

28 August 2009

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The Honourable M J Atkinson MP
Attorney-General
DX 336
ADELAIDE SA

Dear Mr Attorney

Proposal for laws to protect charitable donors of goods and services

I refer to your letter of 1 July 2009 and to the Discussion Paper, "*Charitable donations: Should the law protect charitable donors of goods and services against legal liability*". The Society is pleased to be able to participate in the consultative process.

The Society's Civil Litigation Committee has considered the questions for comment in the Discussion Paper. Some of the questions appear to be best answered by other interest groups. The Society therefore responds to the following questions:

Question 1.3 – Is it desirable to reduce the legal risk to donors, so as to increase the donation of goods, even if this also reduces the legal protection of recipients, in that they would be unable to sue if harmed by the goods (unless the donor was recklessly indifferent about the safety of the goods?)

As a matter of policy we support the notion of a reduction of the legal liability of donors and distributors towards recipients of donated goods, so long as there is a commensurate warning to the recipients as to the standard that is to apply. We acknowledge an appropriate measure may be reckless indifference. In the alternative, we suggest that the same structure and principles (a combination of knowledge and good faith) currently applying to donations of food be used, to the extent that this can be achieved.

Question 1.4 – If there were to be donor protection laws, should they protect donations of all types of goods equally, or is there a basis to treat some types of goods differently from others?

As a matter of practicality, any test should be standard, and not attempted to be varied according to the goods. Sufficient flexibility can be achieved by considering the nature of the goods in conjunction with the breach issue.

Question 2.1 – Is there a case to treat charities, traders and individual donors differently, or should the law treat these all alike? If there is an argument for different treatment, which ones should receive the protection?

We suggest that donors and charities (whether charities are trading or conducting their affairs on a charitable basis only) be fully protected by a reduction in liability. We would propose that traders for

profit be subject to the standard, regular laws and that they only be protected where they come within the definition of a donor.

Question 3.1 – If there were to be laws protecting the donors of goods from legal liability in negligence, should these laws apply equally to all goods? If not, to what goods should they apply?

We propose that there needs to be a single test that would, no doubt, be applied differently by nature of the goods donated.

Question 4.1 – To what extent are service providers discouraged from donating their services to charity for fear of legal liability? How big a factor is fear of liability, compared with other factors influencing the decision? Does it vary depending on the service and, if so, which services are more likely to be donated to charity if liability for negligence were abolished?

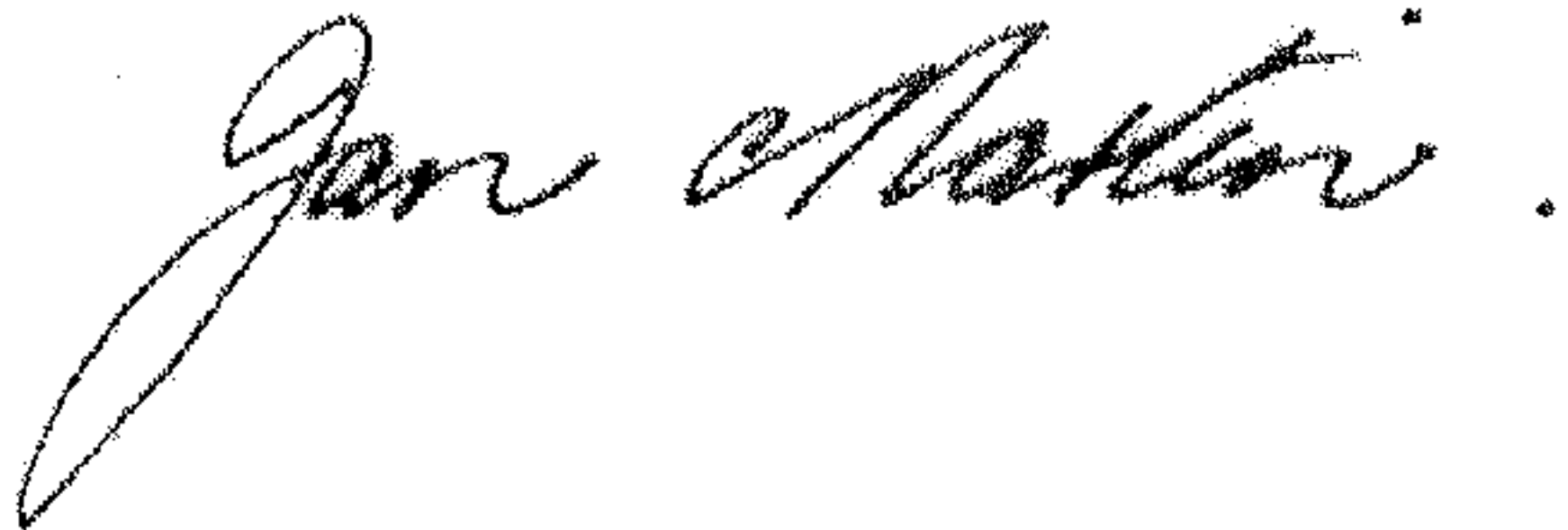
We do not feel that lawyers are discouraged from donating services for fear of legal liability. Anecdotal evidence suggests lawyers understand that they currently owe a full duty when donating services, and are not discouraged from such donations. This may be because they understand the concepts, and because they are insured against the risk.

Question 4.3 – If you are a service-provider, would you discontinue buying insurance, or some of your insurance, if protected from legal liability for donated services? If you would not, why not?

Requirements of lawyers in relation to Professional Indemnity Insurance dictate that policies would be maintained.

I trust these comments are of assistance to you.

Yours sincerely



John Goldberg
PRESIDENT