

P I L C H

Public Interest Law Clearing House

Annual Report 2001 - 2002

PUBLIC INTEREST LAW CLEARING HOUSE

The Public Interest Law Clearing House (Vic) Inc. ('PILCH') is an independent, not for profit legal referral service. It seeks to meet the legal needs of community groups and not for profit organisations, and individuals from disadvantaged or marginalised backgrounds.

PILCH acts as a facilitator for pro bono legal assistance between the community and the private legal profession. Its main role is to receive, assess and refer requests for pro bono legal assistance. PILCH aims to work creatively to match clients with lawyers willing to give their services without charge.

PILCH clients are individuals, community groups and not for profit organisations. Individual clients whose matters raise issues of public interest that require legal resolution, and who satisfy legal merits and means tests and are ineligible for legal aid, qualify for referral to a PILCH member. The member then acts for the client on a pro bono basis.

Not for profit organisations with public interest objectives, or which provide services that are in the public interest, are also eligible for assistance. PILCH aims to support and enhance the work done for and on behalf of the community by such organisations, which typically function with limited resources, by providing access to quality legal services.

PILCH's membership represents the diversity of the Victorian legal profession and includes private law firms, the Victorian Bar, corporate legal departments, community legal centres, university law faculties and others in ancillary or related fields.

Members support PILCH in a variety of ways including financially, by agreeing to accept referrals for legal assistance and through 'in kind' support.

PILCH's objectives are to:

- improve access to justice and the legal system for those who are disadvantaged or marginalised;
- identify and seek redress in matters of public interest;
- refer individuals, community groups and not for profit organisations to lawyers in private practice and to others in ancillary or related fields willing to provide their services without charge;
- support and enhance community organisations in pursuing the interests of the communities they seek to represent; and
- encourage, foster and support the work and expertise of the legal profession in pro bono and/or public interest law.

In keeping with and to further its objectives, PILCH also co-ordinates a number of related services and projects, including:

- the Homeless Persons' Legal Clinic;
- the Victorian Bar Legal Assistance Scheme; and
- the Law Institute of Victoria Legal Assistance Scheme.

THE PUBLIC INTEREST LAW CLEARING HOUSE THANKS ITS MEMBERS FOR THEIR SUPPORT AND CONTRIBUTION:

Aitken Walker & Strachan
Allens Arthur Robinson
Andrew George Solicitors
Arnold Bloch Leibler
Arnold Dallas McPherson
Baker & McKenzie (from July 2002)
Blake Dawson Waldron
Brimbank Community Centre
Carey Van Rompaey

Clayton Utz
Cornwall Stodart
Corporate Citizenship Consulting
Corrs Chambers Westgarth
Deacons
Deloitte Forensic
Fitzroy Legal Service
Freehills
Herbert Geer & Rundle

Holding Redlich
Hunt & Hunt
La Trobe University, School of Law
and Legal Studies
Lawyers Engaged in Alternative
Dispute Resolution (LEADR)
Maddocks
Mallesons Stephen Jaques
Middletons Lawyers

Minter Ellison
Monash University, Faculty of Law
National Australia Bank Ltd
Legal Department
Phillips Fox
Russell Kennedy (from July 2002)
Ryan Carlisle Thomas
TABCORP Holdings Ltd Legal
Department

Testart Robinson
The Office of David Grace QC
Tress Cocks & Maddox
University of Melbourne,
Faculty of Law
Victoria University, Faculty
of Business and Law
Victorian Bar
Wisewoulds

PRESIDENT'S MESSAGE

It is well recognised by the legal profession that access to legal representation is imperative for the fair and proper administration of justice. Two of the basic human rights, recognised in the Universal Declaration of Human Rights, are the right to equality before the law and the right to protection of the law.

PILCH plays an important role in the promotion and protection of these human rights for marginalised and disadvantaged individuals, not for profit organisations and community groups. Generally, these people would not otherwise have access to the extensive legal skills and knowledge that the legal profession can provide. While they cannot afford representation, they are often in the greatest need of assistance to protect their basic rights. Indeed, through PILCH a significant proportion of Victoria's legal community contributes to the protection of human rights for people in Australia.

In the year that has just passed, PILCH's work in achieving the furtherance of its objectives and its participation in facilitating access to the legal profession, has evolved in a number of ways. PILCH has also further matured as an organisation.

PILCH welcomed several new member law firms during the last year, namely **Baker & McKenzie, Maddocks, Middletons Lawyers, Russell Kennedy and Tress Cocks & Maddox.**

PILCH has also received much needed financial relief and support in the past year from within its own membership. Members have continued to support PILCH through the payment of membership fees, which have become PILCH's principal source of income. PILCH was also extremely grateful for two significant additional financial contributions made by members. The **National Australia Bank Ltd** made a very generous donation of \$75,000. As yet the Board is to determine how these funds will be applied. Quite aside from relieving financial pressure in the short-term, this donation provides PILCH with a financial resource and flexibility that it has not previously had. It will also allow PILCH to develop and to explore opportunities that otherwise could not be afforded. In addition, **TABCORP Holdings Ltd** provided a donation of \$3,000 to assist PILCH to meet the production costs of its newsletter. Both these contributions are illustrative of how members can support PILCH not just by accepting referrals, but by providing the means for the organisation to carry out its work generally. For that we are very thankful.

PILCH has arranged legal representation and advice for dozens of asylum seekers in immigration detention centres around Australia, perhaps now one of the most vulnerable and disadvantaged groups that come before the law in Australia. PILCH's efforts in finding legal representation for the asylum seekers aboard MV Tampa was given recognition by a formal commendation from the Human Rights and Equal Opportunity Commission. PILCH was also the recipient of the annual Tim McCoy Award as a result of its involvement in the case.

Furthermore, in addition to the Victorian Bar Legal Assistance Scheme and the Homeless Persons' Legal Clinic, PILCH has now commenced administering the Law Institute of Victoria (the 'LIV') Legal Assistance Scheme ('LAS'). The LIV LAS refers meritorious matters where a client does not have the means to pay for legal assistance, to participating solicitors who act for the client on a pro bono basis. This is an initiative that is separately funded and resourced by the LIV but operates with the benefit of PILCH's knowledge and expertise in managing pro bono legal referral schemes.

The joint administration of the three pro bono schemes and the clinic by PILCH under one roof will be a significant step for PILCH and those seeking pro bono assistance in Victoria, as the centralisation will enable a much more efficient and effective handling of needy cases. The office will now be the largest pro bono referral service in Victoria. Sadly, this enormous effort still does not stretch far enough to meet the needs of all disadvantaged individuals and not for profit groups who will continue go without legal assistance.

By maximising the effectiveness of the delivery of legal services on a pro bono basis by the legal profession, PILCH helps to overcome the gap left by inadequate legal aid funding. In doing so the PILCH board, staff, secondees, volunteers and members actively participate in the promotion of human rights in Australia. We continue to need the support of our members and the broader legal community to enable PILCH to be effective and ensure that pro bono legal services are provided to those who need them. We thank our members and supporters for their continuing hard work.



Ian Walker
President
November 2002

Ian Walker – President



EXECUTIVE DIRECTORS' REPORT

His Honour Justice Michael Kirby has called it a deep “malaise” in legal practice today.¹ It's the same malaise that afflicted Laura Gibson in her high paying, pressurised job in a large city law firm, surrounded by concrete and glass and disconnected symbolically and physically from the people and the grime below. Laura chose a ‘seachange’, threw in her job and sought out the whimsical and relatively gentle, if not eccentric, life in the community of Pearl Bay. Perhaps it's the same malaise that made so many of us relate to her.

Others see the affliction as something more serious than the uneasiness of a malaise and have even suggested that the profession is in “danger of losing its soul.”² This is a very pessimistic and morbid thought. But certainly it is not difficult to find even more temperate critics of the modern legal profession regularly accusing it of such things as self-interest, of being motivated by purely economic or mercantile interests, of losing sight of guiding principles such as “honesty, fidelity, loyalty, diligence, competence and dispassion in the service of clients.”³

Some of the harshest criticism has been of the practices of large law firms. For instance, his Honour Justice Brooking of the Victorian Court of Appeal (now retired), renowned for his acerbic judgments,⁴ noted “the last half century has seen a transformation in the practice of solicitors.” Amongst a catalogue of criticisms his Honour said the “mega-firm” may be:

“...so large that some partners hardly know one another...Its staff will be legion; many of them will have quotas to meet and will charge their time in small units. Charge rates per unit of time will be determined for the various categories of employee and the productivity of employees will be monitored...Competition will be a major consideration in relation to pricing. Partners and senior staff may be headhunted ruthlessly. Clients may be poached...All this makes the practice of at least the bigger legal firms resemble a manufacturing business, producing and selling at a profit a range of legal and at times related services.”⁵

Advocates, law schools and the judiciary have not been immune from criticism either.⁶

So how do we counter the malaise? As individuals not all of us can run away to Pearl Bay. Most of us try to find other ways to reconcile the realities and practicalities of our lives, personal and professional, with our ideals and our consciences.

*...PILCH...is seen in some quarters as
the conscience of the legal profession.*

The Australian, 4 September 2001

But what about the bigger picture? How do we arrest the prospect of the “idealism and selflessness of professionalism finally dying out in the law”?⁷

Contrary to some of the prophets of doom, it's our perception that individual lawyers and the profession generally are finding ways to overcome the malaise or any deeper crisis. In recent times there have been many indications that a new idealism and selflessness has taken hold in the legal profession. There has been a wave of gradual change, maybe something akin to a ‘seachange’ of our own. For instance, we have witnessed:

- the courage and commitment of individual lawyers. The lawyers involved in the Tampa case come to mind, particularly as they faced wide criticism, even by the Commonwealth Government for “promoting unlawful activity”⁸, and for pursuing an unpopular cause;
- the growing participation of private law firms in pro bono practice. For many firms pro bono work is now regarded as an important and integral part of their practices, and is both recognised and encouraged;
- innovation in the practice of pro bono and public interest law. There are now an increasing number of instances of lawyers acting collaboratively, creatively and proactively on behalf of some of the most disadvantaged in our community, with the long term vision of balancing rights and bringing about societal change. A notable example is the Homeless Persons' Legal Clinic;
- the new involvement by corporate lawyers and corporate legal departments in organised pro bono work. For instance two corporate legal departments are now members of PILCH and are represented on the PILCH Board. One of these also participates along side private law firms in the Homeless Persons' Legal Clinic;



Samantha Burchell –
Co-Executive Director

- professional bodies, such as the Law Institute of Victoria and the Victorian Bar, making significant commitments on behalf of their members to the provision of organised and professionally run pro bono schemes; and
- the active encouragement of pro bono work by government. For example, the Commonwealth Government has supported the initiative of the National Pro Bono Resource Centre. The Victorian State Government has made the provision of or contribution to pro bono services a condition of the contract for those firms successful in tendering for the Government's legal services panel.

What is particularly notable is that much of this development has not occurred in the community legal centre or legal aid sector of the profession, which has traditionally concerned itself with providing representation to communities, minorities or the disadvantaged, and with pursuing public interest issues. Rather, the development has involved the private legal profession.

That is not to say that the private profession seeks to encroach on the work of community legal centres or legal aid or that it seeks to excuse the government from providing a properly funded legal aid system. There will always be more unmet legal need than there are available legal services. The private profession seeks to help bridge that gap, to build capacity in previously under serviced or under resourced areas and to complement the work of the community legal centre and legal aid sector. It is part of the profession adapting, changing and re-organising itself to better serve the needs of the community. This is to be applauded. In the meantime, the private profession may also be recovering some of its idealism or reconnecting with its conscience.

So what role does PILCH play in all this? To answer, a pivotal one. In each of the examples of change mentioned above PILCH has been integrally involved. In a few short years the growing demand for its services has seen PILCH transform from a very worthy but still somewhat novel 'project', to a mature organisation of some complexity,

with a unique place in the Victorian legal profession and the broader community. On a practical level, it is now the main pro bono service provider in the state, co-ordinating and administering four individual schemes, and connecting the private legal profession with the individuals and communities it can serve. On a more abstract level, it has even been described as representing "the conscience of the legal profession".

It is our hope that the perceived wave of change heralds a new era for the legal profession. There will always be disenchanted lawyers amongst us, large law firms have an important role to play and are here to stay, and economic considerations are a reality in everyday legal practice. But we hope the profession can also continue to grasp and address, in the words of Justice Kirby:

"...the nobility of the search for individual justice,...the essential dignity of each human being and the vital necessity of providing the law's protection, particularly to minorities, those who are hated, even demonised, and reviled."⁹



Samantha Burchell



Emma Hunt

Co-Executive Directors
November 2002

¹ Kirby, The Hon. Justice Michael, *Billable hours in a noble calling?*, (1996) 21 ALJ 261

² Kronman, A.T., *The Lost Lawyer: Failing Ideals of the Legal Profession*, Harvard University Press, 1993, p.1

³ Kirby, The Hon. Justice Michael, above, p.261

⁴ See *Phosphate Co-operative Co. of Australia Ltd v Shears* (No3) [1989] VR 665; *Stannard v Sperway Constructions Pty Ltd* [1990] VR 673

⁵ *Fry v Oddy* [1998] VSCA 26 (31 August 1998) at para 34, per Brooking JA

⁶ Kirby, The Hon. Justice Michael, above, p.258 referring to Kronman, A.T., above.

⁷ Kirby, The Hon. Justice Michael, above, p.257

⁸ ABC Radio Melbourne, transcript of interview between Jon Faine and the Hon. Daryl Williams, 23 October 2001

⁹ Kirby, The Hon. Justice Michael, above, p.261



Emma Hunt –
Co-Executive Director

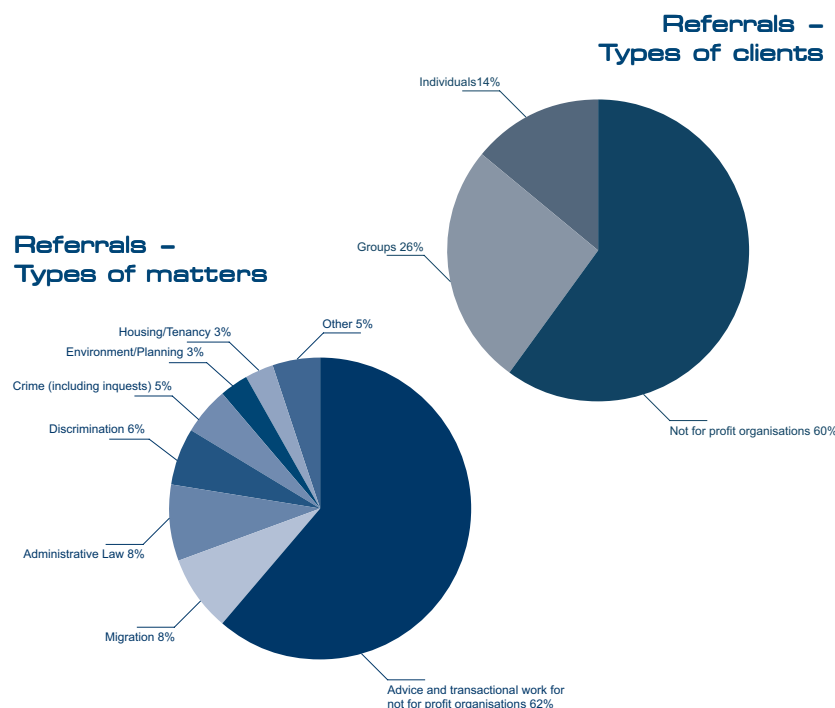
REFERRALS

During 2001-2002, PILCH received **483** inquiries and requests for legal assistance under the PILCH scheme. Arising out of these inquiries and requests, **143** referrals were made to solicitors and barristers in **105** matters.

PILCH continues to work closely with other legal assistance schemes, legal aid organisations, community legal centres and welfare and government agencies to ensure that those applicants whose matters do not meet the criteria for the PILCH scheme are aware of other services that are available and that they are likely to receive the assistance they require.

This year the majority of referrals were made in matters for not for profit organisations and community groups. This reflects, in part, the links PILCH has built with community organisations.

It is also notable that there has been a considerable increase in the number of administrative law and migration matters referred compared with past years.



We have received significant support from PILCH throughout our years of operation and this has continued to enhance our capacity to represent and advocate on behalf of those less fortunate in society.

PUBLIC TRANSPORT

Baker & McKenzie, together with **Jennifer Batrouney SC** and barrister **Georgina Schoff**, represented a defendant, Mr Z, who was charged under section 221 of the *Transport Act 1983* (Vic) (the 'Act') for failing to produce a valid ticket on request while travelling on a tram. Mr Z claimed he had boarded the tram with the intention of purchasing a ticket, but discovered he did not have the correct tender for the coin only ticket machine. Mr Z decided to purchase a daily ticket at the train station at the end of his tram journey, however, during the journey ticket inspectors requested that he produce a valid ticket. When he was unable to do so, he was charged with breach of section 221(4) of the Act.

Mr Z appeared on his own behalf in the Melbourne Magistrates' Court and the charges were dismissed. The Department of Infrastructure appealed to the Supreme Court of Victoria on questions of law concerning the defences afforded to passengers travelling without a valid ticket and, in particular, whether Mr Z could avail himself of such defences.

The Honourable Justice Nettle found that in order to satisfy the Court that he had made all reasonable efforts to purchase a ticket prior to commencing his journey, Mr Z had to prove more than a mere intention to purchase a ticket on board the tram.

Importantly, his Honour also found that where the intention of the legislation is to encourage people to comply, and where the fines imposed are relatively small, there is a strict liability and 'carelessness or forgetfulness or inattention to detail' is not a defence.



Andrew Davies – Secondee Solicitor

PRISONERS' RIGHTS

Phillips Fox, Andrew George Solicitors, Peter Vickery QC, and barristers **Gail Hubble** and **Benjamin Reid** are assisting Mr A, an inmate in a Victorian prison, in proceedings in the Supreme Court of Victoria in relation to his refusal to allow any member of the Victorian police force to take a forensic sample from him. Mr A is seeking an injunction restraining the Chief Commissioner of Police (Victoria) from permitting or directing any member of the police force to visit him for the purpose of using force to obtain a forensic sample. He also seeks a declaration that any means used by a member of the police force in seeking to take the forensic sample must not be disproportionate to the object, being the entry of information into a database for use in criminal investigations, and a declaration that he is entitled to refuse all visits from any member of the police force for the purpose of using force to take a forensic sample. The parties will soon be exchanging submissions and affidavits, and the matter is expected to be listed for hearing in coming months.

PERIN FINES

Deacons and barrister **Michael Gronow** assisted an unemployed pensioner, Ms M, in proceedings before the Federal Court. Ms M had outstanding PERIN (Penalty Enforcement by Registration of Infringement Notice) fines to the value of \$14,755.30 in respect of 72 parking infringements. Ms M sought to apply for bankruptcy on the basis of the fines. The issue before the Honourable Justice Merkel was whether the outstanding fines fell within the definition of 'provable debts' under section 82(1) of the *Bankruptcy Act 1966* (Cth) (the 'Act') and were therefore extinguished by bankruptcy.

His Honour found that parking infringement penalties are provable debts within the meaning of the Act. The PERIN procedure enforces the pre-existing liability, it does not impose a new liability. Accordingly, fines processed through the PERIN system are provable and will be extinguished by bankruptcy. As a result, Ms M could apply for bankruptcy and her liability in respect of the debts would be discharged. The successful result in this case is particularly significant for low income earners and disadvantaged people, who tend to be disproportionately affected by PERIN fines. PERIN fines can now be included in their bankruptcy applications. The State of Victoria has lodged an appeal.

PUBLIC HOUSING

Alexandra Richards QC and barrister **Mark Ravech** together with the Tenants' Union of Victoria Ltd represented a tenant, Ms A, in relation to an appeal by the Director of Housing (the 'DOH') to the Supreme Court of Victoria against a decision of the Victorian Civil and Administrative Tribunal ('VCAT').

VCAT refused the DOH's application for an immediate possession order pursuant section 244 of the *Residential Tenancies Act 1997* (Vic) (the 'Act'). Section 244 of the Act provides that a landlord has power to require immediate vacation of premises 'if the tenant or the tenant's visitor by act or omission endangers the safety of occupiers of neighbouring premises'. The interpretation of section 244 is of particular importance where the DOH is the landlord, as tenants in these circumstances arguably often have the greatest need for secure housing.

A neighbour's daughter had visited Ms A's home and taken a number of sleeping tablets. She woke to find Ms A's non-resident partner assaulting her. The visitor was arrested and on several occasions following his arrest Ms A verbally abused the neighbour and her daughter, leading to her being charged with making a threat to kill. VCAT found section 244 required behaviour of an ongoing serious nature. The tribunal held that the behaviour of the visitor was not continuing at the time the notice to vacate was issued, and the behaviour of Ms A, although abusive and intimidating, did not constitute endangering conduct for the purpose of section 244. The argument in relation to the proper interpretation of section 244 was heard over two days before the Honourable Justice Smith. In addition, a jurisdictional issue was argued as to the requisite satisfaction of statutory preconditions in the case of VCAT, namely that a notice to vacate must be given to the tenant before an application to VCAT can be filed.

His Honour delivered judgment on 15 October 2002 and dismissed the appeal, finding that section 244 requires a real risk of danger to the physical or mental health of occupiers of neighbouring premises and not some remote or faint possibility of such.

REFERRALS (CONT...)

MIGRATION

Allens Arthur Robinson and barristers **Debbie Mortimer** and **Daniel Star** are representing a man in Woomera Detention Centre ('Woomera') with an application for an extension of time to the High Court against a decision of the Refugee Review Tribunal (the 'RRT'). The RRT found that the man was not a national of Afghanistan and did not have a well-founded fear of persecution in that country, but did not make a determination as to which country he was in fact from. The man arrived in Australia in December 2000 and has been in Woomera since January 2001. The application for special leave to appeal is not likely to be heard before February 2003.

Mallesons Stephen Jaques (as agent for Jeremy Moore & Associates), **Julian Burnside QC** and barrister **John Manetta** are currently providing assistance to three Iranian asylum seekers. The asylum seekers, after having been detained for between 12 and 22 months in the Woomera Detention Centre ('Woomera'), 'escaped' from detention in November 2001. They were subsequently apprehended and charged with escaping immigration detention under section 197A of the *Migration Act 1958* (Cth) (the 'Act').

Mallesons Stephen Jaques is assisting in the preparation for the trial in Adelaide Magistrates' Court. The case raises the issue of whether the conditions of detention at Woomera as at November 2001, go beyond anything that could reasonably be regarded as necessary for the purposes of the Act. If they are found to be so, then arguably detention at Woomera is not authorised by the Act and a detainee who escapes from Woomera does not escape from immigration detention. This requires examining the circumstances of detention at Woomera. There is currently an appeal to the Supreme Court of South Australia with regard to the issuing of a subpoena to obtain documents relating to the operation of Woomera.



Nicole Rich – Secondee Solicitor

LEGAL ASSISTANCE FOR NOT FOR PROFIT ORGANISATIONS

Clayton Utz has accepted a referral to assist the Adult Multicultural Education Services in establishing the 'Tool Shed', a furniture restoration and manufacturing company. The Tool Shed is to be a community based cooperative, owned and managed by older men from refugee backgrounds. Clayton Utz is providing advice with regard to models of incorporation for the Tool Shed.

Holding Redlich is currently advising the REACH Foundation, a not for profit organisation, aiming to promote resilience, networking and confidence in young people through a range of courses, camps, forums and workshops. The REACH Foundation sought general assistance with regard to human resources matters, including occupational health and safety and equal opportunity issues. Holding Redlich has assisted the organisation in preparing a draft human resources manual.

Minter Ellison and a lecturer in law with expertise in disability law at **La Trobe University** are assisting the Anglicare Family Centre in preparing a law reform submission in respect of the eligibility requirements of social security payments for carers of disabled children. Currently, carers of children with behavioural disorders such as autism find it difficult to access carer payments under the *Social Security Act 1991* (Cth) (the 'Act') due to the restrictive definition of 'profoundly disabled child' in the Act. The submission will examine the current situation and recommend amendments to the Act.

I wish it had never happened, but at least I know something has been done so others won't suffer.

AGITATING RIGHTS –

PILCH'S INVOLVEMENT IN THE TAMPA CASE

On 26 August 2001, MV Tampa rescued 433 persons from a sinking wooden fishing boat. The persons rescued were principally of Hazara Shi'ite origin, one of the most persecuted minority groups in the world, and were en route to Australia to seek asylum.

As MV Tampa approached Australia on 29 August 2001, forty-five armed SAS troops boarded and secured the vessel. They controlled the movements of the asylum seekers and began to monitor all communications to and from MV Tampa.

*“...You know well about the long time war
and its tragic human consequences, and
you know about the genocide and
massacres going on in our country and
thousands of innocent men, women and
children were put in public graveyards, and
we hope you understand that keeping in
view all aforementioned reasons we have
no way but to run out of our dear
homeland and seek a peaceful asylum...”*

*Afghan refugees
Now off the coast
of Christmas Island
30/8/2001*

The following day, PILCH was contacted by a barrister, John Manetta, about rendering legal assistance to the asylum seekers. For the next 48 hours, PILCH attempted to communicate with the asylum seekers to obtain instructions to bring an application in the Federal Court for the grant of a writ of habeas corpus. The writ of habeas corpus is an order for the release of persons detained without lawful authority.

All attempts by PILCH to communicate with the asylum seekers were unsuccessful and so, on 31 August 2001, PILCH organised for Liberty Victoria, as applicant, and a team of lawyers comprising **Julian Burnside QC**, **Chris Maxwell QC**, **John Manetta** and law firm **Holding Redlich** to file an application in the Federal Court seeking, in effect, that the asylum seekers be freed and accorded their rights under the *Migration Act 1958* (Cth).

The application was heard at first instance by the Honourable Justice North, who ordered that the asylum seekers be released from detention and delivered to mainland Australia. His Honour's judgment was overturned on appeal by the Full Court of the Federal Court.

Both the lawyers and applicants involved in the proceedings were criticised by the Government and certain members of the public for interfering with the exercise of executive power and the will of the Australian people and for 'promoting unlawful activity'. To some they were seen as a group of agitators. And for this they are to be commended. It is indispensable in civil society that we have agitators; this is especially the case when the government seeks to act with impunity against the marginalised, the disadvantaged, the voiceless and the vulnerable. As Oscar Wilde wrote:

“Agitators are a set of interfering, meddling people, who come down to some perfectly contented class of the community and sow the seeds of discontent amongst them. That is the reason why agitators are so absolutely necessary. Without them, in our incomplete state, there would be no advance towards civilisation.”

For its role in co-ordinating the Tampa case, PILCH was awarded a high commendation by the Human Rights and Equal Opportunity Commission in the 2001 Human Rights Medal and Awards, and won the annual Tim McCoy Trust Award for its commitment to social justice.

May PILCH continue to agitate in 2003.



Natasha Leigh –
Seconded Solicitor

HOMELESS PERSONS' LEGAL CLINIC

The Homeless Persons' Legal Clinic, a joint pilot project of PILCH and the Council to Homeless Persons, was established in October 2001 to provide free legal assistance to, and advocacy on behalf of, one of society's most disenfranchised groups – people who are homeless or at risk of homelessness. Legal services are provided at crisis accommodation centres and welfare agencies so as to encourage direct access by clients. Host agencies include Anglicare, Melbourne Citymission, the Salvation Army, the St Vincent de Paul Society, the Big Issue and Urban Seed.

The Clinic is staffed by pro bono lawyers from participating law firms and legal departments, including **Blake Dawson Waldron, Clayton Utz, Hunt & Hunt, Mallesons Stephen Jaques, Minter Ellison** and the **National Australia Bank Ltd Legal Department**. Each firm is responsible for the provision of services at one or two locations on a weekly basis.

In addition to providing legal services, the Clinic seeks to identify the range of legal issues facing homeless people, identify gaps in the delivery of services and conduct advocacy regarding relevant law reform and social policy issues.

The Clinic is funded by a non-recurrent grant of \$76,000 from the Department of Human Services (Supported Accommodation Assistance Program Unit). This funding will enable the Clinic to operate until 31 December 2002. Recurrent funding is still being sought to enable the Clinic to operate on a full-time, permanent basis.

From 15 October 2001 to 30 June 2002, the Clinic provided assistance to more than 200 clients at a commercial value of almost \$1 million. During this period, over 3000 hours of services were provided by more than 100 lawyers. Results ranged from the dismissal of over \$100,000 worth of fines against an elderly homeless man, to the negotiation of an



Philip Lynch – Co-ordinator,
Homeless Persons'
Legal Clinic



PILCH Board member and HPLC lawyer, Fiona McLeay advises
The Big Issue vendor, John. Photograph by Jesse Marlow.

*The Clinic seeks to use the
law to reduce inequality, promote
human dignity and agency, and
address underlying causes
of homelessness.*

apology and monetary compensation in connection with the illegal eviction of a mentally ill man, to the obtaining of social security payments for a refugee family from Somalia. As one client remarked to the legal team assembled on his behalf, “No-one has ever helped me like this before.”

In addition to conducting casework, the Clinic works to identify and address systemic issues arising from the formulation and application of the law without regard to socio-economic context. Over the last year the Clinic has lobbied and campaigned for reform in relation to the criminalisation of begging, the regulation of public places, the denial of the right to vote, and the failure of anti-discrimination law to adequately protect the homeless.

The Clinic is a collaborative, innovative and very cost-effective way to deliver much needed legal assistance and advocacy to a very disadvantaged section of the community. The combined expertise of PILCH, the Council to Homeless Persons, the Victorian Bar, and participating law firms, legal departments, welfare agencies and crisis accommodation services, ensures that legal services are delivered in an appropriate, effective and efficient manner.

Pending recurrent funding in 2002 - 2003, the Clinic will continue to use the law to eliminate inequality, promote human dignity, address underlying causes of disenfranchisement, and construct sustainable pathways out of homelessness.

VICTORIAN BAR LEGAL ASSISTANCE SCHEME

During its second year of administration by PILCH, the Victorian Bar Legal Assistance Scheme (the 'Scheme') continued to develop and improve the accessibility of pro bono legal services of barristers for members of the public who are in need.

The Scheme and the current arrangement for its administration by PILCH, was formalised in July 2000. Prior to this the Victorian Bar (the 'Bar') ran an informal pro bono scheme. However as demands for assistance and upon those voluntarily administering the Scheme increased, a more dedicated service and administrative structure was needed. Thus the administration of the scheme was passed to PILCH, and renamed the Victorian Bar Legal Assistance Scheme.

The Scheme aims to increase access to pro bono legal services provided by barristers for those in need by providing a mechanism undertaken by PILCH for screening and, in appropriate cases, referring requests for assistance from members of the public to members of the Bar. PILCH also works to develop the Scheme and to promote it in the legal profession and the wider community.

In return for administering the Scheme, the Bar provides PILCH with accommodation, some infrastructure and a contribution towards PILCH's ongoing administrative expenses. In addition, under the *Legal Practice Act 1996*, the Legal Practice Board (the 'LPB') makes a contribution towards the cost to the Bar of conducting the Scheme. The support of the LPB is much appreciated by the Bar and PILCH.

The Bar has recently increased its level of financial support to PILCH for administering the Scheme. The demand for the legal services provided by the Scheme has increased over time, particularly with the withdrawal of funding to legal aid services, and there is no sign of this

"You weren't able to help me but you didn't just leave me, you explained why my matter was not legal one, and you told me where I needed to go."

demand abating. Therefore the increase in financial support will enable PILCH to continue administering the Scheme and allow the Bar to be at the forefront of developing a model for an organised, integrated and accessible pro bono network. Nowhere else in Australia are a number of major pro bono schemes administered centrally, as is now the case at PILCH.

The most significant difference between the Scheme and the PILCH scheme is that the Scheme does not require that a matter be in the public interest to qualify for pro bono assistance. Rather the focus is on the means of the applicant, whether the matters is legally meritorious and whether the provision of assistance is in the 'interests of the administration of justice'. The Scheme can therefore play a 'gap-filling' role, for instance by providing assistance in matters that would otherwise fall outside the PILCH criteria.

Applications by individuals make up ninety-nine per cent of applications to the Scheme. Quite often such clients have complex legal problems and have exhausted their own resources and the resources of legal aid. Frequently, matters come to the Scheme which have been propelled through the court system by unrepresented litigants, who reach the point where their expertise and endurance fails them, and who urgently need assistance. There is therefore a strong argument for assistance to be provided to such applicants in the interests of the fair and efficient administration of the legal system. Indeed quite a considerable number of inquiries to the Scheme come from court staff seeking to assist unrepresented litigants in particularly needy circumstances to find representation.

Over the past two years, demand for the Scheme's resources has grown. In the year to 30 June 2002, the Bar received **219** inquiries resulting in **49** referrals. This brings the total number of inquiries received by the Scheme since its inception to **366**, resulting in **99** referrals.

Matters referred to barristers cover diverse areas of law including family, crime, migration, contract, trusts, tort, personal injury, TAC, employment, debt recovery, tenancy and discrimination. Although in the past two years the number of referrals made under the Scheme remained steady, there has been a notable increase in demand for the service with 25 per cent more inquiries, all of which require screening, assessment and, where appropriate, redirection, to ensure that wherever possible clients receive the assistance they require.

The Scheme and the provision of pro bono legal services by barristers are essential to improving the accessibility to the legal system for members of the public and are integral to the operation of all the other pro bono and legal assistance schemes currently existing in Victoria. PILCH is grateful to the Victorian Bar Council and the members of the Bar generally for their ongoing commitment to the Scheme.



Gerald Frost – Accountant
(Mallesons Stephen Jaques)

PROJECTS

LAW INSTITUTE OF VICTORIA LEGAL ASSISTANCE SCHEME

Throughout 2001 and 2002 considerable efforts have been made to finalise arrangements for the administration of the Law Institute of Victoria (the 'LIV') Legal Assistance Scheme ('LAS') by PILCH. These efforts culminated in October 2002, with the commencement of a six month trial of this new arrangement, which sees the LIV LAS joining the PILCH scheme and the Victorian Bar Legal Assistance Scheme in administration by PILCH from its premises.

Upon the initiative of the Young Lawyers Section of the LIV, the LAS was originally established in February 1999. The LAS screens and channels requests for legal assistance to volunteer solicitors who undertake pro bono legal work for the clients. The LAS requires that clients have exhausted other avenues for legal assistance, and that they meet a means test. The LAS was administered for 18 months at the premises of the LIV before negotiations commenced for the current trial from PILCH's offices. The LAS solicitor and administrator have been hired on a part-time basis by PILCH for the duration of this trial period. The LIV will be providing funds to support the establishment of the LAS at PILCH. It is hoped that, if successful, the arrangement between PILCH and the LIV will continue.

During the trial period, the LAS will be re-launched. The aims of the trial period are to promote the LAS among the legal profession, community organisations and the general public, and to review its guidelines and procedures for it to function as effectively and efficiently as possible. The LAS will also foster the development of pro bono services within the Victorian legal profession, with the aim of increasing access to the legal system for clients of limited means who have meritorious claims and who are ineligible for legal aid.

NATIONAL PRO BONO RESOURCE CENTRE

The National Pro Bono Task Force, on which PILCH (Vic) was represented by Co-Executive Director Samantha Burchell, published its Report and Action Plan in June 2001. This saw momentum gather for the establishment of a National Pro Bono Resource Centre (the 'Centre'). Subsequently, the Commonwealth Government called for tenders for the establishment and operation of the Centre. PILCH participated as a project partner in a consortium led by the Public Interest Advocacy Centre of NSW ('PIAC') in its successful



Clare Jones –
Secondee Solicitor



Evelyn Woo – Secondee Solicitor

tender bid. The other project partners were PILCH (NSW), the University of NSW, the National Association of Community Legal Centres and the Law Society of WA. In May 2002, the Commonwealth Government and PIAC entered into an agreement in relation to services for the establishment of the Centre. PILCH (Vic) continued to participate on the steering committee for the establishment of the Centre. Finally, on 15 August 2002, the Centre was launched by the Commonwealth Attorney General, the Hon Daryl Williams QC.

The Centre is designed to be an independent national organisation to promote pro bono work in the legal profession. The Centre will have a coordinating and facilitative role in the delivery of pro bono services, but not in a way that replaces or duplicates the activities of the many State-based, frontline service providers. In particular, it is envisaged that the Centre, through a collaborative working relationship, will provide practical assistance and support, and make available information and resources, to local service providers.

The Centre has appointed as its inaugural Director Mr Gordan Renouf, with an interim Board that includes Co-Executive Director Samantha Burchell, who is acting in the capacity of representative for PILCH Victoria, NSW and Queensland.

CONTINUING LEGAL EDUCATION

In the year to June 2002, PILCH continued to instigate and participate in activities that raise awareness in the legal and wider communities about the value and importance of public interest law and pro bono practice. The Co-Executive Directors and secondee solicitors, have spoken to and consulted with various organisations in different settings about PILCH's role. These include other public interest organisations, peak bodies, community organisations, community legal centres and, of course, various university law schools, private law firms, the Victorian Bar and the courts. At other times, PILCH takes the lead in organising seminars that address particular issues of current concern – for example, PILCH co-organised the 23 October 2001 seminar on the Tampa case, hosted by **Holding Redlich**.

Seminars have proven to be an excellent way for PILCH to raise much-needed funds. This initiative was first undertaken in July 2001, when PILCH organised the highly successful seminar, 'Public Interest Law - Bridging Law and Justice', presented by Andrea Durbach, Director of PIAC in NSW. About 150-160 people attended the evening, hosted by **Minter Ellison**.

The support provided by firms such as yours allows the community sector to deal with public interest matters that affect large, yet invisible and powerless groups that we advocate for.

Also particularly successful was a seminar organised in late May 2002 with the Sir Zelman Cowen Centre for Continuing Legal Education, entitled 'Practising in the Public Interest'. The seminar was well attended, and was chaired by Co-Executive Director Emma Hunt.

PILCH regards its public education role to be fundamental to its mandate to encourage, foster and support public interest law and pro bono practice, and will actively seek opportunities to continue this work in the coming year.

PUBLICATIONS

PILCH aims to produce regular publications to promote PILCH and its activities and to support the public interest and pro bono work of its members. In the last year PILCH published the following works:

PILCH Matters – A newsletter which informs supporters and clients of PILCH of up-to-date issues and cases undertaken by PILCH members. It is published twice a year, and is distributed to over 1,000 individuals, law firms and other institutions and community organisations. The production of the newsletter is due, in large measure, to the generosity of **Freehills**, which provides its graphic design services. In the last year PILCH was also very grateful to **TABCORP** for sponsoring the printing of the newsletter.

Pro Bono in Practice – An in-house email newsletter for the benefit of PILCH members, which aims to provide practical information to those in pro bono practice.

STUDENT FELLOWSHIP PROGRAM

PILCH has recently established a Student Fellowship Program which involves participating member law firms sponsoring a limited number of summer and winter clerks recruited to the firms to take up one or two week placements to PILCH in conjunction with their clerkships. While placed at PILCH, the students selected for Fellowships are paid the normal salary for a clerkship by the sponsoring law firm. Student Fellows are involved in the day to day work of the organisation and are supervised while working on referrals, projects and publications.

Chris Sibree, sponsored by **Blake Dawson Waldron** and the first of the Student Fellows to take up a placement, recounts the experience:

"I was fortunate enough to experience two weeks working at PILCH under the recently established Fellowship program. The program allowed me an insight into areas of the law, which have always appeared as an aspiration, to be organised around university, study, exams and vocational employment. I was involved in many facets of PILCH's work, but particularly absorbing were the opportunities to handle inquiries from members of the public and develop briefs to refer to members. The Fellowship was 'hands-on' from the beginning, and provided a humane interlude in what can at times appear a faceless professional ambition. The work of PILCH greatly assists so many people who are either unable to access the law or are excluded by their circumstances. Enabling students, like myself, to experience how powerful the law can be may make justice more easily accessible for a greater number of these people."

Other participating law firms include **Allens Arthur Robinson**, **Clayton Utz**, **Deacons** and **Minter Ellison**.

STUDENT INTERN AND VOLUNTEER PROGRAM

PILCH has continued to host volunteer student placements in both summer 2001 – 2002 and winter 2002. University vacation internships are generally for two weeks each and provide students with the opportunity to gain experience in a range of paralegal and administrative tasks and expose them to the realities of the practice of public interest law.

PILCH has also been extremely fortunate to have the assistance of a number of volunteers throughout the year who have supplemented and supported the work of staff. For the commitment and contribution of all interns and volunteers, PILCH is extremely grateful.



Kylie Evans –
Secondee Solicitor

BOARD MEMBERS

Ian Walker (President)	Minter Ellison
Bruce Moore (Treasurer)	Mallesons Stephen Jaques
Andrew Blogg (Secretary)	Aitken Walker & Strachan
Peter Caillard	TABCORP Holdings Ltd Legal Department
Judith Dickson	La Trobe University, School of Law & Legal Studies (Alternate)
John Emerson	Freehills
Andrew George	Andrew George Solicitors
David Krasnostein	National Australia Bank Ltd Legal Department
Sarah Matheson	Allens Arthur Robinson
Fiona McLeay	Clayton Utz
Richard McGarvie	Victorian Bar
Jeannie Paterson	Monash University, Law School (Alternate)
Judith Peirce	Brimbank Community Centre
Peter Seidel	Arnold Bloch Leibler
John Sharkey	Deacons
Maureen Tehan	University of Melbourne, Law School



Danielle Brennan – Secondee Solicitor

SECONDEE SOLICITORS

PILCH thanks those members who, in the last year, made available solicitors on secondment:

Allens Arthur Robinson	Philip Lynch	June 2001 – September 2001
Blake Dawson Waldron	Danielle Brennan	April 2001 – November 2001
National Australia Bank Ltd Legal Dept	Evelyn Woo	August 2001 – October 2001
Freehills	Andrew Davies	October 2001 – February 2002
Mallesons Stephen Jaques	Eve Stagoll	November 2001 – February 2002
Allens Arthur Robinson	Clare Jones	February 2002 – May 2002
Minter Ellison	Kylie Evans	February 2002 – June 2002
Allens Arthur Robinson	Nicole Rich	May 2002 – August 2002
Minter Ellison	Natasha Leigh	June 2002 – November 2002

STAFF

Emma Hunt	Co-Executive Director
Samantha Burchell	Co-Executive Director
Judith Cirillo	Co-ordinator
Philip Lynch	Co-ordinator, Homeless Persons' Legal Clinic
Jane Dimsey	Solicitor/Manager, Law Institute of Victoria Legal Assistance Scheme, October 2002 -
Nickolas Troy	Administrator, Law Institute of Victoria Legal Assistance Scheme, October 2002 -
Sara Forsyth	Administrator, 1997 - August 2001, May - June 2002
Sue Kaufman	Co-ordinator, August 2001 - April 2002
Julie Cook	Administrative Assistant, August 2001 - April 2002

PILCH expresses its appreciation for the continuing administrative support provided by Mallesons Stephen Jaques throughout 2001-2002 with the provision of book-keeping and accounting services by their employee, Gerald Frost.



Judith Cirillo – Co-ordinator

VOLUNTEERS

PILCH expresses its appreciation and thanks to those volunteers, student interns and others who, in the last year, generously gave their time to support the work of PILCH, including:

Patrick Belton	Maria Papageorgiou
David Bowser	Bronwyn Polson
Michael Coonan	David Rigby
Matt Drummond	Samantha Sowerwine
Christine Hamilton	Adam Straw
Rochina Iannella	Florence Young
Adrian Kennedy	Celina Tay
Susannah McDonald	Doris Yue
Beth Midgley	

FINANCIAL REPORTS



Public Interest Law Clearing House (Vic) Inc.
Reg. No. A0029409J

Eve Stagoll – Seconded Solicitor

Statement of Assets and Liabilities for the year ended 30 June 2002

Assets	2002	2001
Current Assets:		
Cash at Commonwealth Bank	196,813	52,235
Cash on hand	85	100
Accounts Receivable	2,504	3,630
Total Current Assets	199,402	55,965
Less Liabilities		
Accounts Payable	5,459	1,381
PAYG Withholding Tax & GST	16,393	7,877
Provision for Annual Leave	2,060	2,258
Prepaid Membership Fees	6,187	-
Unspent: Homeless Project	53,133	-
Total Current Liabilities	82,232	11,516
Net Assets	116,170	44,449
Accumulated Funds		
Balance 1 July 2001	44,449	17,224
Surplus (Deficit) for year	71,721	27,225
Balance 30 June 2002	116,170	44,449

Statement of Income and Expenditure for the year ended 30 June 2002

	Notes	2001-02 HPLC	2001-02 PILCH	2001-02 Total	2000-01 Total
Income		\$	\$	\$	\$
Membership		-	120,000	120,000	103,013
Homeless Project	2	86,000	-	86,000	59,667
Donations	3	-	80,375	80,375	26,400
VICBAR Management Fees		-	27,171	27,171	2,179
Event registration		-	5,514	5,514	548
Interest received		-	3,590	3,590	506
Other income		-	197	197	160
Publications sales		-	10	10	506
Total Income		86,000	236,857	322,857	192,979
Expenditure					
Payrol		22,846	98,074	120,920	96,076
Salary oncost		2,938	7,536	10,474	9,925
Occupancy		182	28,666	28,848	28,198
Printing		1,787	7,177	8,964	250
Amenities, postage & stationery		844	6,986	7,830	11,585
Consultants		2,928	3,658	6,586	-
Communications		537	5,622	6,159	4,424
Conferences & travel		499	3,562	4,061	1,154
Library & Membership		125	2,268	2,393	1,146
Finance & Insurance		181	1,572	1,753	4,223
Other expenses		-	15	15	707
Furniture & Equipment		-	-	-	6,276
Locums & Temps		-	-	-	1,284
Total expenditure		32,867	165,136	198,003	165,248
Surplus (Deficit) for year		53,133	71,721	124,854	27,731
Accumulated Funds as at 1 July 2001		-	44,449	44,449	17,224
Surplus (Deficit) for year		53,133	71,721	124,854	27,731
Accumulated Funds as at 30 June 2002		53,133	116,170	169,303	44,955

Notes to and forming part of the Special Purpose Financial Statements for the year ended 30 June 2002.

Note 1 – Statement of Accounting Policies

These financial statements are special purpose financial reports prepared for use by the Board and members of the Public Interest Law Clearing House Inc. The Board has determined that the Association is not a reporting entity and there is no requirement to apply all Accounting Standards, UIG Consensus Views and other mandatory professional reporting requirements in the preparation and presentation of these statements.

These statements are prepared on an accrual basis from the records of the Association. They are based on historic costs and do not take into account changing money value or except where stated, current valuations of non-current assets. Accounting policies have been consistently applied, unless otherwise stated

Note 2 – Homeless Project

During 2001-2002 PILCH received a total grant of \$86,000 from the Department of Human Services for the Homeless Persons' Legal Clinic. This grant is to fund the project to 31 December 2002 and includes \$10,000 for an evaluation.

Note 3 – Donations

During 2001-2002 PILCH received a considerably increased amount by way of donations compared with previous years. This includes a once off donation of \$75,000 from the National Australia Bank Ltd to provide PILCH with capital and to be applied at the discretion of the PILCH board.

Public Interest Law Clearing House (Vic)
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Annual Report 2001–2002
November 2002

Written and compiled by staff, secondees
solicitors and volunteers of the Public
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and production of this Report.**

Freehills

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*The counsel and solicitors acting in the interests of
the rescuees in this case have evidently done so pro
bono. They have acted according to the highest
ideals of the law. They have sought to give voices to
those who are perforce voiceless and, on their
behalf, to hold the Executive accountable for the
lawfulness of its actions. In doing so, even if
ultimately unsuccessful in the litigation they have
served the rule of law and so the whole community.*

– Ruddock v Vadarlis [2001] FCA 1329, 18 September 2001,
Black CJ, Beaumont and French JJ, para 216, per French J.