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Level 1, 550 Lonsdale
Street, Melbourne Vic
3000. DX 38227 Flagstaff.
(03) 9225 6680
admin@pilch.org.au
www.pilch.org.au

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 Belinda Lo of Fitzroy Legal Service, Kimberly Community

The Right Conversation

Kristen Hilton and Phoebe Knowles report on their experiences at the recent 2020 Summit.

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.

The 2020 Summit was, above all, a process of mega democracy.

Rather than simply voting at the ballot box, thousands of Australians – through conversation, writing submissions or attending – were able to have a say about the *content* of what Australia should look like now, and in the future.

We became visionaries. All of us. Even the couple on the Qantas flight from Melbourne to Canberra who explained that they weren't going to the summit but were headed for the nation's capital to see their new baby granddaughter. They weren't political people and they were not Labor voters but they had some ideas that we should know about: paid maternity leave so that their daughter could spend at least 6 months at home with her first child and free public transport for all people over 60.

Before and during the summit we spoke of aspirations but with a foothold in the practicalities of what is needed to achieve change. Like all democratic processes, in the fervour of debate and discussion there were moments of frustration. Not the least of which have been from the inaccurate reporting around summit outcomes and recommendations.



Kevin Rudd & Kristen Hilton, 2020 Summit

As media commentators have been at pains to point out, not all ideas were new. They didn't need to be – many 'old' ideas were reaffirmed with boldness and fresh methods of implementation. One idea that resounded through the Governance, Security, Indigenous and Community streams was a vision of an Australia where human rights are protected and respected - an Australia where all people are treated with respect and dignity and where the government can be held accountable for human rights breaches and violations.

The idea received most traction in the Governance group. The group called for a national consultation process to meaningfully consult with all Australians as to how best protect human rights. Contrary to fears expressed in *The Australian* ('Beware the galloping judiciary imperialists', 23 April 2008) that promoters of a national charter distrust the Australian public's ability to understand what is at issue, the Governance stream expressly called for debate. Let's ask Australians whether they consider that there is sufficient protection of our human rights, they said.

The importance of rights protection was echoed in the Security stream which recognised the link between instability and lack of human rights protection. The Security stream addressed Australia's place in the region and world and called for new leadership in global governance, a phrase borrowed from the Prime Minister after he dropped in on one of the group's chats. To be an effective global citizen, the group agreed, Australia needs to reaffirm its commitment to the rule of law and implement domestically its international human rights obligations.

The group called for a statutory charter of rights and a review of all existing laws, including counter-terrorism laws, for human rights compatibility. The group recognised the links between the denial of human rights and terrorism and stressed that there is no trade off between security and human rights. The soft power advocates were loud, clear and persuasive. In fact, one frustrated participant lamented, 'Why aren't we talking about defence?' He missed the point that we already were.

Critics of a national statutory charter of rights argue that we should entrust Parliament to protect our rights and that democracy will ensure an appropriate course is taken. Democracy has taken its course. Labor was elected on a platform which included consultation regarding a bill of rights and respecting international human rights obligations.

The rights debate is not the province of reactionary journalists, nor is it owned by human rights lawyers and Charter advocates. It is and should be owned by the Australian people. It is a necessary conversation that goes to the heart of democracy, both in terms of form and content. Issues of free speech, the right to be free from discrimination, the right to privacy, to be free from torture and to equality before the law arguably impact less directly on prosperous Australians than on prisoners, people who are homeless, Indigenous people or people who are simply poor. But, and this is where myopia of rights opponents comes into sharp focus, where laws, policies and social conditions operate to diminish the rights of certain individuals or particular groups, they can't but diminish all of us.

Kristen Hilton is the Executive Director of PILCH. Phoebe Knowles is a lawyer on secondment from Minter Ellison to PILCH and the Human Rights Law Resource Centre. Both attended the recent 2020 Summit. ■

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Travels in the Long Grass

VBLAS Lawyer Michael McKiterick goes bush

At the end of the Wet Season the Long Grass stands tall. I had flown into Broome, a town enveloped in the last vestiges of the Wet, and was heading to Darwin. Inland from Broome it didn't take long for the Wet to disappear and by Fitzroy Crossing it was hot and dry.

At this time of year in Northern Australia fires are lit in the Long Grass, creating a patchwork of burnt and unburnt areas, breaking up the country and helping prevent wildfires later in the season.



Michael McKiterick



By the time I made Kununurra, burning was in full swing, and watching the grassfire sunsets from a rocky knoll above town was a pastime enjoyed by many.

Kununurra is home to the Kimberley Community Legal Centre. It is the only legal service in town at the moment. Two lawyers, including a secondee from Clayton Utz, provide legal services throughout the Kimberley as far as Broome and Kalumbaru. Hopefully the shortage of lawyers will be alleviated soon with the opening of a Western Australia Legal Aid Office and the implementation of a Country Lawyers Graduate Program. This program, supported by both State and Commonwealth governments is aimed at improving the recruitment and retention of lawyers in regional and remote areas by developing and rotating junior solicitors throughout regional WA.

By comparison, the Northern Territory seems better serviced by lawyers. Along with its Legal Aid service, there is also the North Australian Aboriginal Justice Agency (NAAJA). NAAJA has duty lawyers in Darwin and Alice Springs, and goes round to the Bush Courts - Magistrates Courts sitting in remote locations throughout the Territory.

I was fortunate to be invited to attend Bush Court with NAAJA in Jabiru and Oenpelli. Oenpelli's Court sat in a room in the post office with three tables pushed together for the purpose. The Court was as informal as the venue. It could not rise to meet the Magistrate as his Honour was already present and seated when we arrived.

Matters heard in Bush Court are like those that would be heard before a Magistrates Court in rural Victoria, with a preponderance of matters relating to domestic violence and carrying offensive weapons. Matters were heard in the Oenpelli's Court as the clients arrived, walking in from the town or from the Long Grass. If a client hadn't turned up it was Stevie Miller's job to find him. Stevie was the NAAJA Indigenous Customer Service Officer. Born in the red dirt of Alice Springs, his job was now to liaise with clients, which usually meant finding people. When Theophilis Gulamuwu had not appeared for his offensive weapons charge, Stevie went for a drive around town. After a few conversations out the car window, Theophilis was located and driven to Court. Theophilis had been apprehended by Police carrying a machete and now the argument before the Court was whether the blade was an 'offensive weapon', or merely a knife. When Court closed for the day it looked like the machete was a knife.

NAAJA also plays an important role in checking the actions of local police officers and how they deal with indigenous people. For example, a *voir dire* hearing was held in Jabiru into the admissibility of a record of police interview containing admissions by a defendant in a theft matter. The *voir dire* related to whether the 'Anunga' Rules - guidelines governing the conduct of Police when interviewing indigenous people where English is not their first language - had been properly followed. Although the *voir dire* did not resolve in NAAJA's favour, it was an exceptional example of the particular issues facing lawyers in the Northern Territory.

Many thanks to all those who made my trip possible. Particular thanks go to staff of the Kimberley Community Legal Centre and NAAJA.

Legal Claims of the Stolen Generations

Kate Fischer, VBLAS Lawyer & Belinda Lo, Fitzroy Legal Service

On February 13 2008, Prime Minister Kevin Rudd did what many in both the indigenous and non-indigenous community had long dreamt of – he apologised on behalf of the nation for the removal of Aboriginal and Torres Strait Islander children from their families and communities under the law and policies of successive Australian governments; ‘this blemished chapter in our nation’s history’. Despite assurances that the apology would not open the door to compensation payments, the issue of reparations for members of the stolen generations has again been raised.

The heartrending stories of the children who were forcibly removed and, in so many cases, their later suffering into adulthood, were brought to the attention of the Australian public by the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families – the Bringing them Home Report, which was tabled in Parliament in April 1997.

54 key recommendations were made in the Report, including a formal apology to those children and families affected and the establishment of a reparations scheme. The Howard Government, which received the Report, rejected these two key recommendations.

There have been a number of common law claims for damages brought by members of the stolen generations, but to date only one claim has been successful. In *Trevorrow v State of South Australia* (2007) the Supreme Court of South Australia found that the plaintiff had been wrongfully removed from hospital in January 1958 and placed into foster care by a statutory board and government department. The court held, *inter alia*, that the State owed a duty of care to the plaintiff at the time of his removal, fostering and subsequent return to his natural family. This duty of care had been breached. More than \$500,000 in damages, including exemplary damages, was awarded.

The plaintiff in *Trevorrow* was able to overcome the substantial hurdles facing any stolen generations claim at common law. In relation to the legality of his removal, the plaintiff showed that the State had received legal advice that it had no power to remove Aboriginal children unless certain procedures were followed. He was also successful in arguing that the claim should not be barred by operation of the Limitation of Actions Act. By comparison, in the matter of *Cubillo v The Commonwealth* (2001), another of the major common law legal claims by members of the Stolen Generations, the Federal Court held that while the plaintiffs had clearly suffered as a result of their early experiences of removal from family and community, the actions of the state at the time had been legal.

Importantly, the first Victorian claim from a member of the Stolen Generations has recently been filed in the Supreme Court of Victoria. The claim is made by an indigenous man who was made a ward of the State in 1965 and moved through a series of foster homes until 1981. He was not informed that he was of Aboriginal descent until 1973. He is claiming damages for breach of common law duty of care, breach of statutory duty and breach of fiduciary duty. A trial date is expected to be set during 2009. This matter was referred by PILCH to Allens Arthur Robinson and Counsel Jack Rush QC and Lachlan Carter who are acting for the claimant on a pro bono basis.

The history of litigation by members of the stolen generations shows that relying on individual claims is an unsatisfactory means of achieving compensation, for at least the vast majority of those affected. It will be interesting to see whether the Rudd government takes up another of the key recommendations of the Bringing them Home report in establishing a compensation fund.

Currently, Tasmania is the only government to offer compensation to its Aboriginal residents who were forcibly removed from their families. The *Stolen Generations of Aboriginal Children Act 2006* created a \$5 million fund to provide payments to eligible members of the stolen generations, and in some cases their children. Following an application and assessment process compensation payments were made in January 2008.

In December 2007, Western Australia announced a \$114 million redress scheme for all children who were abused in state care, including members of the Stolen Generations. It is estimated that up to 3000 stolen generations children were in institutions in Western Australia.

At a Federal level, Senator Andrew Bartlett introduced a private members bill, the *Stolen Generations Compensation Bill 2008*, on 14 February 2008 proposing a scheme similar to that in Tasmania. PILCH’s submission in relation to the proposed bill is available on our [website](#).

We await future developments in this area at both State and Federal levels. ■

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Legal Services in the United States for Indigenous Americans

Tabitha Lovett, PILCH Manager

It is easy to think that people in America are largely oblivious to developments in Australia's history and politics. It is certainly true that most people in the United States recognise Steve Irwin's name more readily than Kevin Rudd's. But the people that I have spoken to here are aware of the formal apology issued earlier this year to Aborigines and the Stolen Generations for their suffering and loss. Part of the reason that the Australian apology resonates is that it echoes policy movements in North American countries towards reconciliation with their own indigenous communities.

Canada has now promised to apologise to the First Nations for Indian residential school abuse and the US Congress has proposed an apology to its Native People.

Robert Coulter, the Executive Director of the Indian Law Resource Center in Montana responded to Congress' proposal in an opinion piece entitled 'A Real Apology Means You Won't Do it Again', in which he wrote:

"Congress is considering an apology to Indians and other native people for the wrongs done by this country -- forced relocations, takings of lands, violating treaties, destruction of sacred sites and outlawing native religions and languages, to name a few. But a real apology means you won't do it again, and there is the problem. Congress needs to stop doing the things for which it is apologizing." (download the complete article [here](#))

Mr Coulter's organisation, the Indian Law Resource Center, is a non-profit law and advocacy organisation which is governed by an international Board of Directors and has consultative status with the United Nations Economic and Social Council. The Center provides assistance to Indian nations and indigenous peoples in the US to protect their lands, resources, human rights, environment and cultural heritage. Funded through private grants and individual contributions, the Center's principal goal is the preservation and well-being of Indian and other native nations and tribes.

American Indian Law Alliance - www.ailanyc.org

The Legal Services Project of the American Indian Law Alliance (**AILANYC**) is a community-based program which provides free, culturally sensitive legal services to meet the unique circumstances of members of the Native American and Indigenous community in New York. The community includes more than 40,000 individuals representing over 60 Indian Nations and communities from across the North and South American continent.

The Legal Services Project responds to issues stemming from 500 years of colonisation, war, genocide, relocation and cultural abrogation which have resulted in poverty, poor health, unemployment and homelessness.

Some of the legal issues that are dealt with on a daily basis include tenancy issues, family law, social security and discrimination. There is also however, an entire body of law which only applies to Native People and Nations. For instance the Jay Treaty of 1794 establishes a separate legal process concerning crossing and re-crossing the U.S./Canadian border for Canadian-born Aboriginal Peoples, many of whom are part of the New York City community. And in the Family Court, the Indian Child Welfare Act imposes a set of Federal standards which must be complied with by state and local courts. Often judges, attorneys and social service personnel are unaware of the Act and its implications and applications.

The Legal Services Project was founded and is run by Native American people to respond to these specialised needs in a manner that is culturally appropriate. It was mandated by the Native American community and approved by its elders. The Service employs its own legal staff but also relies on extensive pro bono support from the legal profession and legal interns from local law schools to ensure it is able to meet the various needs of its clients.

Tabitha Lovett is the Manager of the Public Interest Scheme. She is currently traveling in the United States on a Winston Churchill Fellowship researching and reporting back on pro bono legal, business and advocacy services. ■

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Pursuing Justice: Balancing Challenges and Opportunities Equal Justice Conference – Minneapolis

Tabitha Lovett, PILCH Manager

Each year the American Bar Association (**ABA**) and the National Legal Aid & Defender Association (**NLADA**) holds its Equal Justice Conference to bring together practitioners from legal aid, public defender associations, public interest organisations, pro bono programs, law firms, volunteer lawyers and the judiciary to network and exchange information about their work, innovative delivery models, creative approaches to bridging the gap in access to systems of justice and resources to take back home.

This year's conference held in Minneapolis from 6 – 9 May focused on the theme of '*Pursuing Justice: Balancing Challenges and Opportunities.*'

Read the rest of this article on our [website](#). ■

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News & Events

Walk for Justice 'a Practical and Symbolic Event'

PILCH held its inaugural Walk for Justice on Monday, with Chief Justice of the Supreme Court, the Honourable Marilyn Warren, and President of the Court of Appeal, the Honourable Chris Maxwell, leading walkers through the streets of Melbourne. Over 200 walkers gathered on the steps of Parliament House at 7.30am to hear PILCH Executive Director, Kristen Hilton, read a message of support from Attorney-General Rob Hulls who described the walk as a 'practical and symbolic event'. The walk was then officially launched by Chief Justice Warren.



The Melbourne Walk for Justice coincided with walks taking place in Sydney, Brisbane and London. PILCH lawyer, Amy Barry-MacAuley said "We are incredibly pleased with the support for the Walk for Justice. Not only has it enabled PILCH to raise much needed funds, it has provided PILCH and the wider legal community with an opportunity to recognize and acknowledge the tremendous contribution to access to justice that is made by lawyers acting on a pro bono basis. We are also thankful that it was such a wonderful morning for the Walk".

PILCH thanks all those who participated and the following businesses who supported the Walk - Sarnies, Demi Tasse, Illia Cafe and Wheat Bar.

It is anticipated that the Walk for Justice will become an annual event.

For more information on upcoming PILCH events please see www.pilch.org.au

Chief Justice Medal for PILCH Alumni

Former PILCH volunteer and staff member Henrietta Zeffert, currently an articled clerk at Blake Dawson, was recently awarded the annual VLF Chief Justice Medal for Excellence and Community Service.

Henrietta has been involved with PILCH as an intern, volunteer, publications assistant, and staff photographer, which she remains today. Henrietta is also the founding editor of the magazine *Right Now – Human Rights Law in Australia*, has worked with the Red Cross, the Sudalog Project (an education and assistance program for Sudanese refugees), and Credo Café (an outreach centre for people experiencing homelessness.)

PILCH would like to sincerely congratulate Henrietta on her award and for her remarkable contribution to volunteering and to the numerous organisations and disadvantaged individuals that have benefited from Henrietta's efforts. "Volunteering means connecting with community", says Henrietta. "It asks for commitment and responsibility, openness and conversation. Through volunteering, communities are strengthened, and we enrich our own and other people's lives."

Volunteer of the Year

PILCH is pleased to announce that this year's Volunteer of the Year is a tie between **Verena Tan** and **Matthew Raggatt**.

This year marks the first PILCH Volunteer of the Year Award, introduced by PILCH in recognition of the outstanding commitment and achievements of one PILCH volunteer, as part of National Volunteer Week.

Verena and Matthew were chosen by PILCH staff from a pool of over 60 law students that have assisted PILCH since winter 2007. Verena has been an ongoing volunteer at PILCH since second semester 2007. Matthew began at PILCH this semester on a student placement from La Trobe University. During their time at PILCH both Verena and Matthew have demonstrated a real commitment to PILCH and its values, displayed initiative and enthusiasm for the work, a professional manner and excellent written skills and research skills. Verena and Matthew will each receive a book voucher of \$150 - thank you to Allens Arthur Robinson, Clayton Utz and Minter Ellison for contributing to this prize.

Staffing

PILCH welcomes Susannah Sage Jacobson as the Manager of Pro Bono Services for Seniors' Rights Victoria, to be based at PILCH. Susannah will already be known to many PILCH Supporters as Manager of the Victorian Bar Legal Assistance Scheme. We look forward to working with Susannah in this new capacity when she takes up this position next month.

Melanie Dye will join PILCH as the new manager of VBLAS next month. Melanie brings with her a wealth of experience gained at Victoria Legal Aid and a number of roles within the Federal Magistrates Court, including management of the Self Represented Litigants Project.

PILCH will also welcome two new Administrators later this month - Tarni Perkal and Marika Sosnowski. Tarni joins PILCH as the Administrator of Connect, PILCH's specialist legal service for not-for-profit organisations. Marika joins us as the new Homeless Persons' Legal Clinic Administrator following the departure of current Administrator Helen Arblaster who begins articles at Corrs Chambers Westgarth early next year.

Seminars & Training

Justice Behind the Walls: Human Rights and Prisons

A Human Rights Law Resource Centre / PILCH seminar with

Prof Michael Jackson QC and Jim Kennan SC

Time: 5.45 for 6.00 – 7.45pm

Date: 18 June 2008

Venue: Allens Arthur Robinson, Level 34, 530 Collins St, Melbourne

Cost: \$25 / \$15 concession

RSVP by 11 June 2008

[More here](#)

The Right to Adequate Housing in the Global South

A Human Rights Law Resource Centre / PILCH seminar with

Balakrishnan Rajagopal, Associate Professor of Law and Development Director, MIT Program on Human Rights and Justice

Time and Date: 5.45 for 6.00 – 7.45pm

Date: Monday, 23 June 2008

Venue: Blake Dawson, Level 39, 101 Collins St, Melbourne

Cost: \$20 / \$10 concession

RSVP by 17 June 2008.

See www.hrlrc.org.au for more information and a registration form.

Risk Management and Insurance Basics for Not-For- Profits

What risks does your organisation face, and what protections should your organisation have in place to address risk? Do you have Directors and Officers insurance? What about occupational health and safety liabilities e.g. for volunteers? Do you know what your insurance policies cover?

Time: 9.30am – 1.00pm

Date: Thursday, 5 June 2008

Venue: Allens Arthur Robinson
Level 34, 530 Collins St, Melbourne

Administration fee: \$30 OR
Pre-pay package fee of \$250 for 10 places at any seminar/workshop in 2008.

Registration forms and the full seminar schedule for 2008 are available [here](#).

Legal Issues in Managing Volunteers

What is a volunteer? Are your staff members volunteers or employees? What laws apply and don't apply to volunteers? Should you screen potential volunteers and how? When and how can a Not-for-Profit organisation be held liable for the negligent acts of its volunteers? Can your volunteers be sued? What procedures can reduce the risk of liability to your volunteers?

Time: 9.30am – 1.00pm

Date: Tuesday, 1 July 2008

Venue: Clayton Utz
Level 18, 333 Collins Street, Melbourne

Administration fee: \$30 OR
Pre-pay package fee of \$250 for 10 places at any seminar/workshop in 2008.

Registration forms and the full seminar schedule for 2008 are available [here](#).

PILCH in the Media

Seniors' Rights Victoria

Seniors' Rights Victoria, a joint initiative of PILCH, Council on the Ageing, Loddon Campaspe and Eastern Community Legal Centres, was officially launched on April 27th and received much media attention. A hotline providing support and advice to older people in Victoria is the first part of the service to become operational.

'Hotline for elderly victims of abuse', The Age, 27 April 2007

- Read the article online [here](#)

'Elderly abuse reporting hotline set up', The Australian, 27 April 2008

'Elderly abuse reporting hotline set up', Herald Sun, 27 April 2008

'New hotline to help elderly abuse victims', ABC News, 27 April 2008

'Hotline for elderly victims of abuse', Brisbane Times, 27 April 2008

'Hotline for elderly victims of abuse', The West Australian, 27 April 2008

'Hotline for elderly victims of abuse', ninemsn.com.au, 27 April 2008

'Hotline for the elderly', ABC1, 27 April 2008

'Hotline for the elderly', Channel 10, 27 April 2008

'Volunteer Extraordinaire', Law Institute Journal p.88, May 2008
Former PILCH volunteer wins the annual Chief Justice Medal

'A national charter of rights', The Australian Financial Review, 18 April 2008
PILCH and Human Rights Law Resource Centre Secondee Phoebe Knowles argues for an Australian charter of rights.

'City of the homeless', Herald Sun, 30 March 2008
Caroline Adler, Manager of the Homeless Persons' Legal Clinic, discusses the soaring numbers of homeless Victorians.

- Read the article online [here](#) ■

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Law Reform, Advocacy & Policy

Joint Submission to the Department of Justice Exceptions Review of the Equal Opportunity Act 1995 (Vic)

PILCH and Human Rights Law Resource Centre

The Exceptions Review, carried out by the Department of Justice, aims to consider whether the exemptions from and exceptions to the prohibition on discrimination in the *Equal Opportunity Act 1995* (Vic) (EO Act) are compatible with the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Section 8 of the Charter provides that 'every person has the right to enjoy his or her human rights without discrimination' and 'has the right to equal and effective protection against discrimination'. PILCH and the HRLRC recommended that all of the exceptions and exemptions under the EO Act be repealed and that, instead, any differential treatment that may constitute discrimination be assessed to ensure compatibility with s 7 of the *Charter*. Section 7 recognises that human rights, including the right to non-discrimination, are not absolute but may only be limited so far as is reasonable, demonstrably justifiable, proportionate and adapted.

Download the submission from our website

The PILCH Homeless Persons' Legal Clinic (HPLC) recently made a submission to the Joint Standing Committee on Electoral Matters – Inquiry into the 2007 Federal Election. HPLC's submission examined and discussed the franchise of people experiencing homelessness. HPLC recommended that the Australian Electoral Commission (AEC) improve its education and awareness campaigns and that the

Electoral Act 1918 (Cth) be amended to improve participation in electoral processes.

Download the submission from our website ■

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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

Stolen Generations Compensation Claim

In February this year, the first Victorian claim for compensation by a member of the Stolen Generations was filed in the Supreme Court of Victoria. The matter was referred by PILCH to Allens Arthur Robinson and Jack Rush QC and Lachlan Carter of Counsel on a pro bono basis.

Among other things, the claim asserts a common law breach of duty of care by the State Government of Victoria in failing to take reasonable care to avoid causing physical and psychological injury throughout the period during which the plaintiff was a Ward of the State.

Clayton Utz has accepted a referral to provide pro bono legal assistance to a victim of the Stolen Generation in relation to whether the individual has actions against the State of Victoria for breach of duty of care (i.e. common law negligence) and/or breach of fiduciary duty. Bryan Keon-Cohen QC and Lachlan Carter of counsel provided a draft Joint Memorandum of Advice to PILCH. Clayton Utz has been undertaking further research to assist counsel to assess whether the client should initiate legal proceedings or pursue an alternative course of action.

Hans Bokelund of counsel accepted a referral to provide merits advice in relation to a native title matter in Western Australia. In this case, the Federal Court initially determined that there were native title rights and interests over a particular area of land. However, some years later an appeal against the decision was heard by the Full Court of the Federal Court. Although the appeal decision has not yet been handed down there is photographic and documentary evidence revealing that the land is being desecrated. The land should all be protected until the Full Court of Australia makes its determination concerning ownership rights in relation to it. The client, an indigenous woman, is seeking urgent legal assistance to protect the land from further interference until the Full Court decision is handed down. Mr Bokelund concluded that an interlocutory relief may be available and Maurice Blackburn agreed to assist by filing an interlocutory application in the Full Court of the Federal Court.

Middletons has accepted a referral to provide pro bono legal assistance to Stolen Generations Victoria Limited (**SGV**). PILCH has recently received a number of inquiries from members of the Stolen Generations (or organisations on their behalf) in relation to claims for compensation. PILCH is collaborating with SGV to inform members of the community about the current legal status of entitlement to compensation to Stolen Generations. SGV has requested assistance to draft a summary of the legal requirements of a personal injury claim in Victoria. SGV intends to use this advice to prepare an information pack for members of the Stolen Generations and the Aboriginal community more generally.

Linfox Development

Jim McKenna, Emily Porter and **Catherine Symons** of counsel, under the supervision of **Chris Wren SC**, accepted a referral from PILCH to provide merits advice and representation at a review hearing before the Victorian Civil and Administrative Tribunal (**VCAT**) in November 2007. Counsel

was instructed by the Environment Defenders Office for the Phillip Island Conservation Society Inc. (**PICS**).

On 20 September 2006 and 20 June 2007 the Bass Coast Shire Council (**the Council**) refused the original and amended applications by Linfox Property Group Inc. (**Linfox**) to develop a golf course and group accommodation adjoining the Phillip Island Grand Prix Circuit. Subsequently, Linfox applied to the VCAT for review of the Council's decision. PICS objected to the proposal, in particular having regard to the landscape, environmental characteristics and values of the site and coastline. According to the provisions of the Rural Activity Zone of the Bass Coast Planning Scheme, the site is identified for tourist development subject to agricultural, environmental and landscape considerations.

The 8 day hearing saw Linfox rely on evidence tendered from 12 experts, with the Council and PICS relying on 2 experts respectively. The VCAT affirmed the Council's decision, stating that "the group accommodation component is too big and too intrusive in the landscape whilst the golf course is too close to the coast". Even though the proposed facilities were considered to have tourism benefits, VCAT was not satisfied that the qualities of the environment had been sufficiently respected and protected.

- Read the Order [here](#)
- Read the Age article 'VCAT 'no' to Linfox's Phillip Island' plan [here](#) ■

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

Dangerous exposure to weed killer

According to anti-pesticide and herbicide action groups, studies by independent and environmental researchers prove that long term exposure to certain chemical weed killers can lead to cancer, reproductive problems, birth defects, asthma in children, skin diseases, multiple chemical sensitivity and neuro-behavioural disorders.

In Western Australia, some local councils have stopped using herbicides in street maintenance due to residents' health concerns and in New Zealand, some councils only use herbicide when no alternative is available.

LIVLAS has recently dealt with this issue in the matter of Ms Smith and her dispute with her Body Corporate and its management. Repeated requests by Ms Smith to the Body Corporate not to spray a particular chemical weed killer around her premises was not heeded despite its knowledge that she suffers from multiple chemical sensitivity and other illnesses. As outlined in medical reports, exposure to this chemical causes her to suffer whole body inflammation, migraines that last days or weeks, nausea, temporary cognitive dysfunction, irregular heartbeat, anaphylaxis and other health complications.

LIVLAS was able to refer the matter to Mills Oakley Lawyers who informed the Body Corporate and its management that Ms Smith had a range of legal remedies available to her if the chemical weed killer were to be used. Firstly, they asserted that threatened usage of the weed killer would lead to injunctive proceedings seeking to permanently restrain the Body Corporate from further use of the chemical. Furthermore, the use of the chemical also constitutes a breach of the contractual agreement between Ms Smith and the agent for the Body Corporate. There is an implied obligation upon the service provider of the Body Corporate not to carry out its obligations in a way that endangers the health and wellbeing of the Body Corporate members.

A similar obligation to maintain the property is extant upon the Body Corporate pursuant to section 29(2) of the Subdivision Act and Regulation 201 and 207 of the Subdivision (Body Corporate) Regulations. Again, Mills Oakley asserted that the Body Corporate is subject to an implied obligation not to undertake those duties and functions in a way that endangers the health and wellbeing of the members of the body corporate or severely impedes their use and enjoyment of the property. Therefore, Ms Smith could bring an action in the Victorian Civil and Administrative Tribunal seeking

declaratory and other relief against the Body Corporate and its agent.

Following this correspondence, Ms Smith was contacted by Body Corporate management and informed that the chemical weed killer will not be used on the property. She now considers the matter resolved and is extremely grateful for the assistance she received from Mills Oakley Lawyers.

More information about the health implications of exposure to chemical weed killer is available [here](#) (external link). ■

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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

Youth worker appeals de-registration

Mr D, a self-employed educator, was the subject of complaints in relation to his teaching methods at an 'alternative' school specialising in at-risk youth. The Victorian Institute of Teaching (**VIT**) cancelled his registration due to its determination that his interaction with a number of students showed a problematic level of familiarity/intimacy on several occasions.

Mr D appealed the decision to the Victorian Civil and Administrative Tribunal (**VCAT**), however the VIT successfully argued that VCAT is only able to hear an appeal against a determination (ie. the penalty imposed), not against a finding.

David Staindl of Counsel then accepted a referral from VBLAS to advise and represent Mr D. Counsel advised that an appeal to the Supreme Court had merit, prepared the application and submissions and represented Mr D in Court. Mr D was successful in having the matter remitted to VCAT where Counsel continued to represent Mr D, ultimately working more than one hundred hours pro bono over two years.

Mr D was successful in his appeal against the cancellation of his registration and became able to act as a teacher again from the start of this year. The Member in his decision decried the 'large amount of highly prejudicial material' presented by the Respondent and the poor standard of the initial investigation and evidence collected.

Misuse of photographic image

Simone Jacobson of Counsel accepted a referral from VBLAS, via the **Gippsland Community Legal Service**, to advise on the possible legal remedies available to **Ms R**. Twenty years ago, when she was a young teenager, Ms R and two friends were approached by a photographer who asked to take their photos. Ms R agreed, on the basis that the photo was for a university project and not for publication. The photographer directed the three teenagers' poses and facial expressions and asked them to act out situations of anger and violence.

Recently Ms R came across the photo clearly showing her face on the cover of a non fiction social science book on the subject matter of teen homelessness. The association of her face with the subject matter caused her great distress.

Counsel provided a comprehensive merits advice as to the options available to Ms R. Many of the legal options available were problematic due to statutory limitations and the period of time that had elapsed. This intervening period of twenty years also made producing evidence of an oral contract difficult. Following consultation with the client Counsel drafted a letter to the publisher requesting an apology. We are happy to report that Ms R has now received a formal written apology expressing regret for any distress caused. ■

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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

Office of Housing

Jane, a sufferer of severe osteo-arthritis, was staying in a house she had occupied since 2000 which had not been modified to cater for her special needs. Jane had been on the Office of Housing (**OoH**) list for alternative housing since 2001. Jane and her son were also the victims of 'neighbors from hell' who had subjected them to years of continuous verbal abuse and threats of violence, and Jane has suffered from chronic anxiety and depression as a result. HPLC Lawyers lodged an appeal to the OoH on mental health grounds. In December 2007, the OoH offered Jane alternative accommodation in a two bedroom single storey unit in a nearby suburb away from any other public housing. The unit is

being modified to suit Jane's special needs, and Jane is delighted with the result.

Centrelink

Lawyers assisted Vincent to deal with Centrelink. Vincent resigned from his job in around May last year on advice from his treating doctors, who had diagnosed him with bi-polar disorder, schizophrenia and depression. After leaving his job, Vincent received a large payout from his former employers which he used to clear various debts, including personal loans and credit cards.

Vincent then applied for a Centrelink benefit, the Disability Support Pension (DSP). His application was refused. Centrelink decided that Vincent was subject to an Income Maintenance Period (i.e. a suspension) and would not be entitled to the DSP for another 6 months. Vincent went (unrepresented) to the Social Security Appeals Tribunal (SSAT) who upheld Centrelink's decision. Vincent then sought assistance from the HPLC for an appeal to the Administrative Appeals Tribunal on the basis that the 6 month suspension should be removed or reduced.

HPLC Lawyers argued that the SSAT did not take into account Vincent's serious and complex medical and mental health issues. Centrelink offered to reduce the suspension period by 3 months. Vincent accepted Centrelink's offer and discontinued his appeal.

* Names have been changed

Street Rights – HPLC monthly newsletter

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

- Human Rights and Homelessness
- Homeless in Hawaii: Emergency and Transitional Housing in Hawaii
- The CAG Chronicle
- Good news stories ■

Another Reason to do Pro Bono

John Voorhees, who presented on the Advocacy and Impact Litigation Panel at the Pro Bono Institute's Annual Seminar, said that an unexpected benefit of being involved in his firm's Green Pro Bono Program was sharing the experience with his children.

He explained that at the same time his firm, Patton Boggs, was developing its new Green Program to partner with environmental NGOs on projects and also reduce paper and energy usage in the office, his son was learning about reducing 'environmental imprints' at school. This led to some interesting conversations at the dinner table about how they could do more to recycle and use less water at home.

He said that the firm's Pro Bono Program and the issues on which it focuses also help him talk to his children about issues in the community such as homelessness, unequal access to education and the importance of social justice.

"There's more discussion now about the importance of work/life balance" he said, "but it's more than just getting home before the kids are in bed. It's also about being involved in the community and sharing that with them. And that in turn improves your family life and helps you to raise them to be balanced individuals who are empathetic and aware of the community in which they live."

Further detail about the Patton Boggs' Pro Bono Program is available at www.pattonboggs.com ■

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Victorian Bar

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Community Legal Centres

Aboriginal Family Violence Prevention and Legal Service
Casey Cardinia Community Legal Service
Central Highlands Community Legal Centre
Coburg Brunswick Community Legal and Financial Counselling Centre
Community West
Consumer Law Centre Victoria
Darebin Community Legal Centre
Environment Defenders' Office (Vic) Ltd
Eastern Community Legal Centre
Essendon Community Legal Centre
Federation of Community Legal Centres (Vic)
Fitzroy Legal Service
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Melbourne University Student Union Legal Service
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