

National Pro Bono Resource Centre

Ms Louise Gell
Secretary
Senate Legal and Constitutional References Committee
Parliament House
CANBERRA ACT 2600



12 December 2003

Dear Ms Gell

Questions taken on notice by the National Pro Bono Resource Centre

I refer to your letter dated 24 November 2003 referring to two questions taken on notice at the hearing of the Committee's Inquiry into Legal Aid and Access to Justice on 13 November 2003.

In relation to the first question, I attach a copy of the letter written on behalf of the former Attorney-General to the National Pro Bono Resource Centre, dated 20 June 2003.

In relation to the second question, I have been informed by Mr Iain Anderson, the First Assistant Secretary, Legal Services and Native Title Division of the Attorney-General's Department, that on 3 November 2003 at a Senate Estimates hearing, he advised the Senate Legal and Constitutional References Committee that the Department is undertaking a review of the Legal Services Directions and that there was some discussion of the review with the Committee, including its initiation. Mr Anderson informed me that the discussion is contained on page 88 of the transcript of the hearing of 3 November 2003, starting at the top of the page and provided the following link to the transcript: <http://www.aph.gov.au/hansard/senate/commttee/S7049.pdf>

Mr Anderson also noted that there is one error in the transcript, at the foot of page 88, where he is quoted as saying that the Department was "*not* looking generally at the Directions to see whether any parts needed to be expanded". Mr Anderson informed me that in fact he said, '*we were* looking generally at the directions...'. I attach a copy of the relevant page of the transcript with this amendment noted.

Yours sincerely

A handwritten signature in cursive script that reads "J.P. Anderson".

Jill Anderson
Acting Director
National Pro Bono Resource Centre

Encls.



COPY

OFFICE OF THE ATTORNEY-GENERAL

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20 JUN 2003

Mr Gordon Renouf
Director
National Pro Bono Resource Centre
University of New South Wales
The White House
UNSW
SYDNEY NSW 2052

Dear Mr Renouf

I refer to your letter dated 3 April 2003 addressed to the Attorney-General, the Hon Daryl Williams AM QC MP, enclosing a draft protocol in relation to the provision of pro bono legal assistance and procurement of legal services by the Commonwealth. The Attorney has asked me to thank you for your letter and to reply to you on his behalf.

The Attorney-General agrees that there is a need to address the perception of private sector lawyers that providing pro bono legal assistance in matters against the Commonwealth may affect their ability to undertake legal work for the Commonwealth. Legal service providers should (subject to conflict of interest rules) be given the same level of consideration in relation to the provision of tender bids for legal services, regardless of whether those lawyers have acted pro bono for clients against the Commonwealth.

The Attorney-General's Department is currently considering how best to address this issue. The draft protocol developed by the National Pro Bono Resource Centre will provide invaluable assistance in this regard.

The Attorney-General has asked me to pass on his thanks to you for your continued contribution to, and support for, pro bono legal services.

Yours sincerely

Rachel Da Costa
Adviser

Mr Anderson—The department has been undertaking a review of the legal services directions, which were first issued in 1999, to look at a range of issues that have arisen in our administration of the directions, things that agencies have encountered when—

Senator KIRK—Can I ask you to speak a little closer to the microphone? I am having trouble hearing you. Sorry.

Mr Anderson—The legal service directions have been around since 1999 when they were first issued by the then Attorney. A number of issues have arisen since that time, and we are now looking at reviewing the directions to make sure they are still current and as effective as they should be. One of the issues raised in the directions in 1999 was an encouragement to government agencies and to legal service providers to brief counsel widely and, in particular, to brief women. Our review will raise the question of whether there needs to be a stronger encouragement for the Commonwealth to brief women.

Senator KIRK—When did you say this review that you are referring to was initiated?

Mr Anderson—I think it probably started around the end of last calendar year. It is a review that will go to the Attorney, and we will recommend that there then be an external consultation phase. But, of course, that is a matter for the Attorney.

Senator KIRK—So you are saying that discussion papers will be prepared which will then be forwarded to the Attorney.

Mr Anderson—That is correct.

Senator KIRK—And then there will be consultations following that.

Mr Anderson—That is what we would be recommending.

Senator KIRK—Was this review undertaken at the request of the Attorney?

Mr Anderson—I believe we started it on our own initiative because, as I said, we had become aware of some issues in the day-to-day administration of the directions with which agencies could perhaps receive further assistance. The encouragement to brief women was one that we were certainly aware of before the matter was in the press with Senator Coonan.

Senator KIRK—What sort of time frame do you have in mind for the completion of the discussion paper at least?

Mr Anderson—It will go to the Attorney this month. The further time frame after that I cannot say, because it will depend on what the Attorney wants to do with it.

Senator KIRK—You say that you initiated this review yourselves. Is that a consequence of some concern about briefing practices by agencies or is it because of concerns as to whether the equal opportunity policy was being adhered to?

Mr Anderson—No, it was not because of any concern. We were ~~not~~ looking generally at the directions to see whether any parts needed to be expanded. I think it is worth noting that the public sector generally is a better briefer of the female members of the bar than the private sector. That has been noted, I think, by the Victorian Lawyers Association, and other bodies have looked at the issue.