

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.

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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:

- public interest cases and projects which address issues of broad concern or have a significant impact on disadvantaged groups, and which require assistance *pro bono publico* (for the common good); and
- the legal needs of non-profit associations.

People who are eligible for legal aid are not able to be referred under the scheme.

The PILCH scheme run by PIAC is managed by PIAC's Assistant Director, Andrea Durbach and a seconded solicitor from participating firms, who does most of the referrals and assessments, and administration of the scheme. While PIAC employs the staff and manages the scheme, it is overseen by a committee made up of representatives of the participating law firms who meet monthly to provide policy guidance and feed back on the referrals.

In its first year of operation PILCH dealt with about 400 inquires, and referred about 100 matters as a result of those inquiries.

There are currently about 40 firms participating in the PIAC scheme, all paying \$75.00 per partner per firm to join the scheme, which is used to defray the costs of administering the scheme. Additional funding for the scheme comes from PIAC's existing funding for core staff and administration. A disbursements fund operated by the NSW Law Society provides some funds for disbursements in PILCH cases.

An important feature of the PIAC Clearing House is its program of seminars on public interest law issues. These are organised in conjunction with member firms, with visiting international speakers addressing a range of issues.

Public Interest Law Clearing House goes national

In January 1994 the Consumer Law Centre Victoria took up the PILCH model and started a Clearing House project in Victoria, with eight major Melbourne law firms. A PILCH Co-ordinator was appointed in February 1994 and PILCH (Victoria) Inc. was incorporated by May 1994. The Victorian Bar Council applied to join as a full member of PILCH in July, extending the PIAC model beyond solicitors.

The Victorian Clearing House will have more staff than the PIAC scheme, with a full time manager, Amanda Cornwall, a secondeed solicitor and an administrative assistant. The extra resources will be devoted to encouraging more referrals and an active program of activities aimed at developing an awareness of public interest law among lawyers in private practice.

Funding for the Victorian Clearing House comes from the Victoria Law Foundation, Consumer Law Centre and PILCH member firms. Some funds from the PILCH Inc. membership fees are available for disbursements in PILCH cases, although the account currently holds only a modest sum.

A fledgling PILCH project also started in Queensland this year under the auspices of the Queensland Association of Independent Legal Services and the Queensland Law Society. A part-time project co-ordinator was appointed in September this year with funding from the Queensland Law Society which also provides office resources. They will provide services to clients referred only by community legal centres at first, which will help to reduce the need for a broad publicity campaign and administration of applications.

In South Australia, the Public Law Association was also formed this year with similar objectives to the PILCH groups. For the time being they are relying on voluntary assistance

through the Law School at the University of Adelaide, but plan to produce publications such as a Refugee Handbook in the near future.

A national focus for these groups will be developed through a national PILCH bulletin and a national Pro Bono Conference planned for 1995.

How PILCH relates to legal aid

One of the strict criteria applied by the Clearing House projects in each State is that applicants must not be eligible for legal aid. The respective roles of legal aid and PILCH schemes are quite distinct, although not always obvious.

Legal aid is an extension of the state's obligations to provide access to justice for citizens involved in a democracy. Fundamental to a democracy is equality before the law. The rule of law, through those controls which limit the arbitrary exercise of power by citizens and the state, legitimises the whole system of justice. Legal aid also addresses the specific right to legal representation for citizens who are being prosecuted by the state. Denial of the state's obligation to provide access to justice, and legal representation, undermines the basis of the democratic state.

The notion of *pro bono publico*, which is the premise for PILCH schemes, arises from the special obligation of lawyers to less powerful or disadvantaged sections of the community which is accepted by the legal profession as a part of its professional responsibility.

The Public Interest Law Clearing Houses, which deal with a range of public interest matters, represent a mechanism to extend the professional responsibility of practitioners, and particularly to harness the rich resources of the larger law firms. Their terms of reference are limited and their infrastructure is not capable of coping with the level of demand addressed by Legal Aid Commissions.

How PILCH relates to Law Aid

The Victorian Attorney-General announced in May this year a new scheme, called Law Aid, to assist people to gain access to the courts. She has committed an initial sum of \$3 million over three years to the scheme to cover disbursements and administration in cases involving claims for damages. Funds will be available for people who have a substantive claim for damages but are unable to afford a private lawyer or disbursements.

Law firms and barristers participating in the scheme agree not to charge a fee if the case is unsuccessful, and all costs for other disbursements will be covered by the Law Aid fund. Solicitors and barristers participating in the scheme will be requested to assist on a 'taxi rank' basis, with lawyers being required to take a case as their name comes up next on the list. However, unsuccessful litigants will be liable in the usual way to pay the costs of other parties as ordered by the court.

Unlike the PILCH scheme, the Law Aid scheme does not have a public interest element and for the time being, it is exclusively aimed at litigation involving a claim for compensation or damages. Little of the work undertaken by PILCH is expected to involve individuals who are claiming compensation, but where cases referred to PILCH (Victoria) are eligible for the Law Aid scheme they may well be referred.

Dial-a-law and community assistance service

The Victorian Law Institute's *Dial-a-Law* project and the Community Assistance Service run by the New South Wales Law Society provide recorded legal information services and a re-

ferral service. Under the *Dial-a-Law* project clients are offered the first 30 minutes of legal advice from a solicitor for \$20. Thereafter the solicitor can negotiate a normal or reduced fee, but normally a fee is charged, making the scheme outside the normal boundaries of *pro bono*.

Pro bono schemes run by Law Societies

The New South Wales Law Society runs a *pro bono* scheme parallel to PIAC's PILCH scheme, which refers individuals in need who do not qualify for legal aid and cannot afford a private lawyer.

Lawyers do the work either free of charge or at a substantially reduced cost.

It is run by a full-time *pro bono* manager, Glenn Thiele, who will also assist in an urgent matter, where a caller needs to go to court immediately and lacks the means to pay for a private solicitor.

The Law Society of Western Australia initiated *Law Access* nearly two years ago. It provides an assessment and referral service for firms which are willing to do work free of charge or for a reduced fee, for people in need or for matters in the public interest. In its first year it had 200 applications of which 136 matters were referred. These included matters for people in need who do not qualify for legal aid, public interest litigation on behalf of an environment group concerning the south west forests of WA, and acting on behalf of refugees held at Port Hedland.

It is staffed by a co-ordinator, Greg Mohen and an assistant, with access to the resources of the Law Society. Funding for *Law Access* is provided by the Law Society and the public purposes trust fund.

Pro bono arrangements with community legal centres

Community legal centres in all States have developed a variety of arrangements with private lawyers. In recent years more formalised schemes have been established to enhance the ability of under-resourced CLCs to provide a service to their constituencies. These schemes are not resourced and do not operate on a public interest criteria, aside from any criteria used by the individual centres. The Clearing House projects aim to enhance those arrangements.

An example is the arrangement between Fitzroy Legal Service (FLS) and Mallesons Stephen Jaques in Melbourne under which Mallesons make a commitment to provide a set number of hours of legal work a year for people referred by FLS. The arrangement has allowed FLS to refer individuals who needed assistance in areas in which the FLS had no expertise, or insufficient resources. It has also provided research in the production of FLS submissions and publications, such as the *Police Shootings* handbook.

The Environment Defenders Office (Vic.) (EDO) relies on lawyers from private law firms to run a free legal advisory service one afternoon a week. A lawyer from the eight participating firms, with appropriate expertise, attends the EDO office for one afternoon every few months to provide advice to EDO clients.

Many law firms have other arrangements with legal centres, especially where there are special interest groups. The Arts Law Centre, Redfern Legal Centre and Kingsford Legal Service in Sydney, for example, have solicitors seconded from large national law firms on a permanent basis, and the

firms also provide a budgeted amount of professional legal advice time each year.

Other schemes

Catholic Social Services in Victoria runs a different type of *pro bono* scheme, called Volunteer Service Bureau, providing the services of a number of professions for people who are clients of the 80 Catholic welfare agencies throughout Victoria. Father Peter Norden, Director of Policy at Catholic Social Services is keen to co-operate with the PILCH scheme as he believes it will enhance their existing arrangements with law firms.

The Human Rights and Equal Opportunity Commission (HREOC) in partnership with the Law Council have established a scheme to have lawyers provide assistance free of charge for people with mental illness. This scheme was initiated following the HREOC report *Human Rights and Mental Illness*. A co-ordinator has been appointed in each State to match people in need of lawyers with appropriate barristers and solicitors.

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