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Public Interest Law Clearing House

PILCH

Matters

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Thank you to all PILCH staff, secondees and volunteers who contributed to this edition. Special thanks to Phil Lynch, Paul Lamb and Michelle Burrell.

Photograph © Amber Stuart

Edited by Rachel Brown.

Victorian Charter on the Right Path

Phil Lynch,
Director, Human Rights Law
Resource Centre

PILCH is a non-profit, independent legal referral service with a network of members which represents the diversity of the legal profession. PILCH's primary role is to coordinate the provision of pro bono (without fee) legal assistance. It does so through four pro bono programs: the Public Interest Law Scheme, the Victorian Bar Legal Assistance Scheme ('VBLAS'), the Law Institute of Victoria Legal Assistance Scheme ('LIVLAS') and the Homeless Persons' Legal Clinic ('HPLC'). PILCH also engages in targeted law reform and advocacy work, and provides community education and professional training. PILCH Matters is directed to its members, to the broader legal and allied services communities, and interested members of the public.

It is almost two years since the Victorian *Charter of Human Rights and Responsibilities* received royal assent, 18 months since it entered into force, and 6 months since it became fully enforceable. While this makes it a little too early to evaluate whether the Charter is achieving its lofty aim of a 'democratic and inclusive society that respects the rule of law, human dignity, equality and freedom', it is sufficient to make some significant evidence-based observations.

First, it is very clear that the Charter has not created a tsunami of litigation. At the most, the flow of cases could be characterized as a trickle.

Second, the courts have demonstrated that they are very adept at identifying which cases are meritorious and raise human rights concerns, and which are not. Channel 9's attempt to rely on the 'right to freedom of expression' in its appeal against the suppression of 'Underbelly' was quickly dismissed. So too was Carl William's attempt to obtain a stay of his criminal prosecution on the basis that his 'lawyer of choice', Peter Faris, was not available on the dates fixed by the court. Faris' fees gave way to the importance of the efficient and expeditious administration of justice. On the other hand, the Charter – in particular the right to freedom from arbitrary detention – did play a very important role in a case which confirmed the fundamental principle that an innocent person should not be held in custody awaiting trial for a period longer even than he or she would serve if guilty of the offence.

Third, the Charter is enhancing transparency and accountability in government. The Charter establishes a range of mechanisms to ensure that human rights are taken into account by parliament, public authorities and courts when developing, interpreting and applying law and policy. As Sir Gerard Brennan, former Chief Justice of Australia, stated in a recent speech, the Charter has brought the various arms of government into a "constructive dialogue" about human rights "and thus enhanced the quality of good government".

Fourth, the Charter is being used as a framework to audit and implement best practice in service delivery. Organisations such as

homelessness services and community legal centres are using the Charter to ensure that their services are flexible, responsive, respectful and promote human dignity. This is consistent with experience in the UK under their *Human Rights Act*. A major evaluation of that legislation by the Department of Constitutional Affairs concluded that human rights had exerted a “powerful”, “positive and beneficial” impact on the development and delivery of public policy and services. It has been found that the UK HRA has “led to a shift away from inflexible or blanket policies towards those which recognize the circumstances and characteristics of individuals”.

Fifth, the Charter is being used as a tool to address disadvantage and promote human dignity. The PILCH Homeless Persons’ Legal Clinic has used the Charter and its guarantee of respect for privacy, family and the home to prevent the eviction of a pregnant single mother of two into a state of homelessness. Our Centre is looking at the Charter’s application to the invasive strip-searching of female prisoners and their visitors, with a significant majority of women in prison having themselves been victims of sexual assault. We are also considering the ways in which the Charter can be used to challenge untherapeutic practices of restraint and seclusion of people with mental illness, and to ensure that people are afforded natural justice and due process before they are treated and detained against their will. Aged care and disability services will also come under Charter scrutiny and be positively impacted.

The role that the Charter can play in addressing disadvantage and promoting human dignity is also evidenced by the UK experience, with a major report by the British Institute for Human Rights concluding that human rights legislation can assist disadvantaged people “to challenge poor treatment and improve their own and others’ quality of life”.

The Charter’s enactment in 2006 was accompanied by a wave of conservative hysteria. Their misconceived, and in some cases mischievous, claims have proved unfounded. As night follows day, the next tactic deployed by these commentators will be to highlight every unmeritorious complaint or bad decision made under the Charter; the many more well-founded complaints and common sense decisions made under the Charter to improve people’s lives will be conveniently ignored.

The first 18 months’ of the Victorian Charter evidence the potential of Charters of Human Rights to improve public services, promote more responsive and accountable government, and address disadvantage. With Victoria leading the way, the focus now shifts to the federal sphere to realize this value. ■

Philip Lynch is Director of the Human Rights Law Resource Centre (www.hrlrc.org.au)

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Using the Victorian Charter to Redress Homelessness

Amy Barry-Macaulay, HPLC Lawyer



Since its entry into operation on 1 January this year, the PILCH Homeless Persons' Legal Clinic (**HPLC**) has been using the Victorian *Charter of Human Rights and Responsibilities Act 2006* (**the Charter**) as an advocacy tool in both its casework and its law reform activities to promote the rights of people experiencing or at risk of homelessness. While the success of the Clinic's law reform projects will only come to light over time, the Clinic's Charter based casework is already achieving great results. This Charter casework has principally been in the area of residential tenancy law where we have sought to promote and protect the rights of tenants at risk of eviction and homelessness.

The HPLC's cases have not progressed to final hearing before a court or tribunal and we remain without a decision that directs how the Charter should be applied. Nonetheless, these cases reveal that there are many opportunities available for lawyers to utilise the Charter to boost legal arguments, which can often result in great outcomes for clients.

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Application of the Charter to Mental Health Act and Mental Health Review Board

A recent case before the Mental Health Review Board has brought the application of the Charter into sharp focus. The case concerned the failure of the Mental Health Review Board to conduct a review of the treatment of a patient under the Mental Health Act. Significant issues that were considered in relation to the Charter included whether the Mental Health Review Board was a 'public authority' and/or a 'court or tribunal' for the purposes of the Charter and what the Board was required to do by the Charter to ensure a 'fair hearing'. The decision provides guidance as to how Charter rights are engaged by involuntary mental health treatment.

Read the case note in full on the Human Rights Law Resource Centre [website](#). ■

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The 'public authority' – an unexpectedly broad concept

Paul Lamb, Lawyer, DLA Phillips Fox

While part of the Charter's aim is to reshape and influence the way that all Victorians recognise and respond to the notion of human rights, it is only 'public authorities' that are strictly bound by the legislative framework of the Charter. The Charter provides a list of indicators that will be influential when determining whether an entity is a public authority and there is useful international jurisprudence on the matter, however the definition of a public authority for the purposes of the Victorian Charter will be one that evolves with developing jurisprudence.

Particularly relevant for many of PILCH's clients is whether a not-for-profit or non-government organisation by reason of its funding arrangements and the public nature of their functions will fall within the ambit of section 38 and be considered a public authority for

the purposes of the Charter. The following article provides a useful explanation of the meaning of a public authority.

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News & Events

PilchConnect establishes new Melbourne Uni Law Masters subject

Sue Woodward, the Manager of PilchConnect (PILCH's specialist service for not-for-profit community organisations) recently developed and taught a new subject, *Governing Not-For-Profit Organisations*, for the Melbourne University Law Masters program. The course was taught by Sue (and Shelley Marshall) on an intensive basis 28 May - 3 June 2008. It attracted 15 graduate students working in the not-for-profit (NFP), legal and accounting sectors. Several students came from interstate.



Governing Not-For-Profit Organisations students, June 2008

The subject provided students an opportunity to research and understand the existing regulatory framework for NFP organisations, as well as the role, size and diversity of the NFP sector. There was considerable discussion of the unique challenges facing those who sit on boards of NFP organisations or work in the NFP sector. The subject was enriched by the contribution of a range of guest lecturers including academic colleagues Assoc. Prof Ann O'Connell and Prof Michael Bryan.

There was also consideration of the future – possible reforms that may be undertaken to the regulatory system for NFP organisations to reduce the complexity and better tailor disclosure and accountability regimes. The relevance of the subject is highlighted by the recent decision of the Federal Court about charitable institutions and advocacy (see [the Victorian Women's Lawyers](#) case) and the announcement of a [Senate Inquiry](#) into disclosure regimes for charities and the not-for-profit sector. PilchConnect will be making a submission to the inquiry.

PilchConnect supports African Women's organisations

PilchConnect recently partnered with VCOSS, the Reichstein Foundation, Footscray Community Legal Service and a number of other services as part of an information day held at CAAWI, the Centre for African-Australian Women's Issues, in Footscray. The purpose of the day was to provide interested African Women's groups with information on the legal and related support services available to help set up successful not-for-profit community organisations.

Sue Woodward, Manager of PilchConnect, provided an overview of the legal assistance that PILCH can provide to eligible not-for-profit organisations. PILCH was also grateful to Freehills Partner Alice MacDougall, who came to the day and gave a clear, plain-English presentation about which groups may be eligible for tax concessions and how they can apply. Thanks also to Anna Lyons (lawyer from Freehills and former PILCH secondee), Carly Dunn (PILCH secondee from AAR) and Monika Pekevaska (PILCH secondee from Corrs) who attended on the day to meet with participants about their legal needs.

The day was a success and ended with speakers and participants joining together to share a lunch. Follow-up sessions are being planned for the future.

PALS @ PILCH

Earlier this year the Australian Law Reform Commission released a special publication dedicated to the burgeoning interest in animal law protection and welfare heralding that the protection of animal rights is the 'new frontier in public interest law'. PILCH has been active in this area for a number of years. Its works has involved facilitating a number of referrals to pro bono solicitors and barristers including providing defamation advice for an animal rights group that had written a report critical of conditions for horses in the racing industry and acting on behalf on an animal rights activist in the Supreme Court protesting on the trading of live export. PILCH was also instrumental in the establishment of the Barristers Animal Welfare Group - an initiative of the Victoria Bar.

In 2008-09 PILCH will increase its activity in this area through a special service - PALS@PILCH. The Pro Bono Animal Law Services (PALS) was previously housed at Redfern Legal Service in NSW and with the assistance of a grant from the Victoria Law Foundation will now fall under the auspices of the Public Interest Scheme. PALS@PILCH will consist of a referral service for pro bono matters involving animal welfare and protection issues. The service will also seek to improve laws to promote better animal outcomes by engaging in strategic litigation, community education and law reform and policy work. PALS@PILCH will work closely with existing animal welfare organisations including Voiceless and Lawyers for Animals.

PILCH Farewells Public Interest Manager

Earlier this month, Tabitha Lovett left her position as Manager of the Public Interest Scheme to take up a new role as Grants Manager for the Victoria Law Foundation. Tabitha was the inaugural Manager of the Public Interest Scheme and held the role for 4 1/2 years. During that time Tabitha made a very significant contribution to the development of pro bono and public interest law and the growth of the organisation. We wish Tabitha all the best in her new role.

Seminars & Training

PilchCONNECT:

Screening and Background Checks, Working with Children Legislation

What background police checks should your organisation arrange for employees and volunteers? Can your organisation be held liable if you fail to run a background check? Does your organisation have volunteers or paid staff working with children, the elderly or persons with disabilities? Learn about state and Federal laws governing background checks including the Working with Children Act.

Time: 9.30am – 1pm

Date: Tuesday 12 August

Venue: Middletons, Level 25, Rialto South Tower, 525 Collins Street, Melbourne

More information will be available shortly at www.pilch.org.au.

Human Rights Law Resource Centre:

Strengthening Human Rights and the Rule of Law

With The Hon Robert McClelland MP, Attorney-General for Australia and Justice Chris Maxwell, President of the Victorian Court of Appeal

Time: 5.45 for 6.00 – 7.45pm

Date: Thursday 7 August

Venue: Mallesons Stephen Jaques, Level 50, 600 Bourke St, Melbourne

Cost: \$25 / \$15 concession

RSVP: 31 July

Visit www.hrlrc.org.au for more information

Human Rights Law Resource Centre:

'Torture Team': Human Rights, Lawyers and the 'War on Terror'

With Professor Philippe Sands QC, Matrix Chambers, London and the Rt Hon Malcolm Fraser AC, CH, former Prime Minister of Australia

Time: 5.45 for 6.00 – 7.45pm

Date: on Tuesday 19 August

Venue: DLA Phillips Fox, Level 21, 140 William St, Melbourne

Cost: \$25 / \$15 concession

RSVP: 12 August

Visit www.hrlrc.org.au for more information

Human Rights Law Resource Centre:

Human Rights Law, Advocacy and Campaigning Program

This training, to be run over 4 half-days in July and August, is intended for lawyers, advocates and workers in community legal centres, private law firms, Victoria Legal Aid, community organisations and NGOs with an interest in using human rights law in casework, advocacy and campaigning.

Visit www.hrlrc.org.au for more information

PILCH in the Media

PILCH Referral: 14 year old footy player Evelyn Rannstrom challenges AFL gender policy

'Can women play footy at the highest level?', ABC Grandstand, 26 June 2008

- Read the article online [here](#)

'Footy girl on the bench with knee strain', Nine MSN, 22 Jun 2008

- Read the article online [here](#)

'Girl wins case to play footy with boys', The Age, 20 June 2008

- Read the article online [here](#)

'Evelyn Rannstrom to use human rights charter to play footy', Herald Sun, 18 June 2008

- Read the article online [here](#)

'Walk for Justice Runaway Success', Law Institute Journal, July 2008

'Working hard for the needy', Kristen Hilton and Hugh de Kretser, The Age, 24 June 2008

- Read the article online [here](#)

'Panel firms excel on pro bono', The Australian, 13 June 2008

- Read the article online [here](#)

'Disadvantaged reap government pro bono benefits', media release from the Office of the Attorney-General, 11 June 2008

- Read the media release online [here](#)

'Justice for all, bar none', Ben Schokman (Human Rights Law Resource Centre), The Age, 11 June 2008

- Read the media release online [here](#) ■

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Law Reform, Advocacy & Policy

A Balancing of Rights: The Vexatious Litigant Debate PILCH / HRLRC submission to the Victorian Parliament's Vexatious Litigants Inquiry

The Victorian Parliament Law Reform Committee recently conducted a public inquiry into the efficacy of current vexatious litigant legislation. Since 1928 only 14 people have been declared vexatious litigants in Victoria.

PILCH and the HRLRC provided a joint submission to the inquiry outlining that the current vexatious litigant laws under section 21 of the Supreme Court Act 1986 (Vic) strike the correct balance between the right to access the courts and the need to protect other parties and the justice system from vexatious litigation. The submission argued that any attempts to broaden these laws should be treated with caution and ensure that rights under the Charter of Human Rights and Responsibilities Act 2006 (Vic) are adequately protected, particularly the right to a fair hearing and equal access to the courts.

PILCH and the HRLRC also asserted that any meaningful attempts to address the issue of vexatious litigation should focus on less restrictive means such as reforms to court case management and the provision of direct guidelines and continuing training for judges and court staff in dealing with vexatious and difficult litigants, and individuals who have mental health issues since there is a concern that they are at risk of being misjudged as vexatious by court staff and the judiciary.

The submission also suggested that the underlying issue of the vexatious litigant debate stems from the increase of self-represented litigants due in part to restrictive legal aid guidelines based on insufficient funding in key areas of legal assistance. It was contended that an increase in government funding for legal aid assistance is essential, particularly legal advice at the preliminary stage, as well as funding to increase legal resources made available to self-represented litigants at the various courts and tribunals.

Download the submission from our [website](#)

Commonwealth Government Legal Services Review

PILCH recently made a submission to the Commonwealth Legal Services Review. Part of the review was to consider ways in which the Commonwealth could support pro bono as a part of its purchasing of legal services. PILCH submitted that the Federal Government has a responsibility to promote and support the professionalism of pro bono legal services in the private sector through policy designed to increase socially responsible outcomes.

In particular, PILCH recommended that the Attorney-General introduce a mandatory contractual requirement that each legal firm that is a participant of the Commonwealth legal scheme must "commit to provide pro bono services of at least 5% of the value of the legal fees they derive under the panel arrangements". This recommendation draws on the successful implementation of similar requirements that the Victorian government has imposed on law firms that are selected as providers on the Victorian government legal service panel. PILCH also recommended adopting definitions of pro bono services and approved causes that are consistent with the Victorian scheme.

Download the submission from our [website](#)

Righting the Wrongs of Homelessness PILCH Homeless Persons' Legal Clinic submission to the Federal Government's Green Paper: 'Which Way Home?'

In this submission the HPLC responds to the Federal Government's Green Paper on homelessness. Through the Green Paper process the Government has stated that it seeks to renew the fight against homelessness and find new approaches and solutions to this issue. In its submission, amongst other things, the HPLC argued that the Federal Government should situate homelessness within a human rights framework, review and amend all Federal (and state) laws that impact disproportionately on or discriminate against people experiencing homelessness, introduce a Homelessness Act that enshrines an enforceable right to adequate housing and introduce a Federal Charter of Rights incorporating social economic and cultural rights as well as civil and political ones, following comprehensive community consultation.

Download the submission from our [website](#)

Homelessness and Voting

PILCH Homeless Persons' Legal Clinic submission to the Commonwealth JSCEM Inquiry into the 2007 Federal Election

This submission examines and discusses the franchise of people experiencing homelessness in the context of the 2007 Federal Election. In particular, the HPLC recommends that the *Electoral Act 1918* (Cth) be amended to improve participation in electoral processes for people experiencing homelessness and that the Australian Electoral Commission improve its education and awareness campaigns to better engage with this marginalized group.

Download the submission from our [website](#)

Voting as human right: Enfranchising people experiencing homelessness and imprisonment

PILCH Homeless Persons' Legal Clinic submission to the Parliament of Victoria Electoral Matters Committee into Voter Participation and Informal Voting

In this submission the HPLC examines and discusses the franchise and voter participation of people experiencing homelessness and imprisonment in Victoria in the context of the *Charter of Rights and Responsibilities Act 2006* (Vic). In particular, the HPLC recommends that immediate review and amendment of the *Electoral Act 2002* (Vic) and the policies and procedures of the VEC to ensure compliance with the Victorian Charter and the effective realisation of the right to vote in Victoria.

Download the submission from our [website](#) ■

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Victorian Law Reform Commission's Community Law Reform Projects

Michelle Burrell, Community Law Reform Manager, VLRC

The Victorian Law Reform Commission is well known to most readers of *PILCH Matters*. Since its establishment in 2001 the commission has produced landmark reports on some of the most vexing challenges facing our legal system, such as the law of assisted reproductive technology and adoption, reform of family violence laws, defenses to homicide, the law of abortion and the recently released Civil Justice Review Report.

Each of these major projects has been referred by the Attorney-General and in some cases have taken several years to complete. Perhaps less well known is the ability of the commission to undertake community law reform projects. These do not require a reference from the Attorney-General; instead they come from community members and organisations.

The aim of the community law reform program is to improve community involvement in law reform by opening up access to people and communities who are not usually involved in law reform but who have some really good ideas about how the law could be improved. The key principle is that community law reform projects address legal issues that are of general community concern, but are small enough to have a relatively straight forward solution. In addition community law reform projects must not require significant resources. Some projects will lead to recommendations to government; others may take the form of publishing a discussion or research paper. Examples of previous projects include reforms to the Bail Act 1977 and a report on tenancy databases.

The commission is currently undertaking a project on the law of assistance animals. A consultation paper has just been released, with submissions closing on August 18 2008. It is anticipated that a final report, including recommendations will be given to the Attorney-General by 30 September 2008.

How does the commission decide which community law projects to pursue?

The commission cannot take on every law reform idea that is suggested to us. Generally we can only complete two projects a year.

In deciding whether to undertake a community law reform project the commission considers:

- **The area in which the law applies** – the commission can only make recommendations about state laws.
- **The scope of the community law reform project**, including the complexity of the legal issues raised, the amount of research required, and the amount of legal change that may be needed. The commission can only do community law reform projects that deal with relatively small changes to the law.
- **The amount of community consultation that will be needed to fully consider the issue.** Complex and controversial subjects or areas of law that do not have strong community consensus will generally not fit within community law reform projects. These types of issues require significant consultation and public debate to resolve. This is better suited to a government initiated reference or inquiry.
- **The law reform proposal's likely public benefit.** The commission is interested in projects that will fix problems with the law that affect a significant proportion of the population or address problems faced by significantly disadvantaged members of the community.
- **The prospects of success for the reform proposal.** Community law reform projects must provide a simple, effective solution to an anomaly, inequity or gap in the law.

Other factors such as the scope of community involvement, resources required and avoiding duplication are also considered.

The commission welcomes law reform proposals from community organisations and members of the public. If you would like to discuss your law reform proposal or if you have ideas about how the commission can better engage with the community, please feel free to call Michelle Burrell, Manager Community Law Reform on (03) 8619 8636. Or you can make your suggestion via our website at www.lawreform.vic.gov.au

Have your say on assistance animals

The Victorian Law Reform Commission has recently released a consultation paper on the law of assistance animals and is seeking submissions to help inform the final report and recommendations to government.

Currently, the law in Victoria that governs a person's right to be accompanied by an assistance animal is conflicting and inconsistent across a range of legislation.

There is also a lack of uniform arrangements or a central authority for the regulation of animal training and accreditation and this contributes to confusion surrounding the use of assistance animals in the community.

The review of laws and regulations relating to assistance animals is being undertaken as a part of the VLRC's community law reform responsibilities, which permit the VLRC to examine, report and make recommendations about any minor issues of general community concern.

A copy of the consultation paper is available on the VLRC website www.lawreform.vic.gov.au and can be provided in audio or Braille on request.

Submissions can be made via the website, in writing or by email or verbally by calling the commission (03) 8619 8619.

Submissions close on 18 August 2008.

Public Interest Law Scheme

PILCH receives many requests for assistance under its Public Interest Law Scheme. Those applications that satisfy means, legal merit and public interest criteria are able to be referred to PILCH members for pro bono assistance. The following summaries, while far from constituting a complete list of either referrals or PILCH members who have undertaken referral work, are reported to give an indication of the range of individuals and organisations applying for assistance, the types of assistance they seek, and the variety of pro bono work undertaken by PILCH members. PILCH is very grateful to all its members who have accepted pro bono referrals to assist individuals and not-for-profit organisations.

Case Summaries

14 year old footy player Evelyn Rannstrom challenges AFL gender policy

On 18 June 2008, PILCH arranged representation at the Victorian Civil & Administrative Tribunal (**the Tribunal**) for 14 year old Evelyn Rannstrom by **Wil Alstergren** and **Daniel Pollak of Counsel** acting on pro bono basis. Ms Rannstrom's father, Matt Rannstrom, had approached PILCH earlier in the week for assistance to prevent an attempt by the Dandenong Ranges Junior Football League Inc (**the League**) and AFL Victoria to prevent girls playing in mixed AFL football competitions once they have turned 14.

On 20 June 2008, **Judge Harbison** of the Tribunal granted an injunction to Ms Rannstrom against the League and AFL Victoria. The League had previously declined Evelyn's age exemption application to continue to play in the Under 14's competition. The decision was made pursuant to AFL Victoria's Gender Regulation Policy (**the Policy**) which excludes females who turn 14 in the year of play from participating in any competition that is not a 'female competition'.

Ms Rannstrom sought injunctive relief from the Tribunal to allow her to continue to play football this year despite the Policy. The issue needed to be urgently determined so that Ms Rannstrom could play football that weekend and compete in the number of games required to qualify for the finals season.

The matter raises important equal opportunity issues and may require further determination in light of the newly introduced Victorian Charter of Human Rights and Responsibilities (**the Charter**) that came into full effect on 1 January 2008. The Charter provides protection and recognition of a number of fundamental human rights including the right to be free from discrimination.

Following the decision, Ms Rannstrom took the field for the Gembrook/Cockatoo Football Club and the League also made the decision to allow another girl, Toni Wilson, to participate in the game despite her similar age. Ms Rannstrom is yet to decide whether she intends to pursue the substantive application made to the Tribunal of whether to challenge the AFL's Gender Policy.

Judge Harbison's decision can be found online at:
<http://www.austlii.edu.au/au/cases/vic/VCAT/2008/1185.html>

[Read more in PILCH in the Media](#)

Equal Opportunity in Schools

Matthew Follett of counsel accepted a PILCH referral to provide merits advice in relations to a Victorian discrimination matter. The dispute concerns a mother who alleges that a Victorian School and the Victorian Department of Education and Early Childhood Development discriminated against her two children. The parent claims that her daughter was discriminated on the basis of race and that her son was discriminated against, and expelled, on the basis of his race and medical condition - Attention Deficit Hyperactivity Disorder (**ADHD**). The parent filed two applications on behalf of her children at the Victorian Equal Opportunity and Human Rights Commission in December 2007 and participated in an unsuccessful conciliation in May 2008. Counsel is providing the parent and her aggrieved children with merits advice about the prospect of success if this matter was to be taken before VCAT and considering a human rights argument following the enactment of the Victorian *Charter of Rights and Responsibilities Act 2006* (Vic). ■

Law Institute of Victoria Legal Assistance Scheme

The Law Institute of Victoria Legal Assistance Scheme (**LIVLAS**) receives many requests for assistance. Where the application satisfies a means and legal merits test, and the client is ineligible for legal aid, or it is inappropriate to refer the matter to a community legal centre, legal assistance can be provided through a pro bono referral to a solicitor on the LIVLAS register.



Case Summaries

Financial Abuse Behind Closed Doors

A significant problem in society is the financial abuse that children commit against their elderly parents. LIVLAS has had a number of these distressing cases come through the Scheme since its inception and has regularly referred such matters to solicitors acting on a pro bono basis.

In a recent matter, an elderly woman, Mrs. Z, sought legal assistance through LIVLAS. Mrs Z had lent her son \$29,000 by cheque. Mrs Z's son had subsequently refused to repay claiming that the monies were not a loan but a 'gift'.

Mrs. Z also suffered emotional abuse from her son. She had no choice but to pursue legal action as she needed the money to cover her significant medical costs. Mrs Z has no other assets and relies solely on her pension. She currently resides in a nursing home.

LIVLAS referred the matter to Ronald Klein of Rogers & Gaylard Lawyers in Brighton and Siobhan Ryan of counsel was briefed. In June 2008 the Magistrates' Court awarded Mrs Z the full amount of her claim plus interest after hearing legal arguments put by counsel and the testimony of Mrs Z which, as her solicitor described, was delivered with "enormous dignity despite the pain and tragedy of the matter." Mrs Z is extremely grateful for the legal assistance she has received. ■

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Victorian Bar Legal Assistance Scheme

The Victorian Bar Legal Assistance Scheme (**VBLAS**) is now in its sixth year of administration by PILCH and has continued to develop and improve access to pro bono legal services from barristers. Matters referred to barristers continue to cover diverse areas of law, including family, crime, migration, contract, trusts, tort, personal injury, TAC, employment, debt recovery, tenancy and discrimination.



Case Summaries

Bus Driver Re-Accredited

Ms E was employed as a bus driver but, due to a previous criminal conviction, had her accreditation suspended. Ms E appealed the decision to the Victorian Taxi Directorate and sought the assistance of VBLAS. Ms E was willing to represent herself at the hearing in VCAT and sought Counsel's advice as to how she should conduct the matter. **Ian Stewart of Counsel** agreed to a conference with Ms E and spoke to her regarding the conduct of the hearing and what evidence she should present. Ms E reported back after the hearing that her application to have her accreditation reinstated had been successful, and expressed gratitude to Ian Stewart for his assistance.

Public Housing Eviction

Patrick Doyle of Counsel accepted a referral to represent Mr L, a recently arrived refugee, in a hearing before the Victorian Civil and Administrative Tribunal. The matter was referred to VBLAS from the Homeless Persons' Legal Clinic, and concerned a decision of the Department of Housing to evict and indefinitely ban Mr L from accessing public housing due to damage caused by a young person whom Mr L had taken in. Counsel was successful in having the decision reversed and Mr L was placed on the expedited list for public housing. ■

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Homeless Persons' Legal Clinic

The Homeless Persons' Legal Clinic provides free legal assistance to, and advocacy on behalf of, people who are homeless or at risk of homelessness. HPLC aims to use the law to reduce unfair and unjust treatment of homeless people, to construct sustainable pathways out of homelessness, and to promote fundamental human rights.

***Street Rights* – HPLC monthly newsletter**

Please visit our [website](#) for the latest issue of *Street Rights*, which includes:

- Consumer Forum
- What are my rights: credit & debt reporting
- The CAG Chronicle
- Good news stories ■

Another Reason to do Pro Bono

Tabitha Lovett

Five years ago I left the security of private practice to begin a secondment at PILCH. So began the shift in aspirations from Porsche to Portia.

On that first day at PILCH I was given two new applications for assistance to assess: one from a prisoner taking action against the Department of Corrections for discrimination after being forced to share a cell with a smoker, the second from an independent scientist wanting to challenge the government's decision on stem cell research.

I was immediately struck by the variety of the work and the issues of public importance raised. My first challenge was to understand the difference between direct and indirect discrimination and quickly get my head around the stem cell debate, but after working on a single piece of litigation for three years these were good problems to have.

The next step was to find pro bono lawyers to advise the clients on their prospects of success. I knew first hand the long hours that lawyers work and how it was getting harder and harder for people to find time for their families and self. It seems strange now, but at the time I was nervous about asking people to give their limited time to ideals and principle and I wondered what I could offer or say to encourage them. But from the earliest calls I found lawyers generous in *offering* their time and genuinely curious about the legal questions raised.

Working at PILCH has provided an extraordinary perspective of our legal system, the profession and the importance of organisations such as PILCH and the community legal sector.

It has been a privilege to work with the firms' pro bono coordinators, the members' lawyers, barristers at the Victorian Bar and the tireless lawyers that sustain our community legal centres. Thank you to all who accepted referrals from PILCH - for your generosity, your empathy with clients and the example you provide for the next generation of lawyers. You have each left a lasting impression on me.

I would also like to thank the PILCH Board, the managers and staff and the law students who volunteer so enthusiastically and contribute so much. In partnership we have achieved major successes by changing the law and minor miracles such as giving voice to the unrepresented.

The intellectual rigour and integrity of those I worked with constantly reinforces the importance of our work and the way it genuinely impacts on individuals and our community. The theoretical and ironically 'alienable' language of human rights lawyers is sometimes dismissed as jargon by outsiders. But the principles we work to achieve, 'access to justice', 'equality before the law' and 'the right to representation' are never trite; these create and sustain who we are as a society.

Thank you for the opportunity to feel part of this great cause.

Tabitha Lovett was employed as the PILCH Manager from 2004-2008 and has recently taken up the position of Grants Manager at the Victoria Law Foundation. ■

If you are interested in public interest lawyering and pro bono work, and support the work done by PILCH - for only **\$30** plus GST per year or **\$25** for concession card holders - you can become an official PILCH Supporter.



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