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Public Interest Law Clearing House

PILCH

Matters

ISSUE 18 / MARCH 2008

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The Earth Needs a Good Lawyer

Brendan Sydes, Principal Solicitor, Environment Defenders Office

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.

"Because the earth needs a good lawyer" claims [EarthJustice](#), a public interest environmental law practice in the United States. With huge challenges like climate change and biodiversity loss, there is now more than ever before a role for public interest lawyers with environmental law expertise.

The Environment Defenders Office, with assistance from PILCH, environmental groups, pro bono lawyers and barristers, aims to fill this role in Victoria. The EDO is a community legal centre specialising in environmental law. Part of a network of EDOs throughout the country, EDO Victoria was established in 1992. With a staff of six (four lawyers and two support staff), we are located in the Green Building, a sustainable office building project in Carlton.

Our practice ranges from providing one off information and advice to providing ongoing legal representation. Our client base is different than that of most community legal centres in that most of our clients are groups and organisations rather than individuals. Many of these are small community based environment groups but we also work closely with peak groups such as Environment Victoria and conservation NGOs such as Australian Conservation Foundation.

An important part of what we do is to assist with capacity building, particularly for community based environment groups. We run a series of workshops throughout Victoria that are designed to assist and support community based groups and the voluntary work of their members to protect and enhance the environment.

We also run a monthly seminar series on topical environmental law issues that is free and accessible to the general public. The most recent seminar explored the relevance of the Charter of Human Rights and Responsibilities in an environmental context and attracted a lot of interest.

As part of our efforts to make environmental law accessible to the broader community, we also produce a range of publications including a VCAT Appeals Kit and our handbook, "Introduction to Victoria's Key Environmental Laws". We are currently developing a project to transfer many of these publications into an online format which we hope will facilitate the contributions from the legal profession that have been important to the success of earlier editions.

It would be impossible to practice as public interest environmental lawyers without recognising the need for change and improvement in our existing legal framework. Policy and law reform work is an important element of our work whether it be working with Victorian conservation groups on issues such as improving Victoria's water laws or with our national EDO colleagues on issues such as climate change.

As with many other community legal centres, we depend heavily on voluntary support. We have an active law student volunteer program and we could not undertake the range of activities that we do without pro bono support from individual solicitors, law firms and barristers. We frequently refer clients to PILCH or call upon PILCH ourselves for assistance in locating support for a case or law reform project that we are working on.



Thank you to all PILCH staff, secondees and volunteers who contributed to this edition. Special thanks to Brendan Sydes.

Edited by Rachel Brown.



For more information about the EDO, visit their website at www.edo.org.au/edovic or call on **03 8341 3100** or **1300 336 842** (rural and regional landline callers).

To stay in touch with the EDO's activities and environmental law developments in Victoria, please subscribe to their fortnightly email bulletin.

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PILCH and the EDO establish Environmental Law Group

Tabitha Lovett, PILCH Manager

In October 2007, PILCH and the EDO organised the first meeting of an Environmental Law Group. The group is currently comprised of representatives from the Victorian Bar, PILCH and the EDO, VBLAS, environmental not-for-profit organisations, Lawyers for Forests, Friends of the Earth and solicitors from two of PILCH's member law firms; Mallesons Stephen Jaques and DLA Phillips Fox.

At its first meeting the Group identified its priority areas were to:

- establish a panel of barristers to accept pro bono briefs in matters of environmental protection and climate change;
- establish clear and equitable criteria upon which to refer pro bono environmental matters; and
- source providers of non-legal pro bono assistance (such as engineers, designers, hydrologists, ecologists, planners, environmentalists and heritage experts).

PILCH also identified the following issues which it would explore as part of its focus on environmental justice issues such as:

- the prohibitive cost of civil litigation and the threat of adverse costs orders, which can discourage interested parties from bringing affirmative litigation in the public interest;
- water shortage and global climate change, and the impact of these forces upon the demand for legal services;
- whether certain communities in Victoria are experiencing a disproportionate burden of pollution from industry, landfills, sewage treatment plants and other polluting facilities; and
- whether the judiciary is aware of contemporary environmental issues, such as sustainable development and the precautionary principle, so as to fairly adjudicate on cases which raise environmental concerns.

As part of the work of the Public Interest Scheme, PILCH has been researching the establishment of Environmental Justice Projects which have been successfully implemented overseas. These models are discussed in more detail in our Innovations in Pro Bono section below.

Tabitha Lovett, the Manager of the Public Interest Law Scheme will be in the United States on a Churchill Fellowship from February to May this year to look at legal, advocacy and business pro bono services available for community organisations and will meet with the directors of the overseas projects to learn more about their programs and focus. ■

If you are interested in the work of the Environmental Law Group or would like to be included on the distribution list please email Tabitha Lovett on tabitha.lovett@pilch.org.au

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The Victorian Charter and Environmental Law Overview

Ben Schokman, Human Rights Lawyer

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (**Charter**) is an Act of Parliament that enshrines a number of fundamental human rights in Victoria. The Charter presents exciting opportunities for environmental lawyers and advocates to present and frame arguments in a different light.

The Charter establishes a number of mechanisms to ensure that human rights are taken into account when developing, interpreting and applying Victorian law and policy. The Charter establishes a 'dialogue' between all arms of government by requiring:

- (a) the Parliament to assess the compatibility of all new legislation with the human rights contained in the Charter;
- (b) the Executive to act compatibly with human rights and give proper consideration to human rights when making a decision; and
- (c) the Courts to interpret and apply legislation consistently with human rights, so far as is possible with their statutory purpose.

Conservation & the UK Human Rights Act

Article 8 (2) of the UK Human Rights Act 1998 offers general protection for a person's private life, family life and home from arbitrary interference by the State. In the UK case *Britton v SOS* [1997] JPL 617 the UK courts reconsidered the purpose of the law. They concluded that 'family life and private life' encompasses not only the home but also the surroundings, and therefore the protection of the countryside and areas of conservation also falls within the interests of Article 8 (2).

What human rights are likely to be relevant?

Drawing on experience from other jurisdictions, the substantive rights in the Charter that are likely to be most relevant to environmental law are the right to privacy, family and the home (section 13 of the Charter), the right to a fair hearing (section 24) and the right to recognition and equality before the law (section 8).

Relevant public authorities

In the context of environment law, the obligation to act compatibly with human rights is likely to cover a number of public authorities. The Charter will certainly apply to the actions and decision-making of government departments and ministers, local councils and councillors and planning panels, public officials such as the Chairman of the Environment Protection Authority, and other entities that exercise functions that are associated with services ordinarily provided by government. Entities that are *likely* to be bound by the Charter include water, gas and electricity authorities, and private consultants acting as environmental auditors for the government.

Relevant legislation

All legislation must be interpreted and applied consistently with human rights. To give just a few examples, interpretation of the following legislation may be affected: *Planning and Environment Act 1987*; *Property Law Act 1958*; *Water Act 1989*; *Water (Resource Management) Act 2005*; and *Road Management Act 2004*. ■

For general enquiries about the Charter, please contact Ben Schokman on

humanrights@vicbar.com.au or visit www.hrlrc.org.au.

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Innovations in Environmental Law

Elizabeth Wood, PILCH intern

Centre for International Environment Law

CIEL established the Human Rights and Environment (HRE) Program to identify and develop connections between international environmental law and human rights law. HRE aims to integrate the two movements and to promote a more just, equitable and sustainable approach to development and natural resource management.

In December 2007 HRE in conjunction with the Federation of Indigenous Cacataibo Communities (FENACOCA), the Peruvian NGO *Instituto del Bien Común*, and with the support of the *Asociación Interétnica de Desarrollo de la Selva Peruana* (AIDSESP), requested precautionary measures from the Inter-American Commission on Human Rights (IACHR) to protect the lives, health and physical integrity of Cacataibo indigenous peoples living in isolation in the Peruvian Amazon. The Cacataibo peoples are threatened by oil and gas exploration in their traditionally occupied territories.

These organisations are looking to the IACHR to request that the government of Peru take precautionary measures to protect the lives and safety of these indigenous peoples. In particular, it is submitted that the Peruvian government and the company Petrolífera Petroleum Del Peru S.A.C. should refrain from conducting seismic testing in the traditional territories of the Cacataibo indigenous peoples.

Source: http://ciel.org/Hre/PeruvianAmazon_21Dec07.html

Center for Environmental Law and Land Use, Loyola University, New Orleans

The Center for Environmental Law and Land Use at the Loyola University New Orleans was established one year after Hurricane Katrina. The Center's aim is to become a leader in legal environmental education and service in the Gulf Region.

The Center supports Loyola's Certificate in Environmental Law Program. Law student's concentrate their studies on natural resources, land use and pollution control. The Center also hosts many workshops and conferences designed to educate the public and to initiate research between academics and students. The Center's activities focus on environmental and land use issues associated with Hurricane Katrina and the rebuilding of the Gulf Coast.

Source: <http://law.loyno.edu/environmentallaw-landuse/>

Conservation Law Center, Indiana, United States

The Conservation Law Center is a new organisation that accepts clients who require advocacy for natural resources and conservation issues. The Center works in conjunction with the Indiana University School of Law Conservation Law Clinic. The Clinic supervises and teaches students who practice conservation advocacy for clients of the clinic.

The Law Clinic's main objectives are to make positive contributions to solving conservation problems, to contribute to the development of a more effective body of conservation law and policy and to educate law students. In practice, the Clinic assists its clients by resolving organization and incorporation problems, drafting model legislation, advocating before administrative and judicial bodies for conservation of wildlife, ecological systems, and protected areas and providing legal support for land conservation through acquisition.

Source: <http://conservationlawcenter.org/index.php> ■

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History in the making at the Willard Hotel, Washington DC: The 2008 Pro Bono Institute Seminar

Tabitha Lovett, PILCH Manager

On 27 August 1963, Martin Luther King Jnr stayed up through the night in his room at the Willard Hotel writing and rewriting his speech for the 'March on Washington for Jobs and Freedom' that was delivered on the steps of the Lincoln Memorial the following day and opened with his now infamous words "I have a dream." Before you groan and think, 'not another earnest lawyer quoting Luther King Jnr to demonstrate their idealism', there is a genuine link in this instance - the Willard Hotel has also been the location of the Pro Bono Institute's Annual Seminar since its inception.

The Pro Bono Institute, a non-profit organisation housed at Georgetown Law Center in Washington since 1996, is mandated to explore and identify new approaches and resources for the provision of legal services to the poor, disadvantaged and other individuals or groups unable to secure legal assistance to address critical problems. The annual seminar is an international event for the legal profession tailored to the interests, needs and emerging issues faced by lawyers involved in pro bono programs.

This year the three day seminar was attended by a record number of representatives of law firms, corporate legal departments and pro bono brokers, including a number of pro bono coordinators from PILCH's member firms in Australia. While the seminar's popularity signals the ongoing growth of the legal profession's commitment to assisting the community through pro bono programs, sadly the seminar's demands now exceed the size of the hotel's conference facilities. This year's seminar is the last time it will be held at the historical Willard Hotel.

Utilising Pro Bono to Support Community Development

The first session I attended at the seminar, entitled 'Financial Eligibility of Non Traditional Pro Bono Clients', revealed that pro bono brokers and coordinators on both sides of the world grapple with the question of which non-profit organisations should be eligible for free legal assistance. In the United States the contribution made by non-profit organisations to community development is well recognised and the question of an organisation's eligibility still decided on a case-by-case basis. The 'Means, Merits and Mission' test developed by the Pro Bono Institute provides a workable guideline and framework for the assessment process. The test acknowledges that while it is not practical to reduce the assessment process of a non-profit's eligibility to a simple formula or economic equation, pro bono coordinators and brokers can be guided by considering the organisation's 'Mission' and contribution to community development, its 'Means' (including whether requiring the organisation to pay for legal advice would direct valuable financial resources away from achieving its mission) and whether in some instances although the organisation itself may not be strictly eligible for assistance, the significance of the 'Matter' they raise (such as discrimination or systemic injustice) may qualify the matter for pro bono.

Pro Bono for Entrepreneurial Clients: Small Businesses, Micro and Social Entrepreneurs

One aspect of the US's Pro Bono Community Development Programs covered at the seminar which differs from our programs in Australia is their provision of pro bono legal advice to owners of small businesses who meet a means test (in the US a small business owner earning less than 300% of the country's poverty threshold [US\$10,488 for a single person under 65 - US\$20, 444 for a family group of four, including two children] is eligible for pro bono assistance). Professor Susan Jones, who teaches and supervises the Small Business Clinic staffed by law students at Georgetown University, considers the work of pro bono lawyers assisting low-income small business owners to stay afloat as a step towards realising Dr King'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 who would not otherwise be able to afford such

services are working as advocates for economic justice.

Advocacy and Lobbying vs. Impact or Strategic Litigation

An afternoon session on 'Policy Advocacy and Pro Bono' discussed the risks and costs associated with lawyers undertaking strategic litigation, or what in the US is referred to as 'impact litigation', to effect change. One of the speakers, Betsy Cavendish from the Appleseed Foundation, provided an example of a case in which she was opposed to the US Government which had taken years to be heard and absorbed thousands of hours of valuable pro bono resources. Again the topic tied in well with the history of the Willard Hotel. On 11 May 1855, the United States Court of Claims which was established to allow citizens to sue the US Government, held its first meeting at the Willard. In 1861, President Abraham Lincoln wrote of the court,

It is as much the duty of the government to render prompt justice against itself in favour of citizens, as it is to administer the same, between private individuals.

Ms Cavendish acknowledged the importance of such litigation but stressed that it is also important that lawyers be open to opportunities to use their skills to advocate for legislative change or lobby for policy reform without resorting to the courts. This was apt given the term 'lobbyist' was first coined by President Ulysses Grant in 1869 to describe the groups and individuals who waited for him in the Willard Hotel's lobby (where he retired most evenings for a brandy and cigar) to advance their causes.

In a sense it is a shame that the seminar will no longer be held at the Willard Hotel, a place that has such vivid historical links to the discourse on social justice, but on the other hand, and to paraphrase Dr King, the seminar's growth may be a sign that the jangling discords of social disharmony are on their way to becoming a symphony of understanding and justice. ■

Tabitha Lovett is travelling in the United States on a Winston Churchill Fellowship to research and report back on pro bono programs and law student clinics which provide non-profit organisations with legal, business and advocacy support and services.

For more information about the Pro Bono Institute and Annual Seminar - go to www.probonoinst.org to view the program and highlights.

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News & Events

New Staff

PILCH welcomes four new staff since our last edition of *PILCH Matters*: Penny Morrow, Liz Morgan, Amy Barry-Macaulay, and Tina Giannopoulos.

Penny Morrow joins PILCH in a newly-created position as Operations Manager. Penny brings several years experience as Operations Director of Liberty (National Council for Civil Liberties) in the UK. Penny has also practised as a lawyer and has previously worked as Case Manager at the National Native Title Tribunal, Melbourne.

Liz Morgan joins PILCH Connect, PILCH's new specialist legal service for community organisations. Liz has previously worked at Victoria Legal Aid as Project and Policy Officer where she worked on the development of client service strategies. Liz also has several years' experience in a policy role at Department of Justice and has worked in private practice.

Amy Barry-Macaulay joins us this month as Lawyer to the Homeless Persons' Legal Clinic. Amy comes to PILCH from the Victorian Government Solicitor's Office where she has had responsibility for providing legal advice to government departments and statutory authorities regarding compliance with the *Charter of Rights and Responsibilities*. She has also worked as a policy officer for the Victorian Workcover Authority, spent 2 years in private practice and volunteered with the Human Rights Law Resource Centre.

Tina Giannopoulos has been appointed as a solicitor for LIVLAS in a twelve month position while Lauren Adamson, Co-Manager of LIVLAS, takes maternity leave. Tina brings 15 years experience as a commercial litigator in private practice and with the Transport Accident Commission. She will

commence with LIVLAS in April.

From PILCH Alumni to Pro Bono Coordinators

Congratulations to two PILCH alumni on their recent appointments as pro bono coordinators at two of PILCH's member firms.

Alice O'Connell, former PILCH volunteer and Publications Assistant, has been appointed Pro Bono Coordinator at **Middletons** Lawyers. Dan Creasey, former secondee solicitor to PILCH, has been appointed as Pro Bono Coordinator at **DLA Phillips Fox**. We would like to wish both Alice and Dan well and look forward to working with them in their new positions.

Febfast: PILCH staff dry out for a good cause

Helen Arblaster, HPLC & PILCH Connect Administrator

FebFast is a community education and awareness campaign that invited individuals to make 'February Their Fast-Track to Feeling Good' by sacrificing their alcohol intake for up to one month during February. FebFast also used its 'no booze' campaign to raise funds for organisations that support young people struggling with substance abuse issues. After a hectic silly season, many PILCH staff embraced the idea of avoiding alcohol for a short period of time. Our resolve was strengthened by the thought of raising funds for a great cause.

PILCH is a strong supporter of drug and alcohol support services such as those benefiting from the FebFast campaign. Through the month of February, we invited sponsors to make donations and raise funds to be distributed to organisations that support young people struggling with substance use.

Five PILCH staff - Sue Woodward, Caro Adler, Michael McKitterick, Helen Arblaster and our Executive Director, Kristen Hilton - avoided Friday night drinks and acted as 'designated drivers' throughout February. Although it took a while to adjust, I am pleased to report that all PILCH staff survived the experience. Fellow participants included AFL football teams, Victoria Police, VicHealth and hundreds of individuals around Australia.

By the end of the month, PILCH staff had raised **\$2685**. PILCH participants also reported increased feelings of good health and well being and a decreased desire to drink. The campaign as a whole comprised of 1416 participants and raised over **\$291,782** for organisations including the Australian Drug Foundation and the Youth Substance Abuse Service. ■

Please note that donations can still be made at <http://www.everydayhero.com.au/pilch> and more information on the campaign can be obtained at www.febfast.com.au.

Seminars & Training

Board Members in Community Organisations: Roles, Responsibilities, Liabilities and Protections

We are happy to report that this seminar (originally scheduled for 4 March 2008) has been rescheduled to **Tuesday, 15 April 2008 from 9.30am-1.00pm**.

What are the roles, responsibilities and proper activities of the board of directors or committee of management of a

PILCH PERSPECTIVES

Not-for-Profits: is self-regulation the right option?

Perspectives from the United States and Asia

with
Prof. Mark Sidel, University of Iowa

PILCH invites you to the second in a series of free

community/not-for-profit organisation? What are the potential liabilities of board or committee members? What role should they play in the day-to-day operations of the organisation? What legal protections exist for board and committee members?

The full seminar schedule for 2008 is available [here](#). Further details & registration forms will be released closer to the dates.

[More here](#)

seminars and talks: **PILCH PERSPECTIVES 2008**.

Guest speaker Mark Sidel, Professor of Law and International Affairs, Faculty Scholar, President-elect of the International Society for Third Sector Research (ISTR) and Lauridsen Family Fellow at the University of Iowa, will present a comparative perspective of not-for-profit self-regulation in the United States and Asia.

[More here](#)

PILCH in the Media

PILCH Referral: Stolen Generation Claim

'**Stolen generations claim**', The Age, 21 February 2008

- Read the article online [here](#)

'**Stolen generations compo bid lodged**', The Financial Review, 21 February 2008

- Read the article online [here](#)

'**Lawsuits prepared for Stolen**', The Australian, 21 February 2008

Read the article online [here](#)

'**Asbestos lawyer on case for Aboriginals**', Herald Sun, 20 February 2008

- Read the article online [here](#)

'**Rudd looking at pro bono panel**', The Australian, 14 March 2008

PILCH Executive Director, Kristen Hilton, and board member, Mitzi Gilligan (Minter Ellison), discuss PILCH's key role in the coordination of pro bono legal services in Victoria, and the effect of the Victorian Government's decision in 2002 to make pro bono work a condition of gaining access to government work.

- Read the article online [here](#)

'**On the wagon for a good cause**', MX, 25 January 2008

PILCH staff go teetotal for Febfast.

- More info: www.febfast.com.au

Human Rights Law Resource Centre

'**Deported rapist wants to come home**', The Age, 27 February 2008

Ben Schokman, Human Rights Law Resource Centre Lawyer, comments on the Stefan Nystrom and Robert Jovicic deportation matters

- Read the article online [here](#)

'**Brennan foresees constitutional glitch with rights charter**', The Australian, 14 March 2008

Former Chief Justice Gerard Brennan raises question of a constitutional problem with a crucial feature of the Victorian Charter of Human Rights at a Human Rights Law Resource Centre function.

- Read the article online [here](#)
- Read Chief Justice Brennan's speech on the HRLRC website - www.hrlrc.org.au ■

Law Reform, Advocacy & Policy

Protecting the Right to Freedom of Information: PILCH Submission to FOI Amendment Bill 2007

Michael McKitterick (VBLAS Solicitor) & Phoebe Knowles (HPLC & HRLRC Seconded Solicitor)

A Bill proposing to amend the *Freedom of Information Act (Vic) 1982* (**the Act**) and opposed by PILCH has been defeated.

The *Freedom of Information Amendment Bill 2007* (**the Bill**) was introduced into the Victorian Parliament by the Attorney General, Hon. Rob Hulls, and received its second reading on 22 November 2007. PILCH opposed the Bill, which was ultimately defeated on 28 February 2008.

The Bill proposed to make a number of operational changes to **the Act** following recommendations made by the Ombudsman. These included removing the current application fee, simplifying the application process and uploading regularly requested documents onto departmental websites in order to improve transparency and accountability of government.

While PILCH welcomed these changes, the Bill also introduced a new vexatious litigants procedure which allowed agencies to apply to the Victorian Civil & Administrative Tribunal (**VCAT**) for a declaration that a particular person was a vexatious applicant. Where someone had been categorised as vexatious, they would be prevented from making any FOI applications, without VCAT's leave.

PILCH formed the view that this would operate as a barrier to transparency of government and restrict freedom of information. While it is recognised that one of the aims of the Bill was to reduce government time and resources when applicants were not acting in good faith, there were concerns that the vexatious application procedure went too far and failed to achieve the desired balance between freedom of information and efficiency.

First, the Bill's vexatious applicant test was unclear and problematic in form. For example, if a person made repeated FOI applications that "unreasonably interfered" with an agency's operation, even if the request related to different matters, that agency could apply to VCAT for a vexatious application declaration. An agency could use this route to stall or deter FOI applicants.

Second, PILCH was concerned that the Bill would disproportionately affect those who have a mental illness or disability or are Indigenous. A number of recent reports have found that these people are often unfairly labeled as vexatious when pursuing legitimate claims.

Third, the Bill raised concerns in regards to the *Charter for Human Rights and Responsibilities 2006* (Vic) (**the Charter**) and the right to freedom of expression, which includes the right to receive information, and the right to public participation – which depends on a capacity to access information relating to government. These rights are essential to a free and democratic society in which government is accountable. The right to freedom of opinion and expression is important in the areas of political communication, journalism and the media, demonstrations, industrial activity and 'whistleblowing'. While the right to freedom of expression is not free from limitations, the limitations imposed by the Bill were inconsistent with those recognised as lawful restrictions under the Charter.

Accordingly, PILCH recommended an alternative test be adopted that entitled an agency to apply to VCAT to find that an FOI *application* is an abuse of process (rather than apply for a declaration that the *applicant* is vexatious). This would more appropriately balance the aims of freedom of information with the effective and efficient operation of government.

The Liberals, Greens and Nationals opposed the Bill in Parliament. This decision is a win for freedom of information in Victoria and our rights to effectively participate in public life and actively monitor government action. ■

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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

Climate Positive

DLA Phillips Fox has kindly agreed to provide pro bono legal assistance to Climate Positive in regard to reviewing an agreement entitled the 'Forest Property Agreement'. Climate Positive is an incorporated not-for-profit organisation investing in renewable energy projects and restoring the world's most majestic forests. It was established to assist individuals, families, businesses and policy makers to understand and take action on climate change.

Climate Positive offsets the carbon-dioxide footprint of its members by purchasing verified emission reduction offsets and restoring denuded landscapes through the establishment of bio-diverse forest ecosystems. Their bio-diverse forests are grown in the Strzelecki Ranges, South Gippsland. Plantings are performed by Australian Ecosystems, one of Australia's most respected re-vegetation companies. Climate Positive's mission is to stop the onset of dangerous climate change, repair damage to the Earth and fully account for its members' greenhouse gas emissions. ■

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

Testator Family Maintenance Claim

Mr B is a 63 year old man who suffers from a number of medical conditions including heart disease and bi-polar disorder, and as a result is unable to work. Mr B survives on an annual income of approximately \$6,000 - the income from a life interest in half the property held in a testamentary trust following the death of his mother. Mr B's brother has a life interest in the other half of the property. The property in the trust was to revert to a number of charities on the death of each of the two brothers. Mr B's brother made an application to the Supreme Court under Part IV of the *Administration and Probate Act 1958* claiming to have been left without adequate provision for his proper maintenance and support. The claim potentially threatened the income Mr B derived from the testamentary trust. **Linda Goldsmith** of **TressCox Lawyers** and **Richard Cook** of **Counsel** generously agreed to assist Mr B on a pro bono basis. The matter settled at mediation on terms favourable to Mr B and his brother. The mediation also led to prospects of a reconciliation between Mr B and his brother.

Discharge from Bankruptcy

Mr T became bankrupt and completed his own statement of affairs. An issue arose over his answer 'no' as a response to whether he possessed 'assets or items of value', such as jewellery, cameras, artwork, antiques or copyrights. Mr T understood that 'assets or items of value' were only items which could be sold. After storage and commission costs he realised that net commercial proceeds were required to be included.

Subsequently, the police executed a search warrant of Mr T's residential property and seized a number of items, some of which had not been disclosed in the statement of affairs. The trustee of the bankrupt estate alleged that Mr T intentionally failed to disclose the beneficial interest of all his property and objected to Mr T's discharge from bankruptcy on that basis. Mr T argued that the goods seized were not disclosed for a variety of reasons including that they were property of his wife or stepson, property of sentimental value but no commercial value, monies received after the date he completed his statement of affairs and other general household furniture that he believed to be of little value.

The Tribunal held that the use of the word 'asset' rather than 'property' correctly reflects the interpretation of the section to require disclosure of items of commercial value which should be available for creditors. As a result, the Tribunal accepted that there was no conscious intention on Mr T's part to fail to disclose a beneficial interest in the assets. As a result of this decision, the court cancelled the objection by the trustee to discharge Mr T from bankruptcy. Thank you to **Visnja Vekic, Michelle Burton** and **Stephen Sawyer** of **DLA Phillips Fox** and **Michael Sanger** of **Counsel** who assisted Mr T on a pro bono basis. ■

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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

Judgment Debt

Ursula Stanisich of Counsel accepted a referral from VBLAS to represent Mr Q, a disability pensioner with a mental illness, before the Melbourne Magistrates Court in relation to a refusal to grant an installment order over a judgment debt. **DLA Phillips Fox** were instructing solicitors on behalf of the Homeless Persons' Legal Clinic. Counsel successfully argued that an installment order should be made in the circumstances. Mr Q was very happy with the result, and both he and the HPLC solicitors at DLA Phillips Fox greatly appreciated Ursula's assistance.

Intervention order success

VBLAS was approached by **Women's Legal Service** on behalf of Ms M, who had been subject to violence and threats from her then housemate. Ms M had obtained an interim intervention order against her former housemate and the matter was listed for a contested hearing. The respondent had made a cross application for his own permanent intervention order.

Thank you to **Susan Aufgang of Counsel** who accepted a referral to appear pro bono at the contested hearing. Despite the unavailability of a key witness, Susan was successful in obtaining a two year order for Ms M and in defeating the respondent's cross application.

Credit advice

Both LIVLAS and VBLAS have received a number of applications relating to loans arranged by loan brokers. Recently, **Simon Marks S.C.** accepted a referral from VBLAS to advise on the merits and best course of action in a case involving a loan taken out by Mr and Mrs N.

PILCH was initially approached by **Jason Kane and Andrew Woods of Counsel**, who were acting pro bono for Mr and Mrs N. Mr and Mrs N had a cleaning business and had entered into a loan facility brokered by BC, which was intended to fund some minor renovations to their house. Mr and Mrs N alleged that BC had induced them to enter into a loan for more than \$150,000, and that he had sought to defeat the operation of the Consumer Credit Code by stating on the application form

that the loan was for 'business capital'.

Jason and Andrew asked if VBLAS could arrange for further merits and strategic advice from senior counsel. Thank you to Simon Marks S.C. for accepting the referral and advising in conference. ■

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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.

Case Summaries

Separate teams of lawyers acted for Sally and Henry, who, after an anonymous tip-off, had been determined by the Centrelink fraud group to be in a 'marriage like relationship'. This determination resulted in Sally and Henry's payments being cancelled and substantial debts being raised. Neither was able to satisfy Centrelink that they were not in a 'marriage like relationship', so their applications for payments were rejected and Sally's children's Youth Allowance was discontinued. As a result, Sally's family received no income for several months apart from Family Tax Benefit, and depended on charities for food and other essentials.

Clinic lawyers applied for review of Centrelink's decision late last year, and after considerable delay, the applications made it to an authorised review officer (ARO). After many thwarted attempts and a bit of luck, one team was able to speak to the ARO and explain the urgency of the matter. The ARO expedited his review, and reversed Centrelink's decision, after considering a very substantial volume of documents in two days. Once the decision is formalised, the link on the Centrelink system between Sally and Henry will be severed, and payments restored (with back payments) to Sally and her children.

* Names have been changed

Street Rights – HPLC monthly newsletter

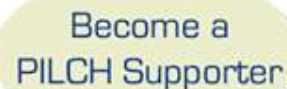
Please visit our [website](#) for the latest issue of *Street Rights*, which includes:

- Begging: What are Your Rights?
- Beggar on the Street of Love, by Tanya Unger, Consumer Advisory Group (CAG) member
- Rudd Government Gets an 'A' on Homelessness Homework
- The CAG Chronicle ■

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A logo consisting of a light blue oval with a dark blue border. Inside the oval, the text "Become a PILCH Supporter" is written in a dark blue, sans-serif font. "Become a" is on the top line, "PILCH" is on the second line, and "Supporter" is on the third line.

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Community Legal Centres

Aboriginal Family Violence Prevention and Legal Service
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Environment Defenders' Office (Vic) Ltd
Eastern Community Legal Centre
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