

## LEGAL PROFESSION

**Holy cow no more!****ADRIAN EVANS reports on some unexpected developments in Victoria.**

In a remarkable reversal of form, the Law Institute of Victoria (LIV) Council has conceded the heavyweight crown of self-regulation (the right to discipline its own members) to the Attorney-General Jan Wade. In a 'Special Report' to members (5 October 1994) Institute President, Rod Smith, disclosed that its submission to the Attorney on legal profession reform endorses, reluctantly, the Attorney's intention to remove disciplinary matters from the Institute. For many years the Institute has resolutely maintained that self-regulation is inextricably linked with legal professionalism and with lawyers' autonomy, i.e. independence from the state. Whether this is true or not, what was really at stake was the financial control of the Solicitors Guarantee Fund (SGF). The fund required only \$10 a head from practitioners each year, relying on interest from trust accounts for most of its resources. This contribution would increase enormously (NSW requires \$535 a year for each practitioner) if control of the fund is lost. Why then toss in the towel?

First, Jan Wade is not Jim Kennan (the former Labor Attorney-General). The latter made noises about reform of the legal profession but it was not a priority for him. Jan Wade, on the other hand, has been the object of regular 'front office' picketing campaigns from aggrieved clients, notably those organised by 'Law Watch' and the Consumers Law Reform Association. Over some months, these small scale but very persistent efforts persuaded her that at least some of the eggs in the Law Institute basket must have 'gone off'. Her *Agenda for Change* document (June 1994) operates as a virtual white paper and strips nearly all regulatory functions from both Law Institute and Bar Council. The determination of her stance has impressed LIV leaders, if not with admiration, at least with the recognition that regulation as an issue could not be moved to the backburner. The decision was taken to let go what was lost, particularly as a significant minority of institute members were arguing for an LIV that could operate as a real lawyer union, unfettered with notions of balance and fairness that occasionally intrude upon a self-regulator.

Second, the decision was made to place an each way bet. The rationale might be: 'concede disciplinary functions if we must, but draft the submission in such a way that the Guarantee Fund stays in the LIV corner. After all, the complaints handling process is really what all the stink is about; she won't mind if we continue to run the irksome task of compensating clients for defalcation.'

With a wing and a prayer, the LIV submission does just that. The disciplinary process is relinquished — magnanimously — on the basis that the issue must be 'settled once and for all', but the SGF (the LIV argues) should be retained because Institute staff have developed expertise that the fund cannot do without. No mention of the fact that this expertise (which is real and considerable), from the Director of Professional Standards down, is readily transferable to an independent body. No mention also that, as the Attorney knows, she assented to 1993 legislation which entrenched the payment of a whole range of LIV administrative costs from the SGF coffers.

The question is now whether this carefully constructed LIV meal will be palatable to the Attorney. The SGF pepper can still be tasted, but at least the chilli formerly provided by the complaints and discipline process, pips and all, has been removed from the Institute recipe.

*Adrian Evans is Co-ordinator of Springvale Legal Service and teaches law at Monash University.*

## ACCESS TO JUSTICE

**Pro bono****AMANDA CORNWALL discusses initiatives from the legal profession.**

A crisis of confidence in the legal system in Australia has put access to justice high on the political agenda in recent years. The private legal profession is responding in a variety of ways with initiatives to help provide directly for access to justice. A relatively quiet initiative is the emergence of schemes that formalise the work done by the private legal profession for no charge for individuals in need and for public interest causes.

While lawyers have always done some work free of charge for 'good causes' or as volunteers at community organisations, more effective systems for assistance are needed. In the words of Chief Justice of the High Court, Sir Anthony Mason, when launching the Public Interest Law Clearing House (PILCH) in Victoria in September:

... lawyers have paid insufficient attention to the pursuit of their professional ideal, that is, dedication to the standards of professional excellence and the service of the public. Instead, there has been a tendency to regard the practice of the law as if it were a commercial operation. This has led to a blurring of professionalism and commercialism...

My long experience with the law has convinced me that the law and lawyers have a fundamental part to play in enhancing the quality of public life and the working of our democratic government.

**Public interest law clearing houses**

One of the first and the most ambitious projects to address this problem was the Public Interest Law Clearing House started by Public Interest Advocacy Centre (PIAC) in Sydney in 1992. The project harnesses the resources of the largest law firms in Sydney to perform legal services free of charge or at a reduced fee for legal matters in the public interest, or any type of legal work for organisations with public interest objectives.

Appropriate cases and projects are matched with participating practitioners or member law firms. Barristers and law firms are able to choose the work they do through the scheme according to their skills and available resources and avoiding any potential conflicts of interest.

The establishment of a Clearing House by (PIAC) in Sydney arose from a staff exchange between PIAC and New York Lawyers for the Public Interest (NYLPI) in 1991, a *pro bono* law centre serviced by major New York law firms. PIAC submitted a proposal to the Law Society of NSW Pro Bono Task Force in early 1992, and in March 1992 the Council of the Law Society adopted the proposal. PILCH Inc. was incorporated in July 1992 and the service started late in 1992.

The focus of the PIAC Clearing House is on: