting with the organisation.

Alliance for Justice also acknowledges in its materials that it is important to remember that the value of evaluation, especially in the context of advocacy, is ‘not only in whether a particular policy was changed or maintained but also in the capacities and networks that were built, the constituencies reached and relationships developed, and the lessons learnt which can inform and shape future efforts.’

10. Overcoming Limits on Lobbying and Advocacy

10.1 Alliance for Justice’s Educational Seminars

As well as assisting Foundations and non-profits to assess the outcomes of advocacy projects, Alliance for Justice has also devoted significant resources and time to assisting them to understand and navigate legislative limits on engaging in lobbying and advocacy.

Alliance for Justice presents a series of seminars and staffs a complimentary advice hotline on the following topics:
- Election-Related Activities for 501(c)(3)s
- Non-Profits & the Election: What Can We Do, How Should We Do It?
- Advocacy Rules for Non-Profits
- Election Related Activities for all Non-Profits

With the US presidential election looming in November 2008, Alliance for Justice has been working tirelessly to educate non-profits on which activities they can undertake in the lead-up to the election without risking their tax exempt status.

10.2 Changemakers US

Changemakers in the US is another organisation which supports community-based social change philanthropy.

See http://www.afj.org/take-action/workshops-and-events
Changemakers aims to work within the philanthropic sector to shift:

(1) Where money is directed – to address root causes, rather than symptoms of social and environmental problems; and

(2) How money is given – by urging individual donors and philanthropic organisations to become more accountable, strategic, inclusive, collaborative, democratic and creative.

Changemakers is particularly committed to encouraging the philanthropic sector to be accountable to the communities it serves and to giving people from under-represented groups a role in decision-making about how funding should be allocated.

10.3 Changemakers Australia

In 2005 Changemakers based on the US model was established in Australia. Although still in its formative years, the Foundation has already held a number of discussion forums and seminars to highlight innovative grant-making strategies which deal with ‘tough and intractable issues.’ Changemakers has also published information and educational material to assist funders to understand current and important issues of social justice.

In a paper entitled ‘Funding Advocacy for Social Change, Clarifying the Rules for Grant Makers’ the author, Leslie Falkiner-Rose, acknowledges that the reason many grant makers shy away from funding advocacy initiatives is due to fear of losing their charitable tax status. However, she submits that the laws regulating which activities can be funded are less restrictive than generally assumed and refers to the definition of permissible activities below, which is available on the Australian Taxation Office (ATO) website:

‘Charities can carry out political, lobbying and advocacy activities, where these are only carried out for the sake of, or in aid of, or in furtherance of the charitable purposes.’ See ATO fact sheet ‘Charities - political, lobbying and advocacy’

However, there is a good reason why many non-profits and foundations in Australia have exercised caution in the past around engaging in and funding advocacy. During the Howard Government’s administration, non-profits in Australia were openly discouraged from engaging in public policy advocacy with threats that they would lose their tax exempt status. The Government was of the opinion that non-governmental organisations should not engage in public policy but rather limit their activities to providing direct services to the community.

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Given these services had in the past been provided by the government but then limited by the Howard Government as part of a push towards smaller government, it was a convenient delegation of responsibility and method to silence dissent. 58

Even as late as June 2007, the ATO reminded all endorsed charities by letter that certain types of activities, such as political, lobbying and advocacy activities may not be consistent with the meaning of charity and may affect an organisation’s endorsement. The ATO’s letter included the following explanation:

‘To be charitable, an organisation’s purposes must be charitable and its objects must be at least incidental or ancillary to such purposes. Criteria for deciding what a charity is have been established by case law. The presence of political objects (where they are not merely ancillary or incidental to charitable objects) is inconsistent with charitable status. Charity law draws a distinction between political purposes and political activities. If an organisation’s purpose is, for example, to change the law or government policy, even if the subject of change is the relief of poverty, education or religion, the purpose is not charitable. However, the presence of incidental political or lobbying activities will not prevent an organisation from being a charity. To be incidental, the activities must be no more than a means of carrying out the charitable purposes and not carried on for their own sake.’ See ATO fact sheet Reminder to charities that political activities may affect their charity status59

The difficulty for many non-profit organisations however, has been in understanding, or feeling confident in their understanding of, which activities would be considered ‘incidental’ and which would not.

Ms Falkiner-Rose’s paper aims to give grant makers a clearer idea of where the legal lines are drawn.

11. Lessons from the United States - 501 (h) Expenditure Tests

In the US prior to the introduction of the 501(h) expenditure test in 1976, there was also enormous ambiguity over the amount of lobbying that non-profits could undertake. Lobbying is defined in the US by federal tax law as any attempt to influence specific legislation. Legislation means a bill that has been introduced, or a draft bill that may be introduced in any legislative body such as a city council, state legislature or Congress.

The Internal Revenue Service (IRS) rules required that tax-exempt non-profits could lose their tax-exempt status if they did more than an ‘insubstantial’ amount of lobbying. This ‘insubstantial-lobbying test’ was never specifically defined in IRS rules, and individual IRS agents had no guidance in what constituted ‘too much lobbying.’

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However, in 1976, non-profits in the United States were given the option to elect to come within a new 501(h) expenditure test (by filling out an IRS Form 5768) rather than being assessed under an insubstantial part test (1976 Lobby Law).

The 1976 Lobby Law established clear guidelines for lobbying expenditures and allows non-profits to choose to be covered by a clearly defined set of lobbying rules. This law clarifies that 501(c)(3) nonprofits (similar to tax exempt non-profits in Australia) which elect to fall under these rules can spend up to a defined percentage of their budget for lobbying without threatening their tax-exempt status.

In 1990, the IRS published final rules on implementing the Lobby Law which make it quite clear that non-profits should elect to be covered by the lobbying-expenditure test and not fall under the vague insubstantial lobbying test.

11.1 501(h) Election

Under the 501(h) expenditure test, organisations count only their lobbying expenditures (i.e. costs) so, if an activity does not cost the organisation any money (such as when using volunteers), that activity does not count against the organisation's lobbying limits. Even if an activity meets the definition of lobbying, it may cost the organisation very little money (such as sending emails).

The insubstantial part test, on the other hand, looks at an organisation's activities, rather than expenditures. In essence, any lobbying communication or activity undertaken on behalf of the organisation counts against the organisation's limits. And similar to the situation in Australia with the ATO’s references to ‘incidental activities’ there are no clear definitions of what constitutes lobbying under the insubstantial part test, nor is there a threshold of what constitutes ‘substantial.’

Under the 501(h) expenditure test, an organisation’s overall lobbying limit is determined on the basis of its exempt purpose expenditures. For most organisations, this is generally the amount of their annual expenditure.

11.2 Annual Expenditure Lobbying Limit

The following chart is used to determine an organisation’s overall lobbying limit.

- Annual expenditure of $500,000 or less = 20%
- Annual expenditure of $500,000 to $1 million = $100,000 plus 15% of excess over $500,000
- Annual expenditure of $1 million to $1.5 million = $175,000 plus 10% of excess over $1 million
- Annual expenditure of $1.5 million to $17 million = $225,000 plus 5% of excess over $1.5 million
- Annual expenditure over $17 million = $1,000,000
11.3 Direct Lobbying and Grassroots Lobbying

Once an organisation which has made a 501(h) election determines its overall lobbying limit, it can use the entire amount on direct lobbying or, 75% on direct lobbying and 25% on grassroots lobbying.

‘Direct lobbying’ is defined as any communication, with a legislator, expressing a view about specific legislation.

‘Grassroots lobbying’ is defined as any communication with the general public, expressing a view about specific legislation, with a call to action.

A ‘call to action’ refers to four different ways in which an organisation can ask the public to respond to its message:

1. asking the public to contact their legislators or staffers;
2. providing the address, phone number, website, or other contact information for the legislators;
3. providing a mechanism to contact legislators such as a tear off postcard, petition, letter, or email link to send a message directly to the legislators;
4. listing the recipient's legislator, the names of legislators voting on a bill, or those undecided or opposed to organisation's view on the legislation.

An organisation that has made the 501(h) election can never spend more than 25% of their overall lobbying limit on grassroots lobbying. Therefore, a s501(c)(3) organisation that has applied for the 501(h) election and has an annual budget of $500,000, would have an overall lobbying limit of $100,000 and a grassroots lobbying limit of $25,000 - which is substantial given the organisation only has to count direct costs (not volunteering).

The lawyers I met with at Alliance for Justice commented that, in their experience, a non-profit would rarely reach those limits.60

11.4 Benefits of Taking the 501(h) Election versus Not Electing

In summary, the benefits for an organisation taking the 501(h) election are:

1. No limit on lobbying activities which do not require expenditures, such as unreimbursed activities conducted by bona fide volunteers.
2. Clear definitions of various kinds of lobbying communications, enabling electing charities to control whether they are lobbying or not.
3. Higher lobbying dollar limits and fewer items which count toward the exhaustion of those limits.
4. Less likely to lose exemption because the IRS may only revoke exempt status from electing organisations that exceed their lobbying limits by at least 50% averaged over a four-year period.

60 Alliance for Justice publishes a number of publications and fact sheets which describe the rules in more detail. See ‘What is Lobbying’ and ‘Electing the 501(h) Expenditure Test’ which explain the process for making the 501(h) election at http://www.afj.org/utilities/search/search.jsp?query=Electing+the+501%28h%29+Expenditure+Test
(5) No personal penalty for individual managers of an electing charity that exceeds its lobbying expenditure limits.

### 11.5 Technical Assistance for Philanthropic Foundations

Alliance for Justice receives a large portion of its funding (approximately 80%) from philanthropic foundations. It has a technical assistance service through which it provides advice and guidance to non-profit organisations and foundations either by email or telephone on questions regarding the law relating to limitations on engaging in lobbying and other questions which arise.

Members of Alliance for Justice and donors can access the technical assistance service for free. Alliance for Justice will also sometimes charge foundations for consultation services on a particular project, guidance on preparing or reviewing its grant applications, or guidance on what foundations can and cannot fund and the relevant law.

The lawyers at Alliance for Justice reported that a number of philanthropic foundations will expressly state in their grant application forms that the foundation will not fund advocacy or lobbying activities. Alliance for Justice will often review the grant applications and explain that, in the lawyer’s opinion, these statements are overly conservative and it would be safe to remove the disclaimer and be silent on the issue. The staff at Alliance for Justice believe it is more effective for philanthropic foundation to encourage the non-profits which they fund to attend training offered by Alliance for Justice and organisations such as Pro Bono Partnership on how to determine which of their activities would be considered by the IRS to ‘constitute lobbying activities.’ The training also covers how to divide an organisation’s budget into ‘lobbying’ and ‘non-lobbying’ activities, report to the IRS and allocate a foundation’s grant to activities which do not risk the foundation’s tax status.

### 11.6 Training on ‘Lobbying Rules for Non-Profits’

Alliance for Justice provides extensive training for non-profits on lobbying rules, which can be attended in person or online through a system called WebEx. Alliance for Justice explained the benefit of conducting training online is that it ensures the training is accessible to all non-profits, regardless of their geographic location or means.

The training sessions cover topics such as:

- Limits to Lobbying;
- The difference between ‘Grass-Roots Lobbying’ and ‘Direct Lobbying;’ and
- Exceptions to the Lobbying Definitions.

The training also provides practical examples of lobbying activities and how a non-profit can change some aspects of its activities so they will not fall within the definition of lobbying. For example, if a non-profit sends out a flyer or email alert on an issue about which it is concerned and provides the number at the bottom of the flyer/email alert with the relevant legislators, or local members number to call – that would be considered ‘grass roots lobbying’. However, if the same flyer/email alert
was distributed without a number to call it would not. This was explained in careful
detail by the trainer at Alliance for Justice during the training I attended and non-
profits were also encouraged to call Alliance for Justice’s technical assistance service
with any questions.

Other training sessions provided by Alliance for Justice, which I did not have the
opportunity to attend, covered which aspects of an organisation’s activities its staff
should keep track of in order to provide accurate reports to the IRS, reporting
thresholds and practical assessment measures such as using time sheets.

11.7 Compulsory Training for Grant Recipients

One philanthropic foundation based in Los Angeles was in the process of negotiating
a funding grant for the Public Counsel (which is similar to PILCH) and the Alliance
for Justice staff based in its LA office to collaborate on preparing and presenting a
series of seminars for all the foundations’ grant recipients on:

1. What constitutes lobbying activities?
2. How to provide a budget justification for programs to demonstrate how
   much time and resources are spent on lobbying?
3. Reporting obligations to the IRS.
4. How to accurately report back to the philanthropic foundation on how
   funding was spent in order to demonstrate that the foundation’s funds were
   not directed towards lobbying activities.

The foundation approached Alliance for Justice and the Public Counsel with an offer
to fund them to provide this training and when I met with Alliance for Justice and
the Public Counsel they were in the process of consulting with the foundation to
work out the most effective delivery model for the training.

At the time of writing this Report, the organisations had decided it would be best to
survey the foundation’s 80 grant recipients (who as part of the funding conditions
would be required to attend the training) to determine the recipients’ missions,
interests, activities and level of knowledge around the lobbying definitions used by
the IRS.

Alliance for Justice and the Public Counsel then recommended dividing the 80
organisations into common interest groups (i.e. health organisations with a similar
level of lobbying knowledge). They also recommended that each group only have 20
participants or less to ensure that the seminars are interactive and engaging and that
the presenters can use practical exercises and hypotheticals as learning techniques
with plenty of opportunities for the participants to ask questions and have one-one-
one discussions with the presenters.

The philanthropic foundation requested that Alliance for Justice and the Public
Counsel provide each group with 6-8 training sessions covering the range of topics
set out above, and confirmed that it was prepared to invest time and money to
develop the training series for its grant recipients (in conjunction with Alliance for
Justice and the Public Counsel) to ensure the training was not clinical, dry and ‘boring’.

The Public Counsel explained that it would develop and deliver the training in conjunction with Alliance for Justice and would have one of its member firms also review any seminar materials and hypotheticals beforehand to ensure the legal information and representations were not in any way breaching the IRS rules, or in any way misleading or ambiguous.

11.8 Benefit of Alliance for Justice’s work with Foundations

One of the lawyers at Alliance for Justice stated that he believed Alliance for Justice had changed the climate by providing training on the IRS’ rules, what constitutes lobbying activities and the difference between ‘grass roots’ and ‘direct’ lobbying. He also said that by meeting with philanthropic foundations and making the case as to why and how they could fund non-profits to engage in advocacy projects, Alliance for Justice had contributed to an increase in these types of projects being funded and had built the non-profit sector’s capacity to undertake lobbying activities without being breaching IRS lobbying limits.


R10 – Advocacy Assessment Tool: Promote the use of advocacy capacity building and evaluation tools such as those developed by Alliance for Justice to assess advocacy capacity and outcomes.

R11 - Lobbying Laws: Undertake advocacy to encourage the Australian Government to introduce lobbying laws similar to the 501(h) Expenditure Test in the US, which would enable non-profits to engage in advocacy without fear of losing their tax exempt status and which advocacy, will in turn, inform the democratic process and governance of the country.

R12 – Training re: Lobbying Laws: Consider providing training for tax-exempt grantees on what activities they can undertake under current laws in Australia in relation to lobbying and advocacy activities, without risking their tax exempt status.
Part C – Business Services for Non-profits

1. Background and Impetus for the Research in the US

1.1 PilchConnect’s Current Services
In the course of scoping the services which a new specialist legal service for non-profits at PILCH should provide, legal advice was identified as an area of high need and priority. However, research and consultations with the non-profit sector also revealed that non-profits would benefit from access to free or low cost business services and financial advice.

In the early stages of its development, PilchConnect’s web-portal will include links to other pro bono service providers such as good company\(^61\) or Volunteering Australia\(^62\) which have accountants and financial planners on their database of volunteers. PILCH has also had some preliminary discussions with the CPA (a peak professional body for chartered accountants) about partnering so this is an area with future potential.

1.2 Economic Clearing House
There has been discussion in the past about the need for a formal Economic Clearing House which could operate like PILCH and match and actively refer non-profit, community organisation to accountants and other financial experts for free assistance.

I have often wondered whether the success of the Legal Clearing Houses is due to the legal profession’s longstanding tradition of performing pro bono work or whether it can be attributed to a more practical cause - such as the fact that legal advice can be carved into discrete referrals like tax exemption advice or assistance to apply for a trademark, whereas accounting or bookkeeping is seen as an ongoing requirement and not something that should be disjointed.

There are some good examples of companies like KPMG and Pricewaterhouse Coopers building partnerships with charities and community organisations but they are usually with the more sophisticated charities and non-profits which are adept at leveraging pro bono support and partnerships.

2. Free business Services available in the United States
Although the pro bono legal programs I visited in the United States are classified as ‘Community Economic Development Projects’ they focus on the provision of legal services to non-profit organisations rather than financial services. Many of them are in a similar position to PILCH in that they are able to leverage support from accountants and financial planners to present training and seminars for non-profits

\(^61\) See http://www.goodcompany.com.au
\(^62\) See http://www.volunteeringaustralia.org
on financial issues affecting the sector, but not to accept referrals to provide free, direct services one-on-one.

When I asked the lawyers at D.C Bar Community Development Program, Pro Bono Partnership, New York Lawyers for the Public Interest and Lawyers Alliance for New York if they had links with, or knew of, organisations which provided free financial services to non-profits they confirmed that (although not having any formal links or referral systems in place) they were aware of three volunteer-based organisations in the US which provide free financial services to non-profits and small businesses - Wall Street Without Walls (based in Washington and New York), Community Resources Exchange in New York and SCORE. Further inquiries with volunteers at these organisations however, confirmed that they provide advice on business management strategies rather than match non-profits with professionals to provide pro bono book-keeping, accounting and auditing services.

Wall Street Without Walls however, concentrates on providing high level assistance to non-profits involved in deals over $3 million on how to access capital markets - which would exclude the majority of non-profits which PILCH and the pro bono brokers in the US assist.

Further SCORE, rather than assisting non-profits, focuses instead on supporting small business owners and micro-entrepreneurs by distributing online newsletters providing business news, links to training and matching small business owners to professional, volunteer mentors.

2.1 Wall Street Without Walls

Wall Street Without Walls\(^{63}\) (WStWW) was launched in 2000 as a pilot program to focus on the New York area. WStWW volunteers provide financial technical assistance primarily to community development financial institutions and community development corporations seeking advice on how to access capital markets. WStWW aims to harness expertise in structured financing to develop new services and products for non-profits, such as a financial guarantee capacity, a capital exchange liquidity vehicle, and the leveraging of government foreclosed assets as a credit enhancement tool for community development finance.

2.1.1 How does Wall Street Without Walls work?

Non-profit organisations are eligible for free financial, technical assistance through WStWW if they have specific financing needs or transaction questions for deals over $3 million. Requests for assistance are made through trade associations such as the National Congress for Community Economic Development, Local Initiatives Support Corporation, the Enterprise Foundation, National Community Capital, and the Neighbourhood Reinvestment Corporation. The Securities Industry Association works with WStWW to make sure the process is productive for both the volunteers and the non-profits.

\(^{63}\) See http://www.wallstreetwithoutwalls.com/
2.2 Community Resource Exchange (CRE)

Founded in 1979, Community Resource Exchange (CRE) is a non-profit social change consulting firm based in New York. CRE helps over 300 organisations fight poverty and champion social justice issues each year. CRE works with both emerging organisations and well-established institutions in neighbourhoods where resources and opportunities are limited.

2.2.1 How does Community Resource Exchange work?

CRE has provided assistance and training to over 3,000 community leaders to undertake and sustain work that assures higher-quality education, literacy, affordable housing, and immigrants’ rights. CRE is especially dedicated to fighting the spread of HIV/AIDS in low-income communities. With CRE’s help, leaders of non-profits develop the tools to build their organisations and improve the neighbourhoods in which they live.

2.3 SCORE – Counselors to America’s Small Business

SCORE64 “Counsellors to America’s Small Business” founded in 1964, is a non-profit association dedicated to the formation, growth and success of small business nationwide and the education of micro-entrepreneurs. SCORE, which is headquartered in Herndon, VA and Washington, DC, has 389 chapters throughout the United States and its territories, with 10,500 volunteers nationwide. It is a resource partner with the U.S. Small Business Administration.

2.3.1 How does SCORE work?

SCORE offers free and confidential advice to small business owners through face-to-face counselling, online counselling and online workshops. Both working and retired executives and business owners donate time and expertise as business counsellors through SCORE’s programs.

Some of the Community Development Programs which I visited in the US (The D.C Bar Pro Bono Community Economic Development Project65 (Washington DC), Public Counsel Law Center66 (Los Angeles), Philadelphia Law Works67 and Legal Corps68 (Minneapolis), will, as well as assisting non-profits, also assist low-income micro-entrepreneurs by referring them to pro bono lawyers for legal advice.

If the lawyers at the above services believe the micro-entrepreneurs are not sufficiently far enough along in developing their business idea to warrant legal advice, they will often refer them to SCORE for assistance to prepare business plans.

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64 See http://www.score.org/explore_score.html
65 See http://www.dcbar.org/for_lawyers/pro_bono/about_the_program/serving_the_community
66 See http://www.publiccounsel.org/overview/cdp.html
67 See http://www.phillyvip.org/legal_help/lawworks.php
68 See http://www.legalcorps.org/
3. **Recommendations for PilchConnect**

**R13 – Partnering with Accountants:** PilchConnect may benefit from further discussions with CPA (a peak professional body for chartered accountants) to consider future opportunities for partnering and ways in which non-profits can be matched with volunteer accountants and financial planners for free advice and assistance.

**R14- Developing an Economic Clearing House:** PilchConnect may be able to encourage the CPA to consider the potential for establishing a formal Economic Clearing House which could operate like PILCH and match and actively refer non-profits to accountants and other financial experts for free assistance.
Part D – The Case for Assisting Micro-Entrepreneurs

1. Future Trends from the US
One of the great advantages of travelling on a Churchill Fellowship is spotting the developments and trends which may be introduced in Australia in the coming years.

With regard to the delivery of pro bono legal services in the US it was interesting to see the inclusion of low-income, micro-entrepreneurs and small business owners (seeking basic business law advice) in the eligibility guidelines of a number of pro bono referral services and law firms. Most of the services and programs which assist small business owners agreed that an individual who earn less than 300% of the country’s poverty threshold would be considered eligible for pro bono assistance. The poverty threshold in the US is US$10,488 for a single person under 65 and US$20,444 for a family group of four, including two children.

As discussed earlier in my Report, I was surprised to hear a number of the representatives of US pro bono referral services at the various conferences I attended, report that there were not enough requests from non-profits for free legal advice to satisfy the demand from law firms, University Student Clinics and in-house corporate teams for new pro bono matters.

As a result of this demand and the legal profession’s capacity and willingness to take on more and more pro bono transactional, business law referrals - a number of the Community Economic Development Pro Bono Projects across the US have developed programs which, as well as assisting non-profits, will also assist non-profit micro-enterprise development programs, and low-income micro-entrepreneurs and small business owners who would otherwise be unable to afford legal advice.

2. Pro Bono for Micro-Entrepreneurs
While in the United States I met with the following services which provide support to micro-entrepreneurs and small business owners:

1. Small Business and Micro Enterprise Clinic at George Washington University Law School69
2. LegalCORPS70 (Minnesota)
3. Neighborhood Entrepreneur Law Project71 (New York City);
4. Working in Business Opportunities72 (New York City)

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69 See http://www.law.gwu.edu/Academics/Clinical+Programs/Small+Business/aboutdirector.htm
70 See http://www.legalcorps.org
71 See http://www.abcny.org
72 See http://www.wibo.org
3. The Current Situation in Australia
Pro bono referral services in Australia, such as PILCH, will generally not refer micro-entrepreneurs or small business owners for free legal advice with regard to their businesses or potential businesses.

There are occasional exceptions such as a small business owner who is in crisis and at risk of losing his/her business (i.e. due to bankruptcy or a disaster, such as a fire) and who is genuinely unable to afford legal assistance. The majority of small business owners however, who may request pro bono advice in relation to issues arising in the course of their day-to-day business (i.e. assistance to recover a debt or to understand their responsibilities with regard to employees) would be directed by PILCH to seek advice from a private practitioner on a standard, fee-paying basis.

4. Assistance for Small Businesses in the United States
In the US however, assisting low-income micro-entrepreneurs (many of them women, minorities and members of underserved communities) to start-up businesses and turn their interests, hobbies and skills into small businesses, is considered a legitimate anti-poverty strategy.

At the Small Business and Micro Enterprise Student Clinic at George Washington University Law School, I met with Professor Susan Jones who, as well as teaching the clinic students, has published a number of articles and guides on the importance of assisting both micro-enterprise development organisations and micro-entrepreneurs.

Ms Jones explained that ‘many of these potential entrepreneurs possess the drive, creativity and talents to create and market a product needed in their communities, however, the resources required to initiate and sustain small businesses are often beyond their reach because they lack credit histories or good credit, assets, family role models, mentors and formal or business education. As with any business, creating and maintaining the entity, no matter how small, involves legal issues and responsibilities including tax, regulatory, licensing, contracts, and liability matters. Pro bono lawyers who are willing to help these micro-entrepreneurs, or the organisations that sponsor them, can make a critical difference.”

5. Guidance for Pro Bono Lawyers Assisting Small Businesses
Professor Jones noted that although generally lawyers practicing in the area of banking, tax and corporate law spend the majority of their time counselling large industries, their knowledge positions them well to also advise small businesses.

Professor Jones has published a *Legal Guide to Microenterprise Development* which sets out an overview of the issues and law which impact on micro-enterprise programs and micro-entrepreneurs. Her guide is intended to assist the corporate lawyers who volunteer their time to assist such clients.

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74 Ibid
6. **What is a Micro-business or Micro-enterprise?**

Professor Jones explained that there is no standard definition of micro-enterprise, but for the purpose of eligibility for pro bono assistance it is usually a very small business with few employees that does not have access to the commercial banking sector. A micro-enterprise will usually need a very small loan (between $500-$35,000) as start up capital. The majority of micro-enterprises are businesses operated solely by the owner and his or her family.

7. **What are Micro-enterprise Programs?**

Microenterprise development programs provide technical, financial, social and business support to individual entrepreneurs, most of whom lack business experience.

In the US, micro-enterprise development programs provide a range of services and use different models for service delivery, including entrepreneurial training and technical assistance, access to capital, access to new markets and asset development and financial planning.

In Australia, micro-enterprise development programs are most often referred to as Business Enterprise Centres. There are 22 Business Enterprise Centres located throughout the metropolitan and regional areas of Victoria. The Victorian centres are part of a national network of over 130 Business Enterprise Centres in Australia.

Business Enterprise Centres in Australia are independent organisations and provide low cost, practical and competent assistance to support the development of new and existing small businesses. Each Business Enterprise Centre has its own identity however, the range of services they provide includes:

- Training, Short courses, Workshops and Seminars;
- Networking Opportunities
- Mentoring
- Counselling
- Referrals; and
- Business Incubation.

8. **The Importance of Micro-enterprise Development**

Professor Jones explained that the self employment movement has a much greater impact than simply the number of micro businesses created or assisted. Self employment is an economic, human, family, and community development strategy that facilitates poverty reduction and encourages economic self-sufficiency, human dignity, and community empowerment. Neighbourhood micro businesses support individuals as well as families, and micro-entrepreneurs serve as community role models and create jobs.75

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75 Ibid, p.3
9. Small Business and Micro-enterprise Clinic Student Clinics

On my second day in Washington I attended the Small Business and Micro Enterprise Clinic at George Washington University and sat in on a number of interviews conducted by the students with their clients. Professor Jones' explained that as well as providing skills training to law students as part of the Law School's clinical legal education program, the Clinic also enables selected small businesses and non-profit organisations to access legal advice for which they could not afford to pay a lawyer. The Clinic does not provide a 'shop front' service and clients are seen by appointment only. Most of the clients are micro-businesses comprising 1-5 persons with less than $35,000 in start up capital.

The Clinic is staffed by second and third year law students who work under the supervision of a full-time law professor and supervising lawyer who directs the program. In addition to their work at the Clinic, the students have full course loads, and each student generally has two to four clients per semester. The students must allocate their time between their clients and their other classes and they work closely with the supervising lawyer, gaining practical experience in client interviewing and drafting legal documents, such as articles of incorporation, by-laws, contracts, and applications for licenses and permits. They also provide other legal research along with tax and business counselling. For practical purposes, the student is responsible for all aspects of representing their clients, including scheduling meetings, drafting legal documents, phone consultation; file maintenance and keeping clients abreast of their work and progress.

10. LegalCORPS

LegalCORPS is one of the pro bono referral services I visited in the US which assists low-income small businesses owners and small non-profit organisations by connecting them with volunteer lawyers. The organisation (which was established after a similar scoping exercise to that undertaken for PilchConnect) was originally intended to only assist non-profits.

However, after LegalCORPS realised the law firms in the Minneapolis area had capacity and interest in accepting more referrals and that a strong case could be made for assisting micro-entrepreneurs pro bono on the basis that a strong small business sector contributes to neighbourhood revitalisation - the organisation extended its eligibility guidelines to include small businesses with a particular focus on newly arrived immigrants.

76 The Small Business and Micro Enterprise Clinic does not handle litigation, draft business plans, engage in financial negotiations, develop loan packages, prepare tax returns or engage in complex business transactions. If clients require financial advice they are expected to seek the services of an accountant or tax advisor.
LegalCORPS explains in its promotional material that ‘by lending a hand to those who otherwise could not afford much needed legal help, LegalCORPS’ knowledgeable volunteer lawyers join efforts to make Minnesota’s communities great places to live, raise families and do business.’

10.1. The Midtown Global Market
LegalCORPS receives a great deal of support from one of the local law firms in Minnesota. This law firm has assisted a large number of micro-entrepreneurs to establish small businesses through a partnership with a micro-entrepreneur training program called the Neighborhood Development Center.

On the first night of the Equal Justice Conference which was held in Minnesota, the firm held a function at the Midtown Global Market to give the visiting lawyers an opportunity to talk to the micro-entrepreneurs who had been assisted to establish food, arts and craft stalls and cafes in the Market. The Market is located in a renovated Sears Building which previously stood abandoned for 15 years. The building was purchased and developed by the Neighborhood Development Center and three Neighborhood Partners (the African Development Center, the Latino Economic Development Center and the Powderhorn Phillips Cultural Wellness Center) to house a variety of small businesses, approximately 90% of which are owned by past students of the Neighborhood Development Center.

The stall and café owners’ passion and commitment was inspiring and it was wonderful to hear many of them talk about how the Neighborhood Development Center and the pro bono lawyers had assisted them to start up their businesses, turning their skills and knowledge into profitable businesses.

11. The Neighborhood Entrepreneur Law Project (NELP)
In New York City, I visited the Neighborhood Entrepreneur Law Project (NELP) which is one of the many pro bono projects run by the New York City Bar.

NELP provides free, legal assistance to low-income micro-enterprises who are interested in starting a small business or who already have an existing business. The Project is designed to provide low-income micro-entrepreneurs with the legal advice they might otherwise go without, due to the traditionally high costs associated with these services.

NELP is managed by a lawyer who refers eligible clients to members of the New York City Bar who have expressed an interest in providing pro bono services to micro-entrepreneurs such as:

- Services related to business structures (i.e. forming a corporation, partnership, sole proprietorship);
- Reviewing and negotiating commercial leases;
- Protecting trademarks and copyrights;
- Preparing sales and service contracts;
• Dealing with employment law matters, including drafting and reviewing employment agreements;
• Reviewing loan documents; and
• Obtaining necessary city, state and federal licences and registrations.

11.1 NELP’s Program Delivery
NELP also coordinates educational seminars and legal clinics for local-entrepreneurs which are held at community-based centres. The community-based organisations offer to host the legal seminars and clinics to compliment the other services they provide to local residents - such as language classes, child and health care.

12. Working in Business Opportunities (WIBO)
Another program I worked with in New York City, called Working in Business Opportunities (WIBO), utilises lawyers and volunteers from a range of professional backgrounds and experience to provide training and support to low-income individuals who want to establish their own businesses and take a step towards self sufficiency.

WIBO draws upon a pool of successful business owners and senior executives to volunteer their time and experience through a sixteen-week course for local entrepreneurs. The workshops are held once a week after hours and cover topics such as market research, financial planning, book keeping, human resources, credit and debt and other legal and business management issues affecting small business owners. Volunteers are asked to teach the workshops based on their real-life experience and knowledge. Through volunteering to teach the classes they assist the individual entrepreneurs and also contribute to the development of underserved communities. Over 70% of WIBO’s participants are minorities and women from communities such as Harlem, South Bronx, Yonkers, Saint Albans and Central Brooklyn in New York State.

12.1 WIBO’s Legal Clinic for Graduates
Following the success of the seminar on legal issues which is held during week 14 of the course, WIBO recently established a legal clinic staffed by volunteer lawyers from a corporate partner (AMEX) and a large law firm in downtown New York. The volunteer lawyers are rostered to attend the clinics (which are held once a month) and provide legal advice to WIBO graduates who have booked an appointment to discuss a legal issue which has arise in the course of starting or running their business. The monthly clinic allows WIBO graduates to have a face-to-face meeting with a lawyer and determine what future steps they may need to take to protect or further their business.

WIBO coordinates the legal clinic, schedules the appointments and provides a brief to the volunteer lawyer the week before the clinic so the lawyer has time to research and prepare their advice. The law firm and corporate lawyers from AMEX are also involved in preparing fact sheets and precedents to assist the other volunteer lawyers.
who staff the clinic and to prevent them needing to reinvent the wheel for each new
client.

13. Conclusion - The Case for Assisting Micro-entrepreneurs
Professor Susan Jones considers the work of pro bono lawyers assisting low-income
small business owners to stay afloat, as a step towards realising Martin Luther King
Junior’s dream of economic justice.

In his last Sunday morning sermon, Dr King said,

We read one day –We hold these truths to be self evident, that all men are created
equal, that they are endowed by their creator with inalienable rights. That among
these are life, liberty and the pursuit of happiness. But if a man doesn’t have a job or
an income, he has neither life nor liberty nor the possibility for the pursuit of
happiness. He merely exists.

Considered broadly, it could be said that lawyers providing free business and
transactional advice to small business owners and micro-entrepreneurs that would
not otherwise be able to afford such services, are working as advocates for economic
justice.

14. Recommendations for PILCH and other Pro Bono Referral Services

R15- Pro Bono Assistance for Micro-entrepreneurs: Pro bono referral services such
as PILCH should consider including low-income, micro-entrepreneurs (seeking basic
start-up business law advice) in their pro bono eligibility guidelines.

R16- Partnerships:
As a future direction for PILCH it should consider establishing partnerships with
some of the Business Enterprise Centres in Victoria\(^\text{77}\) to:

- host a series of educational seminars on legal issues affecting small businesses
to be presented by business lawyers as part of their pro bono commitment;

and

- hold a regular evening clinic (monthly or bi-monthly) to be staffed by
volunteer lawyers who can provide face-to-face advice to eligible small
business owners during 1 hour consultations.

PILCH could also explore whether it should establish a partnership with one of the
post admission legal training courses in Victoria, such as Leo Cussens, to provide
opportunities for junior lawyers to provide advice (under supervision) to start-up
small business owners through a Small Business and Micro-enterprise Clinic rather
than restricting students to only providing advice to ‘hypothetical’ clients.

\(^\text{77}\)There are 22 Business Enterprise Centres located throughout the metropolitan and regional areas of Victoria - see
http://www.becnvic.com
Appendix 1

Complete List of Recommendations from this Report

Part A - Legal Services for Non-Profits

R1 - Referrals: Consider the future of PILCH’s Public Interest Scheme’s Referral Service for non-profits including whether:

- Responsibility for making referrals should be moved from the Public Interest Scheme to PilchConnect to form part of the suite of services provided by PilchConnect to the non-profit sector?
- The referral process should be changed from PILCH’s current practice of direct placement of matters with lawyers to email distribution?
- The current guidelines to assess a non-profit’s eligibility should be revised and presented on PilchConnect’s website in anticipation of an increase in requests for referrals following the launch of PilchConnect’s web portal in October?
- PilchConnect should consider charging administrative or screening fees in the future to provide for further staff salaries and the growth of the Service.\(^{78}\)

R2 – Direct Representation: Consider whether lawyers employed by PilchConnect should perform some legal services in-house on a reduced fee basis similar to the model used by Lawyer’s Alliance for New York.

R3 – Telephone Resource Hotline: Consider whether (subject to funding) a dedicated lawyer should be employed by PilchConnect to answer telephone inquiries through a Resource Hotline and whether s/he could also supervise the referral service if it is moved to PilchConnect. Also consider whether PilchConnect should request the secondment of a senior lawyer (3-5 years experience from a corporate advisory or tax practice group) preferably for 6 or more months from one of PILCH’s member firms to provide advice to non-profit clients through the Resource Hotline.

R4 - Expert Panels: Establish panels or lists (in areas of identified need) comprising 10 or so lawyers with expertise in a particular area of law, who are given approval upfront by their pro bono committees to take on urgent matters directly from PilchConnect (bypassing the usual pro bono committee/coordinators approval processes) and deal directly with clients. Examples of areas of law which could be covered include employment law, OH&S and requirements for annual general meetings.

R5 - Educational Seminar Programs: Evaluate and expand the existing seminar program for non-profits to repeat popular topics (such as tax exemptions and legal liabilities arising from volunteer programs) and also design ‘sequel’ seminars.

\(^{78}\) Lawyers Alliance for New York charges $375 per referral and Pro Bono Partnership charges $500 for start-ups to deter them from incorporating prematurely.
For example, one seminar may cover the legal liabilities arising from volunteer programs based at a non-profit - followed by a sequel seminar covering the legal liabilities of running an external volunteer program which visits clients at their homes and involves transportation and other risks not relevant to an internal volunteer program. PilchConnect should also explore options for making seminars accessible online through interactive programs such as WebEx\(^79\) (which allows participants to attend live seminars remotely) or through recorded podcasts.

**R6 – Publications:** Map the publications currently available for non-profit community organisations in Australia and compare it with the list of publications made available by the larger organisations in the US such as Lawyers Alliance for New York. PilchConnect can then identify gaps in the range of publications available in Australia and apply to relevant funding bodies, such as the Victoria Law Foundation\(^80\), for grants to prepare new publications for online and hard copy production.

**R7 –Web Portal:** Develop the PilchConnect web portal to provide precedents, links and fact sheets for the community sector and also relevant precedents, links and updates for the lawyers who accept referrals to assist the sector on a pro bono basis. Explore the use of new technology programs such as A2J Author\(^81\) to determine if they can be adapted to suit these materials.

**R8 – Student Clinics:** Investigate the establishment of specific student projects at PILCH to assist non-profit clients.

**R9 - Establish Thematic Priorities:** Utilise the managers of PILCH’s other projects to promote PilchConnect’s services to their stakeholders and client base and, in doing so, assist PilchConnect to identify thematic priorities.

**Part B- Advocacy Services for Non-Profits**

**R10 – Advocacy Assessment Tool:** Promote the use of advocacy capacity building and evaluation tools such as those developed by Alliance for Justice\(^82\) to assess advocacy capacity and outcomes.

**R11 - Lobbying Laws:** Undertake advocacy to encourage the Australian Government to introduce lobbying laws similar to the 501(h) Expenditure Test in the US which would enable non-profits to engage in advocacy without fear of losing

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79 See http://www.webex.com/
81 A2J Author™ is a software tool that enables non-technical authors from the courts, clerk’s offices, legal services programs, and website editors rapidly to build and implement customer friendly web-based interfaces for document assembly. The A2J Guided Interviews™ created with A2J Author™ are currently used for self-represented litigants to allow them to easily complete court documents which are then ready to be filed with the court. Currently, A2J Author is used in 22 states, the U.S. Virgin Islands, and Ontario, Canada.

82 See Para 9 page 37 of this Report.
their tax exempt status and which advocacy, will in turn, inform the democratic process and governance of the country.

**R12 – Training re: Lobbying Laws:** Consider providing training for tax exempt grantees on what activities they can undertake under current laws in Australia in relation to lobbying and advocacy activities without risking their tax exempt status.

**Part C: Business Services for Non-Profits**

**R13 – Partnering with Accountants:** PilchConnect may benefit from further discussions with CPA (a peak professional body for chartered accountants) to consider future opportunities for partnering and ways in which non-profits can be matched with volunteer accountants and financial planners for free advice and assistance.

**R14 - Developing Economic Clearing House:** PilchConnect may be able to encourage the CPA to consider the potential for establishing a formal Economic Clearing House which could operate like PILCH and match and actively refer non-profits to accountants and other financial experts for free assistance.

**Part D: The Case for Assisting Micro-entrepreneurs**

**R15 - Pro Bono Assistance for Micro-entrepreneurs:** Pro bono referral services such as PILCH should consider including low-income, micro-entrepreneurs (seeking basic start-up business law advice) in their pro bono eligibility guidelines.

**R16 - Partnerships:**

As a future direction for PILCH it should consider establishing partnerships with some of the Business Enterprise Centres in Victoria\(^\text{83}\) to:

- host a series of educational seminars on legal issues affecting small businesses to be presented by business lawyers as part of their pro bono commitment; and
- hold a regular evening clinic (monthly or bi-monthly) to be staffed by volunteer lawyers who can provide face-to-face advice to eligible small business owners during 1 hour consultations.

PILCH could also explore whether it should establish a partnership with one of the post admission legal training courses in Victoria, such as Leo Cussens, to provide opportunities for junior lawyers to provide advice (under supervision) to start-up small business owners through a Small Business and Micro-entrepreneur Clinic rather than restricting students to only providing advice to ‘hypothetical’ clients.

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\(^{83}\) There are 22 Business Enterprise Centres located throughout the metropolitan and regional areas of Victoria -see [http://www.becnvic.com](http://www.becnvic.com)
Appendix 2:

Fellowship Program

Washington

- Presented to the students at Harrison Institute of Housing and Community Development Student Clinic on 26/02/08
- Attended the Small Business and Micro Enterprise Clinic at George Washington University Law School on 27/02/08
- Attended the Pro Bono Institute Annual Conference 28/02 – 1/03 (TL in Washington)
- Attended the D.C Bar Pro Bono Program CED Project on 4/3/08 (TL in Washington)
- Meeting with Alliance for Justice on 6 and 7/03/08 (TL in Washington)
- Met with the Pro Bono Partner of Squire & Sanders on 7/3/08 (TL in Washington)

Hawaii

- Attended the Volunteer Legal Services Non Profit Project on 11/3
- Attended the VLS’ Thank You Function for Volunteer Lawyers on the Big Island

Los Angeles

- Met with Elizabeth Bluestein, Director of the Community Economic Development Program of the Public Counsel Law Centre in Los Angeles (1-2 April)

Georgia

- Attended the ‘Working in the Public Interest Law Conference” at the University of Georgia Law School (3-5 April)
- Conference with Rachel Spears Pro Bono Partnerships Inc Atlanta (8 April)

New York City

- Placement at New York Lawyers for the Public Interest (14 – 18 April)
- Meeting with law firm, Deerhart LPD (14 April)
- Partnership meeting with Skaaden Lawyers (15 April)
- Meeting with Tory Messina from Pro Bono. Net (17 April)
- Attended Pro Bono Fair at AMEX with New York Lawyers for the Public Interest (NYLPI), Working In Business O (WIBO), Lawyers Alliance for Justice (LANY), [New York] City Bar Justice Center (17 April)
- Meeting with Lawyers Alliance for New York (21 April)
• Meeting with City Bar Justice Center. Neighborhood Entrepreneur Law Project (23-24 April)

White Plains and Connecticut, New York State

• Placement at Pro Bono Partnership (28-29 April)
• Attended meeting at Pitney Bowe (Corporate Member of PBP) (28 April)
• Attended meeting with PBP Volunteer Law Firm Attorney (29 April)
• Attended seminar on ‘Board Governance and Directors Duties’ at public library in Connecticut (29 April)

New York City

• Attended LANY’s seminar on ‘Mergers and Strategic Alliances’ presented by Lawyers Alliance for New York (30 April)
• Meeting with The Support Centre for Non-Profit Management’ (30 April)
• Meeting with Workshop in Business Opportunities (WIBO) Legal Clinic scheduling (1 May)
• Attended WIBO workshop on Financial and Human Resources in Central Brooklyn (1 May)
• Attended WIBO presentation at Queens Community College’s program for Disengaged Youth (2 May)

Minnesota

• Attended ABA Equal Justice Conference (5-9 May)
• Attended the Midtown Global Market which was purchased and developed by the Neighborhood Development Center and three Neighborhood Partners (the African Development Center, the Latino Economic Development Center and the Powderhorn Phillips Cultural Wellness Center) to house a variety of small businesses, approximately 90% of which are owned by past students of the NDC (6 May)
Appendix 3

Conferences Attended in the United States

Pro Bono Annual Institute Seminar - is an international, pro bono event and conference specifically tailored to the interests, needs, resources, and emerging and evolving issues faced by law firm leaders – chairs, managing partners, practice group and office leaders, pro bono committee chairs, pro bono partners, counsel, coordinators, and relationship partners – involved in the direction, oversight, support, and administration of major law firms and their pro bono programs.

Location: Washington D.C
Dates: 28 February – 1 March 2008

Working in the Public Interest Law Conference – is organized by the students at the University of Georgia Law School. The Conference brings together eminent practitioners in their respective fields, students, and faculty to discuss practical approaches to lawyering which can best serve the poor. Practical methods of challenging poverty are often not covered in traditional law school courses. This conference seeks to remedy that and provide dynamic, creative ways to combat poverty through the vehicle of the law.

Location: Athens, Georgia
Dates: 4 – 5 April 2008

Sessions Attended:
- Plenary - The Role of Public Interest Lawyer in Defending Civil Liberties
- The Media: How it Shape Our View of the Law
- Impact Litigation
- Environmental Justice: Towards a Just Future
- Immigration Policy Reform-Immigrant Integration and Civic Participation

Equal Justice Conference - brings together all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to the poor and low-income individuals in need of legal assistance. The emphasis of this Conference is on strengthening partnerships among the key players in the civil justice system. Through plenary sessions, workshops, networking opportunities and special programming, the Conference provides a wide range of learning and sharing experiences for all attendees. Pro bono and legal services program staff, judges, corporate counsel, court administrators, private lawyers, paralegals attend this event.

Location: Minneapolis, Minnesota
Dates: 7-9 May 2008

Sessions Attended:
- Beyond the Basics: A Program for experienced Pro Bono Managers
- Public Interest Impact Litigation and Transactional Programs
- Self Represented Litigants: Effective Strategies for Meeting Their Needs and Realizing Your Organisation’s Goals
- Pro Bono: It’s Not Just for Lawyers
- The Challenges and Opportunities of Public Interest Impact Litigation and Pro Bono
- Maximising What You have: Using Your Case Management System to Support Innovation and Planning
- Pro Bono Makes Cents: Making the Business Case for Pro Bono
- Winning Combination: Corporate Law Departments, Law Firms and Legal Service Providers
- International Perspectives on Developing Pro Bono
- Outcome-Focused Self Assessment for Pro Bono, Pro Se Assistance and Other Small Legal Service Programs.
- Transactional Pro Bono for Community Organisations and Micro-entrepreneurs

I prepared a report of this conference which was published in PILCH’s May Newsletter and available on the PILCH website.