

History
of
Australian

Pro Bono Referral Schemes

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History of Australian Pro Bono Referral Schemes

Foreword

“If pro bono service is no longer to be regarded as incidental or marginal, then ways must be developed to systematise it and mainstream it into lawyers’ professional lives. This is quite a challenge in the Australian context where existing pro bono work is done on an ad hoc and relatively disorganised basis, and where there are few established programs or direct facilitating mechanisms to assist interested lawyers.”

Betty Hounslow, Public Interest Advocacy Centre staff member, in a paper to the 1992 National Legal Aid Conference.

Since 1992 when the first formal pro bono referral scheme was established in Australia, pro bono clearing houses and legal assistance referral schemes have developed as a response to concern about access to justice. Whether they are focused on the public interest or on particular disadvantaged groups or individuals, referral schemes provide assistance to those who would not otherwise be able to assert their legal rights. They do this mainly by connecting individuals and organisations with lawyers who may be willing to assist them on a pro bono basis.

But some schemes do more than this. They provide a focal point in a legal community for the coordination of a wide range of pro bono activity. They undertake projects with their lawyer members - often in conjunction with community organisations - directed at a particular community problem or issue. They involve law students and community organisations in clinics providing advice to particular disadvantaged groups or on particular areas of law and practice. In doing so, they have become important institutions in facilitating access to justice for people who would otherwise not know where to seek legal help.

This publication provides details of the 10 professional association and law firm schemes that presently exist in Australia. These schemes exist in the context of other schemes, of varied formality, and of other pathways by which disadvantaged people find their way to a pro bono service provider. For example, many firms now have pro bono coordinators who are contacted direct by community legal centres and organisations on their own behalf or on behalf of their clients. There are court established pro bono referral schemes which seek to have lawyers take on appropriate cases on a pro bono basis. Some local professional associations or groups of firms operate pro bono duty lawyer schemes at particular courts. Some courts have informal arrangements for making referrals with professional bodies or firms. There are also issue-specific referral schemes to which law firms and barristers subscribe. Further details about these other schemes and pathways can be found in the mapping report soon to be published by the National Pro Bono Resource Centre.

The following general comments can be made about the schemes described in this book:

- eligibility for assistance is assessed under each scheme’s own guidelines;
- assistance under the schemes may be provided on a without-fee, reduced fee or conditional fee basis;
- assistance will generally not be provided under the schemes if there is another form of assistance available (such as legal aid, or assistance from a CLC);

- the schemes are discretionary and there is no right to assistance;
- some schemes exclude certain kinds of matters;
- the schemes generally apply a means test, and a merits test;
- applicants must complete an application form, provide information about their case, and detailed information and documentation about income, assets and expenditure; and
- the schemes do not themselves provide disbursement assistance for matters referred under a scheme.

This publication was compiled with the aim of recording a short history of these pro bono referral schemes so that their history is not lost. It also provides a resource for existing schemes to learn about their counterparts in other States and Territories and, hopefully, will assist States and Territories that are considering establishing their own referral schemes.

John Corker
Director
National Pro Bono Resource Centre
May 2006

Australian Capital Territory

ACT Law Society Pro Bono Clearing House

History of the Scheme

Initial establishment and founders

The ACT Law Society Pro Bono Clearing House (PBCH) was launched in Canberra, ACT, on 15 November 2004. It was established by the ACT Law Society with support from the ACT legal profession and community legal centres.¹

The idea of running a referral service for pro bono work had been contemplated by the ACT Law Society for many years. Law firms Clayton Utz and Mallesons Stephen Jaques contributed many hours of work in formulating the policy behind the PBCH. Other firms have since assisted in its establishment.² In particular, Ms Rachel Lewis from Mallesons Stephen Jaques made an extensive contribution.

Reasons for establishment

The PBCH was established with the dual aims of coordinating the provision of pro bono services in the ACT³ and helping those whose legal needs fall outside Legal Aid guidelines and for whom legal assistance is not otherwise affordable.⁴

Stages of establishment

The ACT Law Society facilitated meetings with representatives from interested parties, including private firms, the ACT Bar, the Australian National University (ANU), community centres and Legal Aid.⁵ These representatives made all the significant decisions about the establishment of the PBCH and they continue to meet every two months to manage and evaluate its operations.⁶

Following the first of these meetings, lawyers from Clayton Utz and Mallesons, (Mss Katy Grimes and Rachel Lewis), produced a paper outlining the preferred options for a Pro Bono Clearing House model for the ACT.⁷ These included legal structure, referral criteria, membership and funding. The model proposed for PBCH was based on the structure of the Public Interest Law Clearing Houses operating in NSW, Victoria and Queensland - but without the limitation of the public interest criteria.

The ACT Law Society drafted a survey gauging the interest of the ACT legal profession in participating in and funding a PBCH. The results were processed and compiled into a report

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- 1 Law Society of the Australian Capital Territory (Bill Redpath, President), 'Launch of the ACT Pro Bono Clearing House' (Media Release, 12th November 2004).
 - 2 Personal Communication, Manager ACT PBCH (2005).
 - 3 Ben Caddaye, 'Law Corner' in City News, (8 February 2005), www.citynews.com.au
 - 4 Law Society of the Australian Capital Territory, 'ACT Pro Bono Clearing House Brochure' (2004).
http://www.lawsocact.asn.au/content/public2/Pro%20Bono%20Clearing%20House/PBCH%20Brochure%20_A4_.pdf at 21 March 2005. See also Note 1.
 - 5 Rachel Lewis, 'Draft Discussion Paper: Preferred Options for a Pro Bono Clearing House Model for the ACT', (2004), Law Society of ACT.
 - 6 Manager ACT PBCH, Personal Communication (2005).
 - 7 Id.

in early 2004.⁸ The Law Society then took the initiative to offer secretariat and co-ordination resources to establish the ACT PBCH.

Overview of the Scheme

Aims and objectives

The aim of the PBCH is to match people and organisations genuinely in need of pro bono legal assistance with legal service providers able to provide appropriate assistance. The service provider may be a private firm, a community legal centre, or Legal Aid.

Focus

The ACT scheme is region-specific and adopts wider criteria than purely public interest matters. Its focus is:

- ‘public interest’ law matters that affect a significant number of people or raise an issue of broad public concern addressed for the ‘common good’, and
- ‘private interest’ law matters, litigious or otherwise, which are assessed as having reasonable prospects of success.⁹

Early indications are that the greatest demand for assistance is in family law matters.¹⁰

Members

Individual lawyers and firms are recruited on a voluntary basis to be members of the PBCH. The ACT Law Society maintains a list of the members.

All members of the ACT legal profession are encouraged to participate, either by volunteering to serve on the Assessment Panel, which is responsible for reviewing applications to the PBCH, or by agreeing to undertake work referred by the PBCH. Twenty-four lawyers practising in firms, community legal centres and as barristers have volunteered to serve on the Assessment Panels. Initially, eighteen firms and six barristers volunteered to accept referrals. Additional firms interested in accepting referrals are being sought.

Participants can specify the roles they are willing to perform, their availability and their areas of practice.

Referral services

The referral service is offered to eligible applicants who apply for pro bono legal assistance. Applications are reviewed once each week by the Assessment Panel, which is made up of 3-4 volunteer lawyers. The names of applicants are forwarded to Assessment Panel members prior to each meeting to allow them to conduct conflict checks.¹¹

In assessing whether an application meets referral criteria (outlined below), the Assessment Panel considers:

- If the matter appears eligible for referral to Legal Aid and assistance from Legal Aid has not previously been sought, the Assessment Panel will recommend that the matter be referred to Legal Aid
- If the matter is not eligible for Legal Aid, the Assessment Panel will recommend that the matter be referred to one of three short-listed legal service providers.

8 Rachel Lewis, ‘Draft Discussion Paper: Preferred Options for a Pro Bono Clearing House Model for the ACT’, (2004), Law Society of ACT.

9 Law Society of the Australian Capital Territory (Bill Redpath, President), ‘Launch of the ACT Pro Bono Clearing House’ (Media Release, 12th November 2004).

10 Manager ACT PBCH, Personal communication (2005)

11 Id.

- Where the matter is one that should be dealt with by a community legal centre, the Panel will recommend the matter first be referred to a community legal centre.
- The ACT Law Society contacts a short-listed provider and if there is no conflict and the provider is able to accept the matter, the application is passed on.
- If there is a conflict or the provider is unable to accept the matter, it will be offered to the next short-listed provider.
- In the event that there is no suitable provider, the matter will be referred back to the next Assessment Panel.
- If no provider can be found after a second assessment, the client will be informed and the application will be returned.¹²

Referral criteria

Two groups of people are eligible for assistance from the PBCH:

- (i) Not-for-profit organisations or community groups whose primary purpose is charitable and who can adequately demonstrate a financial need for pro bono assistance;
- (ii) Individuals who would suffer a serious injustice if not granted legal representation and who have been refused a grant for Legal Aid, or whose matter is one outside those for which Legal Aid can provide assistance. An individual must meet one of the following ‘means’ tests:
 - The applicant’s main income must be derived from social security benefits;
 - The applicant must hold a health care card;
 - The applicant’s gross annual income must be below \$35,000 (including any income from a married or de facto spouse). This limit is increased by \$5000 for every dependent child up to a maximum of \$50,000; and
 - The applicant’s financial or other circumstances must be determined by the Assessment Panel as preventing the applicant from obtaining legal assistance.¹³

Details of referrals

During its first 4 months of operation, the PBCH sent out 55 application forms in response to queries and received 28 applications of which 14 were assessed as meeting the eligibility criteria. It successfully referred all 14 applications to legal service providers.¹⁴

After 12 months, PBCH had received 64 applications for assistance mainly in the areas of family, criminal and tenancy law. Of these, 34 applications were successfully referred out to local practitioners. Of the others, some were referred to Legal Aid or to CLCs, some did not meet the means test criteria and others were considered not to have reasonable prospects of success.

The Management Committee is monitoring the PBCH statistics and conducting qualitative analysis of the success of the service.

Other services

The extension of the PBCH into providing other services, such as running seminars and offering training in areas of particular pro bono need, was discussed prior to its establishment. At this stage the PBCH is focusing on its referral service, but the provision of other services is to be reconsidered at a later stage.¹⁵

12 Law Society of the Australian Capital Territory, ‘ACT Pro Bono Clearing House’ (2004) Law Society of ACT at 3-4.

13 Ibid at 2.

14 Manager ACT PBCH, Personal Communication (2005).

15 Id.

The PBCH was approached early in its operations to allow students to observe the Assessment Panel procedures and it was decided that their involvement would be considered at a later stage.¹⁶

The ACT Law Society administers the PBCH and organises the promotions and publications necessary for its successful operation.

Major changes since inception

The Clearing House is currently undergoing an initial trial period after which its structure and operations will be reviewed.¹⁷

Funding

The Management Committee gauged the willingness of the ACT profession to fund the PBCH prior to its establishment and discovered that little funding would be available from this source.¹⁸ The ACT Law Society provides infrastructure, administrative support and pays administrative costs. The Law Society funded the launch and continues to fund promotions associated with the PBCH.

All other 'funding' is provided in-kind in the form of the services of the Management Committee, members of Assessment Panels and lawyers undertaking referred work.

Organisational structure and staffing

The PBCH is administered by the ACT Law Society where two members of staff spend approximately one day per week administering the scheme. Applications are reviewed weekly by an Assessment Panel (see 'Referral services' above.)

The PBCH reports to the Executive of the Law Society and the PBCH Management Committee. As noted, membership of this committee includes practising lawyers, community legal centres and Legal Aid lawyers, barristers and staff members of the ACT Law Society.

If the service continues to operate successfully, it may eventually be established as a separate legal entity.

Promotion

The PBCH is promoted through the Law Society's publications and website. The ACT Law Society has from time to time placed advertisements in local newspapers to good effect. The Law Society has written to local politicians to apprise them of the service and to all firms to seek their participation. The ACT Law Society also sends out a PBCH brochure with application forms. Word-of-mouth promotion occurs through the community legal centre network and the private profession.

Current Directors

There are currently 12 members of the PBCH Management Committee.¹⁹

Contact details

Clearing House Administration
Level 3, 11 London Circuit
Canberra City ACT 2601
Postal address

16 Id.

17 Law Society of the Australian Capital Territory, 'ACT Pro Bono Clearing House Brochure' (2004), Law Society of the Australian Capital Territory.

18 Manager ACT PBCH, Personal Communication (2005).

19 Members at January 2006 included Mss Bennett, Bolton, Budavari, Crebbin, Falvi, Grimes and Kilpatrick and Messrs King, Redpath, Roser, Wheeler and Whybrow.

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Website: www.lawsocact.asn.au/content/public2/public2.asp

New South Wales

New South Wales Bar Association Legal Assistance Referral Scheme (LARS)

History of the Scheme

Initial establishment and founders

In 1994, the New South Wales Bar Association formalised its legal assistance practice by establishing the Legal Assistance Scheme,²⁰ now known as the Legal Assistance Referral Scheme (LARS).

Overview of the Scheme

Aims and objectives

LARS' stated aim is to provide legal services at either no cost or at reduced rates to people who would not otherwise be able to obtain legal assistance without suffering severe financial hardship.²¹

Focus

The focus of LARS is to assist individuals, having special regard to cases involving hardship, unfairness or risk to a person's liberty.²² Most areas of law fall within the ambit of the scheme - although matters relating to personal injury, medical negligence, neighbourhood disputes, and apprehended violence matters are generally excluded. For approved matters, a range of fee options can be negotiated between a barrister and the client. These range from no fee to a usual fee rate for the type of matter (see below).

The consideration and referral of an application for legal assistance under LARS is a matter entirely within the discretion of the Association.²³

Members

Members of LARS are barristers who have agreed to accept referrals. The NSW Bar Association 2005 Annual Report indicates that since the scheme's inception, barristers have provided over 25,000 work hours on pro bono matters.²⁴

The Manager of the scheme is able to ask any member of the bar to assist. An indication of the number of barristers involved in the work of the scheme can be gauged by the number of referrals in any given period.

20 Ian Barker, 'President's Column', (1998) 57 Stop Press 1-2 at 1.

21 NSW Bar Association Annual Report 2005 at 41.

22 Law Society of New South Wales, 'Pro Bono Work: Promoting Cultural Change Discussion Paper on the Review of Pro Bono Services by the NSW Legal Profession' (2001) at 31.

23 NSW Bar Association website at www.nswbar.asn.au/Public/LegalAssistance/content_legass.php

24 NSW Bar Association Annual Report 2005 at 41.

Referral services

The main service LARS provides is a referral service which involves three stages.²⁵ The first involves a consideration of material for which applicants are required to supply the following information:

- Details of all applications for Legal Aid or other pro bono or legal assistance and the results of their applications.
- The extent to which the applicant can contribute to the cost of assistance under the scheme.
- The extent of any work likely to be sought.
- Verification of the applicants income, for example a copy of their most recent tax return.
- Any other documents required to facilitate an application.

In the second stage of the process, the Bar Council considers the application and whether it has reasonable prospects of success. Barristers who have agreed to provide services under the LARS are asked to provide written advice to the Council on the merits of the matter and the probability of success. The Council, or the Executive Director, then considers the advice and exercises the discretion to grant or refuse assistance.

The third stage of the process involves the Bar Council considering other factors such as whether the conduct of the case is in the public interest, and the general nature of the matter with particular regard to whether there is any risk to a person's liberty.

If referral assistance is not granted, any documentation provided in support of the application is returned to the applicant.

If the application is successful, LARS will take reasonable steps to find a barrister prepared to provide an advice as to the prospects of success or legal merit of the matter. If the advice is that the matter has limited prospects of success, the barrister and the Association have no obligation to be further involved. The identity of the barrister will not be disclosed to the applicant and all paperwork will be returned.

If, however, the barrister has informed the Bar Council that he or she is willing to provide legal services to the applicant, the role of the Association, Bar Council and LARS ceases. The barrister and applicant are free to enter into a retainer and fee disclosure agreement directly (or with the applicant's solicitor, if a solicitor is instructed) which must comply with Part 11 of the *Legal Profession Act* 1987. An applicant must be prepared to retain a solicitor for the matter if the Bar Association considers it necessary. The fee arrangement may include one or more of the following terms:

- the barrister may elect to cease acting on behalf of the applicant if the proceedings are transferred out of New South Wales;
- fees may be charged by the barrister at his/her usual fee or rate for a matter of that type, complexity and jurisdiction, payable only in the event of a successful outcome by verdict or settlement and/or an order for costs, and/or actual recovery of costs from another party;
- fees may be payable on an instalment basis;
- fees may be charged on a reduced basis; or
- no fees may be charged.²⁶

Referral criteria

Factors considered by the Bar Association for successful applications include:²⁷

25 New South Wales Bar Association
<http://www.nswbar.asn.au/Public/LegalAssistance/content_legass.php> at 24 February 2006.

26 *Id.*, section dated 25 March 2004.

- The applicant's gross income, which must not exceed \$1000 a week.
- Whether the matter has been refused Legal Aid because it lacked merit or where there were no reasonable prospects of success. Assistance will also not be provided for those who have been refused assistance under a pro bono scheme offered by the Federal Court of Australia, the Supreme Court of NSW, the District Court of NSW, the Law Society of NSW, the Sydney Regional Aboriginal Legal Corporation Pro Bono Referral Scheme or large firms of solicitors.
- The matter must fall within those dealt with by the scheme (see 'Focus' above).
- Assistance under the scheme is not to be seen as a substitute for legal aid and applicants are usually required to apply to the Legal Aid Commission first.
- Whether disputes can be resolved using Community Justice Centres or alternative assistance schemes.
- Whether matters are subject to current court proceedings or proposed litigation.
- Whether the matter is attempting to overcome *Dietrich*-type problems.
- Whether the matter is likely to be set down for a long trial.
- The financial resources of the applicant.
- The nature and effect of any previous assistance and the conduct of the applicant on those occasions.
- Applicants must also be prepared to waive any confidentiality or privilege as required to enable enquiries to be made and also must cooperate with the Association at all times in respect of their application.

Details of referrals

For the 2004-2005 (most recent) years, barristers contributed approximately 2,675 work hours to the scheme.²⁸ It should be noted that barristers in NSW also undertake pro bono work outside of the Scheme.

Year	Number of Applications	Number of Eligible Referrals
1997-1998	291	241
1998-1999	328	240
1999-2000	350	230
2000-2001	380	245
2001-2002	302	191
2002-2003	358	189
2003-2004	258	119
2004-2005	278	135

Applications which are not successful are those which fall outside the guidelines of the scheme, for example: eligibility for Legal Aid, type of matter, or financial circumstances.

Other services

The Manager and staff of LARS manage the Duty Barrister Scheme, operating at the Local and District Courts at the Downing Centre and at the Australian Industrial Relations

27 Ibid

28 NSW Bar Association Annual Report 2005.

Commission. They also assist with the administration of court appointed legal assistance schemes, operating in the Federal Court, the Federal Magistrates Court, the Supreme Court, the Land and Environment Court and the District Court, through answering day-to-day queries and updating lists of barristers who have volunteered for the schemes.²⁹

LARS works closely with the Law Society Pro Bono Scheme. The Bar Association and the Law Society provide a list of panel members who practice migration law for the Federal Court of Australia Refugee Review Tribunal Legal Advice Scheme and also assist the Bar Council in determining the eligibility of barristers who wish to be added to this panel.³⁰

LARS also provides placements for the Public Interest Advocacy Centre Summer and Winter Schools.³¹

Over 500,000 people visited the Bar Association's *Find a Barrister* section on its website during the 2004-2005 year. The site is specifically targeted at people requesting barrister services and is extremely helpful for applicants who have not qualified on financial grounds for legal assistance from LARS.³²

The Bar Association is a member of the newly formed NSW Legal Assistance Forum which was set up to improve service delivery to socially and economically disadvantaged people.³³

Major changes since inception

The name of the Scheme was changed in mid 2000 from the Legal Assistance Scheme to LARS and a new set of guidelines was approved by the Bar Council.³⁴ Changes included the exclusion of personal injury, medical negligence, neighbourhood disputes and Apprehended Violence Order matters from the scheme. Additionally, matters which have been refused assistance from other providers due to lack of legal merit were excluded and the gross income threshold was altered to \$1000 per week.

In 2000, a management consultant reviewed the Scheme's administration, principally because of the increasing number of applications.³⁵ Procedures such as the TRIM filing system were put into place to deal with the increasing workload.

Amendments were made in 2002 to LARS guidelines to facilitate the schemes incorporation into LawAccess, the NSW 'one stop shop' providing access to legal services and assistance.³⁶ The Bar Association is one of the founding partners in LawAccess, together with the NSW Attorney-General's Department, the NSW Legal Aid Commission and the Law Society of NSW. In addition to the founding partners, the Combined Community Legal Centres of NSW and Public Interest Advocacy Centre are on the LawAccess NSW board.³⁷ LawAccess is only one source of referrals to LARS.

Funding

From 1996-1999, the Law and Justice Foundation of NSW funded the administration of the Scheme with an annual grant of \$100,000, supplemented by in-kind funding from the Bar

29 NSW Bar Association Annual Report 2004 at 41.

30 Ibid.

31 NSW Bar Association Annual Report 2003, 38; NSW Bar Association Annual Report (2002) at 31.

32 NSW Bar Association Annual Report 2005, at 43.

33 See <http://www.legalaid.nsw.gov.au>

34 NSW Bar Association Annual Report 2001.

35 Ibid.

36 NSW Bar Association Annual Report 2003.

37 LawAccess was launched by the Attorney General of NSW, the Hon Bob Debus MP, on 17 June 2002.

Association.³⁸ Between 1999 and the present, the majority of the funding has come from the Public Purpose Fund through the Law and Justice Foundation of NSW. Funds from the Public Purpose Fund cover most of the staffing costs, with the rest being met by the Bar Association. The Bar Association bears a significant portion of the costs for the administrative infrastructure.

Organisational structure and staffing

The Bar Association Legal Assistance Department runs LARS.³⁹ Currently, paid staff include a Manager with day-to-day responsibility for the scheme, and an Administrative Assistant.

Promotion

LARS is promoted through the LawAccess and NSW Bar Association's websites but is also listed and linked on many other legal help sites.⁴⁰ The Scheme also produces an information brochure which is provided to Community Legal Centres and Legal Aid Offices to explain the services offered.

Contact details

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Website: http://www.nswbar.asn.au/Public/LegalAssistance/content_legass.php

38 Michelle Hannon and Kate Harrison, 'Delivering pro bono services: promoting access, equity and efficiency' (1998) 73 Reform 26 at 28.

39 NSW Bar Association Annual Report 1999 at 25.

40 See www.lawaccess.nsw.gov.au

New South Wales Law Society Pro Bono Scheme

History of the Scheme

Initial establishment and founders

The New South Wales Law Society Community Referral Service Pro Bono Scheme (PBS) was founded in March 1992 by the NSW Law Society Council and the Law and Justice Foundation of NSW, with support from solicitors and law firms in NSW.⁴¹

Reasons for establishment

The PBS was established in recognition of the need to improve access to legal services, especially for disadvantaged members of society.⁴²

Stages of establishment

In 1991 the NSW Law Society set up a Pro Bono Task Force, chaired by Councilor Phillip King, to obtain information on the amount of pro bono work being undertaken by solicitors. The Task Force found that the contribution by private lawyers to pro bono work was considerable and that it was spread unevenly across the profession. It was effected in a variety of ways including legal work done at substantial discounts for non-profit organisations or for no charge to Indigenous people, attendance at community legal centres (CLCs) and through cash or in-kind donations to CLCs.⁴³

The Pro Bono Task Force produced a report which made recommendations in relation to setting up the PBS.⁴⁴ One of the recommendations recognised the professional responsibility of legal practitioners to contribute an identifiable part of their time to work without charge or at substantially reduced charges:

- to establish or preserve the rights of the poor, the disadvantaged, or classes of persons who otherwise deserve public support; or
- for non-profit organisations working for the public benefit or particular public sectors; or
- for the improvement of the law or the legal system.

On 26 March 1992, the recommendations were considered and all were adopted by the Law Society Council including the recommendation that the PBS be established.⁴⁵

Another recommendation was the setting up of a Pro Bono Committee, which was established in 1992 to oversee implementation of the recommendations.⁴⁶ The Committee comprised representatives of the Law Society, community legal centres, the Public Interest Law Clearing House (NSW) Inc, Legal Aid NSW and pro bono practitioners. The costs of the Committee were absorbed by the Law Society and members acted on a voluntary basis with meetings hosted by law firms. During the initial stages of the PBS, the Committee monitored the operations of the PBS and received reports relating to it.

41 Law Society of New South Wales, 'Pro Bono Work: Promoting Cultural Change Discussion Paper on the Review of Pro Bono Services by the NSW Legal Profession' (2001) at 7.

42 Ibid at 8.

43 Personal Communication, NSW PBS Solicitor (2005).

44 The Pro Bono Task Force 'The Legal Profession - Commitment to Pro Bono Work: A Report to the Council of the Law Society of New South Wales Sydney', (1992) Law Society of New South Wales.

45 Ibid.

46 The Pro Bono Task Force, above n 44.

The Council of the Law Society of NSW also established the Law Foundation Pro Bono Disbursement Fund on 18 May 1993 to cover disbursements already expended by legal practitioners who undertook pro bono work through the formal NSW Schemes. The Law Foundation allocated the sum of \$200,000 to be administered by the Trustees.⁴⁷

Overview of the Scheme

Aims and objectives

The PBS aims to further some of the objectives of the Law Society's Pro Bono policy, namely, to encourage its members to undertake pro bono legal work, to highlight the professional responsibilities of a legal practitioner and to ensure that pro bono work is a part of legal practice.

The policy states that pro bono work should focus on establishing or preserving:

- the rights of the poor, the disadvantaged or classes of persons who otherwise deserve public support;
- the non-profit organisations working for the public benefit or particular public sectors; and
- improvement of the law or the legal system.⁴⁸

The Scheme's aims and objectives include the maintenance and improvement of its level of service to the community - as well as creating stronger relationships with NSW solicitors and firms in order to broaden the referral base and provide assistance to greater numbers of individuals and groups.⁴⁹ When making referrals, the Scheme makes every effort to assist in order to reduce the amount of work required by the practitioner.

The Scheme's decision to assist eligible applicants is discretionary.⁵⁰

Focus

The focus of the Scheme⁵¹ is the provision of services to eligible applicants in the following areas of law: administrative law, Apprehended Violence Order applications, business law in relation to non-profit organisations, childcare and protection, criminal law, debt and credit matters, discrimination, employment and industrial law, family law in relation to children's matters only, immigration law, tenancy matters and wills and estates.

Areas of law which are not included in the scheme are: business law except in limited circumstances, neighbourhood disputes, family law property settlements and maintenance, workers compensation, personal injury and professional negligence, defended Apprehended Violence Orders, traffic matters and motor vehicle accidents, local government and planning and victims compensation matters.

Applicants to the Scheme are usually individuals but may also be organisations, particularly non-profit organisations.

47 PBS solicitor, Personal communication (2005).

48 'Law Society of New South Wales – Pro Bono Policy' (2004) Law Society of New South Wales, <<http://www.lawsociety.com.au/page.asp?PartID=6745>> at 4 April 2005.

49 Law Society of New South Wales, 'Pro Bono Work: Promoting Cultural Change Discussion Paper on the Review of Pro Bono Services by the NSW Legal Profession' (2001) at 8.

50 Law Society of NSW website < <http://www.lawsociety.com.au/page.asp?partID=6744>> at 15 April 2006.

51 Law Society of New South Wales, 'Law Society of New South Wales – Pro Bono Scheme' (2004) Law Society of New South Wales <http://www.lawsociety.com.au/page.asp?PartID=6744> at 4 April 2005.

Members

Law firms may join the PBS.⁵² Member firms must nominate a solicitor who will be responsible for undertaking the work and allocating the matters within the firm. Individual lawyer registrations are not permitted.

As of May 2005 there were 4,187 firms in the State of NSW. Of these 340 had agreed to accept referrals from the Scheme. This represents participation by approximately 8% of all NSW firms.⁵³

Referral services

The PBS coordinates referrals of applicants to member law firms. If the applicant is eligible and the matter falls within the Scheme's guidelines, the Pro Bono Solicitor will contact firms on the register to determine if they will take the case.⁵⁴ If the case is accepted, the client and the law firm may take on the case without charge or at a substantially reduced fee.⁵⁵ Solicitors who accept matters from the Scheme are able to access the Pro Bono Disbursement Trust Fund. Many of the disbursements incurred in pro bono matters are refundable through the fund.⁵⁶ The Scheme's decision to assist eligible applicants is discretionary.

Referral criteria

Applicants are subjected to a means, needs and merits test.⁵⁷

Means Test:

- The applicant must be below the income threshold of \$600 a week, after tax;⁵⁸
- Other factors that will be considered include the income of co-habitants and the number of children. Clients who earn up to \$500 a week will be asked to make a small contribution to the fees.

Needs Test

- The applicant must be unable to meet the full costs of legal representation otherwise; and
- must have been refused legal aid for the relevant proceedings.

Merits Test:

- The matter must have a reasonable prospect for success;
- The type of matter must fall within the scheme's guideline in areas considered under the scheme.

52 Law Society of New South Wales, 'Law Society of New South Wales – Pro Bono: Making sure the wheels don't fall off' (2004) Law Society of New South Wales at <http://www.lawsociety.com.au/page.asp?PartID=16605> at 4 April 2005.

53 NSW PBS solicitor, Personal communication (2005).

54 Law Society of New South Wales, 'Pro Bono Work: Promoting Cultural Change Discussion Paper on the Review of Pro Bono Services by the NSW Legal Profession' (2001) at 7.

55 Ibid.

56 Ibid.

57 See <http://www.lawsociety.com.au/page.asp?PartID=6744>

58 Law Society of New South Wales, 'Pro Bono Work: Promoting Cultural Change Discussion Paper on the Review of Pro Bono Services by the NSW Legal Profession' (2001) at 8.

Details of referrals

Year	Number of Applications	Number of Referrals
1994-1995	670	164
1995-1996	637	173
1996-1997	579	227
1997-1998	427	174
1998-1999	481	144
1999-2000	555	111
2000-2001	497	115
2001-2002	348	71
2002-2003	380	116
2003-2004	385	137
2004-2005 (to May)	500	188

There are no target numbers for applications or referrals at the NSW PBS. The saturation point for referrals varies from time to time depending on firms' capacity and the resources available within the PBS.

Other services

In 2005, the NSW Pro Bono Scheme Solicitor commenced the coordination of a monthly pro bono column with the Law Society Journal and established a webpage within the Law Society's website for practitioners.⁵⁹

Additionally, the Scheme originally offered one full-time placement opportunity for students to complete their PLT practical component by undertaking pro bono services. Since 2004, the Scheme has offered three placements.⁶⁰

The Scheme has a relationship with the Women's Legal Service and four large Sydney law firms which, in 2005, commenced a pilot program to assist financially disadvantaged Indigenous women in regional NSW. The Scheme has employed a part-time coordinator for this project.⁶¹

Major changes since inception

The Community Assistance Department of the Law Society of NSW used to field inquiries from members of the public regarding the PBS and give legal advice. In 2001, this service was relocated to LawAccess which resulted in a decrease in the number of applications to the Scheme. Recently, the number of applications has again increased.⁶²

Funding

The Scheme is funded by the Public Purpose Fund through the Law and Justice Foundation of NSW and receives in kind support from the Law Society.⁶³ The Public Purpose Fund supports the salaries of the PBS Solicitor and the part-time administrative assistant. The Law Society covers all other costs of the Scheme. The Scheme does not charge membership fees.

59 Ibid.

60 Ibid.

61 Ibid.

62 Ibid.

63 Michelle Hannon and Kate Harrison, 'Delivering pro bono services: promoting access, equity and efficiency' (1998) 73 Reform 26 at 28.

Organisational structure and staffing

The Scheme is run by the Community Assistance Department of the Law Society of NSW and works closely with the NSW Bar Association Legal Assistance Scheme to ensure a coordinated approach to the provision of pro bono services. The person responsible for the day-to-day management (assessing applications for eligibility) is the Pro Bono Solicitor. The Pro Bono Scheme must submit a budget to the Public Purpose Fund at regular intervals. The Pro Bono Solicitor is usually assisted by two full time and other part-time volunteers. Currently, there are three full-time equivalent volunteer positions for PLT students. Work periods for the students are up to 16 weeks but may vary according to the student.⁶⁴

Promotion

The PBS is promoted to potential applicants through bodies that may refer applicants to the Scheme and solicitors who may volunteer to be on the panel.⁶⁵ The PBS is promoted on the Law Society website and in the Law Society Journal. Prospective applicants can inquire at one of the following agencies: LawAccess, community legal centres, legal advice centres, private legal practices, welfare agencies and the Legal Aid Commission.⁶⁶

Contact details

The Pro Bono Solicitor
Law Society of NSW
170 Phillip St
Sydney NSW 2000
Tel: (02) 9926 0364 Fax: (02) 9231 5809
DX: DX362
Email: probonoscheme@lawsocnsw.asn.au
Website: www.lawsociety.com.au/page.asp?partID=6744

64 Ibid.

65 Ibid.

66 Law Society of NSW, above n 48 at <http://www.lawsociety.com.au/page.asp?partID=6744>

The Public Interest Law Clearing House Inc - New South Wales

History of the Scheme

Initial establishment and founders

The Public Interest Law Clearing House Inc (PILCH) was the first of its kind in Australia.⁶⁷ It commenced operations in 1992 as an initiative of the Public Interest Advocacy Centre (PIAC), law firms, the Law Society of NSW and more recently has been joined by the NSW Bar Association. In 1991 PIAC hosted a staff exchange with New York Lawyers for the Public Interest (NYLPI), a pro bono organisation supported by private law firms in New York City. This provided PIAC with a wealth of material on US approaches and initiatives to meet unaddressed legal needs through partnerships with private lawyers. At this time, PIAC held informal discussions with a number of major law firms in Sydney to explore the potential for a co-operative venture to tap the resources of larger law firms to provide pro bono services.

PIAC's response to the challenge identified by PIAC staff member Betty Hounslow⁶⁸ in 1992 was the development of the PILCH mechanism, housed within PIAC.

The PILCH model of pro bono service delivery developed by PIAC was informed by the NYLPI model, adapted to the particular needs of the Australian community and the resources available. The model aimed to enhance access to justice through expanding pro bono services in NSW.

Reasons for establishment

PILCH was established in response to the growing incidence of unmet legal need within the community. Underlying its establishment was the commitment from private lawyers that the provision of pro bono services is intrinsic to legal professional responsibility. The objective of PILCH was to ensure that non-profit organisations and disadvantaged individuals and communities had access to high quality legal assistance to pursue matters of public importance.

Stages of establishment

In December 1991, the Law Society of NSW established a Pro Bono Task Force to recommend to the Law Society a policy on pro bono work and appropriate action to support that policy. Andrea Durbach and Betty Hounslow represented PIAC on the Task Force, chaired by the late Mr Phillip King of Allen Allen and Hemsley (now Allens Arthur Robinson). Andrea Durbach, who later became Director of PIAC and the PILCH Coordinator, coordinated the PIAC proposal. The Task Force adopted the PIAC proposal as a joint venture and included the proposal in its recommendations to the Council of the Law Society.

In March 1992, the Council of the Law Society adopted the clearinghouse proposal and recommended the establishment of PILCH in conjunction with law firms. At the same time the Task Force recommended the establishment of the Law Society Pro Bono Referral Scheme. The PIAC proposal was that PILCH be established as one mechanism to facilitate public interest pro bono work by identifying and referring appropriate cases and projects to medium and larger firms, concentrating on two areas:

67 'What is PILCH?' at <http://www.piac.asn.au/legal/pilchhelp.html> (9 February 2006).

- legal cases and projects raising matters of broad public interest; and
- legal needs of non-profit organisations.

It was acknowledged that mid and top-tier law firms were ideally placed to assist in these two areas of work that were often beyond the capacity of the Legal Aid Commission, community legal centres and sole practitioners.

In May 1992, PIAC convened a meeting with Law Society and law firm representatives to formulate a corporate, management and operational structure for PILCH, for approval by the Law Society and the PIAC Board. It was agreed that PILCH be established as a separate entity and that its operations be managed by PIAC. Its revenue would derive from annual membership fees and its operations would be directed by a Board with representatives from the Law Society, PIAC and law firms.

PILCH was incorporated on 9 July 1992 under the *Associations Incorporation Act 1984*. Founding members of the Association were PIAC, the Law Society of NSW and Sydney CBD law firms.

The Law Society convened a meeting on 10 July 1992, inviting law firms to become founding members of PILCH. Twenty-seven law firms were represented at the meeting and they were addressed by John Marsden, Danny Gilbert and Phillip King on the structure and proposed operations of PILCH. The meeting approved an Interim Board for PILCH.

On 24 July 1992 the first meeting of the PILCH Interim Board⁶⁸ was held at the Law Society and PILCH was officially launched on 27 October 1992 during Lexpo 92. Membership of PILCH was initially open to law firms only.⁶⁹

In 1993 the NSW Law Foundation approved a development grant to PILCH of \$26,200 to assist with establishment, operating and capital costs.

Overview of the Scheme

Aims and objectives

The aims and objectives of PILCH are:

- to identify matters of public interest that warrant legal assistance *pro bono publico* (for the common good);
- to identify the legal needs of non-profit organisations;

68 A quotation from Betty Hounslow's paper delivered to the National Legal Aid Conference (1992) is included in the Foreword to this paper.

68 Directors were: Phillip King, Allen Allen & Hemsley: President and Law Society representative; Keith Steele, Freehill Hollingdale & Page: Vice-President and Member Firm representative; Michael Hogan, Director of PIAC: Secretary/Treasurer and PIAC representative; Danny Gilbert, Gilbert & Tobin and Chair of PIAC: PIAC representative; Greg Hammond, Mallesons Stephen Jaques: Member Firm representative; and Michael Eyers, Blake Dawson Waldron: Member Firm representative.

69 At 30 June 1993, the members of PILCH were: Abbott Tout Russell Kennedy; Allen Allen & Hemsley; Baker & McKenzie; Bartier Perry & Purcell; Blake Dawson Waldron; Bryden Doherty & Shead; Carroll & O'Dea; Corrs Chambers Westgarth; Cowley Hearne; Dennis & Co; Dibbs Crowther & Osborne; Dunhill Madden Butler; Ebsworth & Ebsworth; Freehill Hollingdale & Page; Gadens Ridgeway; Gilbert & Tobin; Gillis Delaney Brown; Henry Davis York; Hunt & Hunt; Maher & Flynn; Makinson & d'Apice; Mallesons Stephen Jaques; Mardsens; Matthews Williams; Michell Sillar; Minter Ellison Morris Fletcher; Moffatt Sullivan; Norton Smith & Co; Parish Patience; Phillips Fox; Price Waterhouse; Public Interest Advocacy Centre; Sly & Weigall; Taylor & Scott; Tress Cocks & Maddox; Woolf Associates.

- to match disadvantaged and under-represented individuals, and groups who have a need for otherwise unavailable legal assistance with PILCH member law firms and barristers to utilise the diverse skills and resources of private lawyers and other professionals in a broad range of public interest matters;
- to expand the participation of private practitioners in the law reform process;
- to seek the integration of pro bono work with legal practice; and
- to encourage cooperation between private practitioners and public interest lawyers.⁷⁰

Focus

The core activity of PILCH is its legal assessment and referral service for clients requesting legal advice and representation. Applications for assistance are assessed against eligibility criteria and eligible matters are referred to PILCH members for pro bono assistance. Referred matters are monitored by PILCH staff until the assistance is completed. Matters that do not meet the PILCH criteria are referred to other appropriate agencies, where possible.

Members

Membership of PILCH includes NSW law firms, barristers and corporate lawyers to whom requests for legal assistance can be referred. In addition, PILCH is also able to call on the assistance of its associate membership, which includes accountancy firms. As at April 2006, PILCH had 29 law firm members, 17 barrister members (9 of these being chambers of barristers), 2 associate members and 1 corporate legal department.⁷¹

Referral services

PILCH services include projects and cases, each with particular eligibility criteria. Before a project is commenced, compliance with the following criteria is required:

- The project will focus on providing legal services to individuals or organisations in areas of public interest; and
- PILCH members have the necessary expertise to provide effective legal services to assist those individuals or the capacity to readily develop that expertise with appropriate support from PILCH.
 - Matters of ‘Public interest’ include matters that:
 - particularly impact on disadvantaged or marginalised groups; or
 - raise matters of broad public concern.

In this regard, PILCH’s focus is on matters concerning:

- Human rights, particularly discrimination and the civil rights of people with mental illness, children, the homeless, people with disabilities, and Indigenous Australians.
- Abuse of power by government officials.
- Specific matters of current public concern, presently, the impact of the industrial relations law reform on the rights of employees and counter-terrorism legislation.

Before a case is assessed for referral, compliance with the following criteria is required:

- The applicant must be either an individual or a not-for-profit organisation.
- Where the applicant is an individual, he or she must demonstrate an entitlement to *pro bono* legal assistance through:
- being unable or, to the satisfaction of the Clearing House, ineligible to obtain Legal Aid and of insufficient means to reasonably afford requisite legal services at the applicable professional charging rates; and

70 See <http://www.piac.asn.au/legal/aims.html>

71 A list of current PILCH members can be obtained at <http://piac.asn.au/legal/pilchhelp.html>

- having a legal matter of public interest, where a legal remedy or other assistance is required and the matter requires addressing *pro bono publico* ('for the common good').

Where the applicant is a not-for-profit organisation, it must be an organisation that provides services that are in the public interest with limited resources to provide those services.

Details of referrals

Year	Number of Enquiries	Number of Referrals
1992-1993	162	48
1993-1994	250	60
1994-1995	250	60
1995-1996	200	54
1996-1997	266	86
1997-1998	217	54
1998-1999	198	51
1999-2000	179	51
2000-2001	235	49
2001-2002	212	60
2002-2003	247	90
2003-2004	260	88
2004-2005	247	77

Projects

While the work of PILCH initially focused on assisting individuals and community organisations through the assessment and referral scheme, it became clear that PILCH could have an impact on meeting the needs of marginalised and disadvantaged communities by adopting a project-based approach to systemic issues, in partnership with other organisations. PILCH's involvement in a number of projects since 1996 has been possible through the support of its members who have accepted referrals, assisted with publications, conducted training and hosted project activities. Major projects undertaken by PILCH are detailed below under *Major changes since inception*.

Current PILCH projects include:

- Homeless Persons' Legal Service (HPLS),⁷² a joint initiative between PIAC and PILCH;
- Children in Detention Advocacy Project (CID^aAP),⁷³ a joint initiative of PIAC, PILCH and the Legal Aid Commission of NSW;
- Practising in the Public Interest (PIPI) Course,⁷⁴ a joint initiative of PIAC, PILCH and participating universities; and
- Predatory Lending Project,⁷⁵ a joint project of PILCH, Consumer Credit Legal Centre and Legal Aid Commission of NSW.

72 Further information about the HPLS is available at <http://piac.asn.au/legal/hpls.html> or contact the HPLS Co-ordinator at homelessproject@piac.asn.au

73 For further information contact the PILCH Co-ordinator or the PIAC Senior Solicitor at pilch@piac.asn.au

74 For more information contact the PIAC Training Co-ordinator at pilch@piac.asn.au

75 For further information contact the PILCH Co-ordinator.

Other services

From time to time PILCH prepares law reform submissions on issues relevant to pro bono practice and access to justice. Two examples of this work are the response to the Federal Civil Justice System Strategy Paper prepared by the Attorney-General's Department (April 2004) and the submission to the Law Reform Commission's Discussion Paper on Expert Witnesses (February 2005).

PILCH regularly holds seminars which are supported by members through the provision of venues, speakers and publication of factsheets.

Each year a PILCH member hosts the Annual PILCH function for summer clerks. This provides an opportunity to address clerks on ways in which they can undertake pro bono and public interest litigation while working in private practice.

PILCH provides information about its work and services through a range of publication activities. These include maintaining its website, publication of a monthly electronic bulletin for members and key stakeholders, contribution to the bi-annual *PIAC Bulletin* and to external journals and newsletters such as the *Law Society Journal* and *NCOSS News*.

In 2005, PILCH, with the assistance of Minter Ellison, launched the *Court and Tribunal Fee Waiver Manual*.⁷⁶ The Manual was developed as an access to justice resource for litigants and pro bono practitioners in NSW. It provides details of the circumstances in which a court or tribunal fee may be waived or postponed.

Major changes since inception

On 16 April 1993, PILCH membership was opened up to associate members (people, firms and entities outside the legal profession). Subsequently, accounting firms Price Waterhouse (now PricewaterhouseCoopers), Economos and Partners Pty Ltd and Arthur Anderson joined PILCH. In August 1994, membership of PILCH was opened up to barristers,⁷⁷ and in November 1998 the category was expanded to include chambers of barristers. In 1998 the NSW Bar Association became a member of PILCH.

In August 2003 PILCH amended its Rules to admit corporate legal departments to membership and currently MLC Ltd is the only member in this category.

In 2002-2003, Nexus Management Consulting conducted a review of PILCH and made a number of recommendations. The Board has sought to implement these recommendations where practicable, particularly in the area of extending its project work.

Funding

The financial resources of PILCH are derived primarily from annual membership fees currently levied at the rates (exclusive of GST) below.

Law Firms	\$130.00 per partner
Barristers' Chambers	\$500.00 per floor
Individual Barristers	\$130.00 per barrister
Associate Members	\$240.00 per member

76 The Manual can be accessed online at <http://www.nationalprobono.org.au/publications/legalguide/feewaivermanual.htm> or at http://piac.asn.au/publications/pubs/feewaiver_20051031.html

77 The founding barrister and floor members were: Jay Anderson; Paul Cattini; Kevin Connor; John Gallagher SC; David Robertson; Peter Rout; John Wilson; 5th Floor Selborne Chambers; Mark Brabazon of 5th Floor Selborne Chambers was the first barrister representative on the Board.

Corporate Law Departments:	
Fewer than 5 solicitors	\$1,000.00 per annum
Between 5-20 solicitors	\$2,000.00 per annum
Over 20 solicitors	\$3,000.00 per annum

In addition to membership fees, some revenue is generated from PILCH functions and projects, all of which are supported by PILCH members.

Governance

PILCH is co-located with PIAC in Sydney. PILCH is managed by a Board comprising Board appointees, elected representatives from each of its categories of membership and representatives nominated by the Law Society of NSW, the NSW Bar Association and PIAC.

In 2005, in response to the need for further staffing resources for PILCH, PIAC agreed to extend its existing College of Law Placement program to enable the recruitment of a volunteer student for four-month periods to assist the PILCH Coordinator and secondee. The first position was filled in September 2005.

A significant and ongoing resource has been the provision of solicitors on secondment by PILCH member firms to assist with the day-to-day running of the referral scheme. The work of secondees continues to be a vital factor in the successful operation of the scheme. Secondees are currently seconded for periods of four months on a full-time basis. They undertake a broad range of activities across a wide spectrum of legal issues, including discrimination, native title, administrative, commercial and environmental law. They have extensive client contact, manage a large number of active files and respond to the constraints of working with minimal resources.

Promotion

PILCH distributes an information brochure available in English and nine other community languages. It undertakes staff visits to community legal centres and peak community sector bodies and to law firms and barristers. It conducts training and delivers papers at conferences and seminars.

Secondees to PILCH, aside from their critical role in maintaining the effectiveness and operation of the assessment and referral scheme and broader activities of PILCH, importantly become ambassadors for the public interest.

Current Directors

The Board of Directors of PILCH has representatives from PILCH member firms, barristers and nominees from PIAC, the Law Society of NSW and the NSW Bar Association. Details of the current Board members can be found at <http://www.piac.asn.au/legal/pilchhelp.html>.

Contact details

Public Interest Law Clearing House
Level 9, 299 Elizabeth Street
Sydney, NSW 2000
Tel: (02) 8898 6550; Fax: (02) 8898 6555
DX: DX643 Sydney
Email: pilch@piac.asn.au
Website: <http://www.piac.asn.au/legal/pilchhelp.html>

Queensland

Queensland Public Interest Law Clearing House Incorporated (QPILCH)

History of the Scheme

Initial establishment and founders

QPILCH was established in early 2001 by a Queensland committee which formed to develop a PILCH initiative, based on the NSW model. It was launched on 19 April 2002 and is a member of the Australian PILCH network. QPILCH was an initiative of several private law firms, community legal services, the Queensland Bar Association, Legal Aid Queensland and Griffith University.⁷⁸

Representatives of the Queensland Association of Independent Legal Services (QAILS) (Merran Lawler) and Legal Aid Queensland (Simon Cleary) were instrumental in forming QPILCH with support from six foundation law firms – Allens Arthur Robinson (Andrew Buchanan), Blake Dawson Waldron (Lucy Bretherton), Clayton Utz (Geoff Harley), Mallesons Stephen Jaques (Hugh Scott-Mackenzie), Minter Ellison (Robert Reed) and McCullough Robertson (Peter Rosengren).

Reasons for establishment

At the QPILCH launch in April 2002, QPILCH President Andrew Buchanan, referred to the need to coordinate pro bono professional resources to assist the disadvantaged community, especially in public interest cases with the potential to benefit a greater number of people.⁷⁹

The Scheme also helped publicise the dedication and sense of community of pro bono lawyers, law students and academics.⁸⁰

Stages of establishment

The Management Committee acted quickly to incorporate the association in June 2001 and members assessed and referred several cases in this formative period. The six foundation firms each contributed funds to commence operations and the first coordinator was employed in December 2001. Legal Aid Queensland was very supportive, providing administrative support and establishment resources, including assistance in setting up premises, donated for the first year by member firm Shine Roche McGowan. By September 2002, QPILCH had attracted 26 members, including law firms, barristers, the Queensland Law Society and accounting firm BDO Kendalls.

78 Exchange of Christmas Greetings and Presentation of Senior Council
www.courts.qld.gov.au/publications/articles/speeches/2001/dj121201.pdf at December 2001.

79 QPILCH Launch, Headlines, www.qpilch.org.au/news.htm at April 2002.

80 QPILCH Annual Report 2001-2002 at 3.

Overview of the Scheme

Aims and objectives

The aim of the Scheme is to increase access to justice by the disadvantaged sector of the community and to assist and support community groups that promote public interest matters.⁸¹ QPILCH also aims to encourage cooperation between private lawyers and public interest lawyers and to promote awareness and support for public interest legal involvement by private lawyers in general.⁸²

Focus

The focus of QPILCH is to act as a central point of contact for the community to seek legal assistance. QPILCH serves to establish connections between members of the profession willing to provide services, and those in the community who need them. QPILCH also acts as a filter to ensure that more significant cases gain priority.

Members

Members of QPILCH are classified according to their status as firms, barristers, legal unit members, associate members, honorary members and life members. Some organisations have special membership status such as the Queensland Law Society Incorporated, Legal Aid Queensland, the Bar Association of Queensland and QAILS.⁸³ At February 2006 QPILCH had 27 law firm members, 31 barrister members, 5 associate members and 1 government and 1 corporate legal department member⁸⁴.

Referral services

QPILCH refers requests for legal assistance in public interest matters to its members who provide assistance on a pro bono or reduced-fee basis. Services provided by QPILCH members include giving of advice and opinions, drafting documents, mediation and negotiation, litigation, legal projects and research. QPILCH receives applications from individuals, organisations and community legal centres, the courts and other referral agencies. Where a referral cannot be made by QPILCH or where the application is ineligible, QPILCH also refers matters to other agencies for handling.⁸⁵

Other services

QPILCH has also implemented a number of major projects to promote the public interest and access to justice. Most have been coordinated by secondments from member law firms or universities. Projects include:

- the Refugee and Immigration Legal Support Project (a joint project between QPILCH and the South Brisbane Immigration and Community Legal Service), which provides legal assistance to Temporary Protection Visa holders and asylum seekers in Australia;
- developing a database for use in refugee case preparation;⁸⁶ and
- the Homeless Persons' Legal Clinic in 2000 which promotes positive reform of laws in Queensland affecting the homeless⁸⁷ and includes an extensive training program for volunteers involved in its homeless persons' legal clinics.

In addition, QPILCH runs an extensive clinical program and operates three student clinics:

81 Ibid at 6.

82 QPILCH Brochure, see <http://www.qpilch.org.au/publications/QPILCH%20Information/Brochure.pdf>.

83 QPILCH website, Membership www.qpilch.org.au/membership.htm

84 Ibid.

85 Ibid.

86 QPILCH Annual Report 2003-2004 at 9.

87 QPILCH, 'In the Public Interest', QPILCH Issue 1, November (2002).

- the Griffith University “Public Interest Lawyering” clinic where students attend for one day per week in first semester each year to undertake case assessment;
- the Consumer Law Advice Clinic in 2003 (a joint project with the University of Queensland, TC Beirne School of Law and Clayton Utz) to provide assistance to low income consumers⁸⁸ with consumer and financial service problems;⁸⁹ and
- the Administrative Law Clinic with Bond University which provides assistance in administrative law matters.

QPILCH has prepared a number of publications that are available from its website at www.qpilch.org.au. These include a pro bono referral manual, a guide to costs in public interest litigation and a fee waiver guide in courts and tribunals. There are also a number of submissions available on the website, and copies of annual reports and newsletters.

Referral criteria

Before QPILCH will refer a matter for assistance, the applicant must demonstrate an entitlement to pro bono legal assistance, being either:

- a non-profit association, or
- unable, or to the satisfaction of QPILCH, ineligible to obtain legal aid and of insufficient means to afford the required legal services at the applicable charging rates; and
- the matter is a legal matter of public interest in that it:
 - affects a significant number of people, or
 - raises matters of broad public concern, or
 - requires legal intervention to avoid a significant and avoidable injustice, or
 - particularly impacts on disadvantaged or marginalised groups, and
 - requires a legal remedy or other legal assistance, and
 - requires addressing pro bono publico (‘for the common good’).

Applications must have a good prospect of success. This ensures that QPILCH resources are directed to cases that are likely to succeed and are therefore beneficial to the public interest.

As a referral organisation, QPILCH assesses cases to:

- ensure that priority is given to legal areas not usually litigated or covered by other legal service providers;
- determine if they might raise concerns likely to be resolved through litigation – (test cases); and
- focus on accountability issues such as professional regulation and instances of arbitrary exercise of discretionary power.⁹⁰

Many applications that do not meet the public interest or merit tests are referred to other agencies for advice. Applicants whose matters are rejected and not referred can ask the management committee to review a rejection decision.

Details of referrals

Cases are referred in a range of matters including discrimination, guardianship and administration, environmental law and immigration. A number of community groups has been assisted with incorporation and other issues.

Application and referral statistics are as follows:⁹¹

88 New Queensland Free Legal Advice Scheme for Disadvantaged Consumers in Trouble, July 2004, at www.qpilch.org.au/news.htm.

89 QPILCH, ‘In the Public Interest’, QPILCH Issue 6, August (2004).

90 QPILCH Annual Report 2002-2003 at 4.

Year	Applications	Referrals	% Referred
2001-2002	50	17	34
2002-2003	111	40	36
2003-2004	176	46	26
2004-2005	197	64	32.5

Major changes since inception

QPILCH is currently undergoing a review to assess the many demands that have arisen since inception, particularly the challenges associated with the development of direct service clinics.

Funding

QPILCH funds its operations mainly from its annual membership fees, which are determined by the Management Committee. The fees per financial year, including GST, currently are:⁹²

Membership fees

Member Firms	\$220 per partner per firm
Member Barristers	
1-3 years experience	\$55 per barrister
4-5 years experience	\$110 per barrister
6+ years experience	\$220 per barrister
Government Legal Unit Members	\$1,100 per legal unit
Corporate Legal Unit Members	\$3,300 per legal unit
Associate Members	\$330
Other Members	NIL

Grants and donations have been received by QPILCH toward special projects and operations. These include grants of \$10,000 in 2003 from the Attorney-General toward QPILCH core services⁹³ and of \$22,254 in 2006 from the Queensland Government's Gambling Community Benefit Fund to develop a training framework for its clinics and clinical legal education programs.

Member firms have also assisted QPILCH by donating operating equipment.

Organisational structure and staffing

QPILCH has both executive and committee members. Executive members include the President and Vice-President, and the Secretary/Treasurer. Committee members are representatives of QPILCH members. There are currently two employed 'permanent' staff as well as other staff employed on temporary projects, law firm secondees employed on various projects, and volunteers.

QPILCH is managed on a day-to-day basis by a Coordinator, whose role is to manage its direction, organisational issues and workload. The Coordinator is assisted by students, both in

91 QPILCH Annual Reports 2002-2005.

92 QPILCH website at <http://www.qpilch.org.au/membership.htm> (24 February 2006).

93 QPILCH, 'In the Public Interest', QPILCH Issue 4, December (2003).

clinics and as volunteers, by secondees and temporary employees who perform many invaluable tasks.

Promotion

Information about QPILCH is available on its website at www.qpilch.org.au. The website is the main promotional medium, supplemented by regular QPILCH newsletters. Promotion to the community is mainly by word of mouth through referring agencies such as Legal Aid Queensland, community legal services and government.

Occasional articles promoting QPILCH to the profession are published in professional journals and professional association mailouts.

Current Directors

There are currently 13 Directors who make up the management committee. There are three executive members, 8 committee members and 2 co-opted members. Their details can be found at:

<http://www.qpilch.org.au/publications/Annual%20report/Annual%20Report2004-05.pdf>

Contact details

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Tel: (07) 3012 9773; Fax: (07) 3012 9774
Email: contact@qpilch.org.au
Website: www.qpilch.org.au

Bar Association of Queensland

History of the Scheme

There is no formalised barrister referral scheme in Queensland but members of the Queensland Bar have a long tradition of providing legal help to the community, free of charge. Barristers also undertake work on the basis that they are paid only if a client's case succeeds.⁹⁴ Most barristers will undertake some pro bono work and inquiries can be made directly to the barrister concerned or the Chief Executive of the Bar Association of Queensland who coordinates interest, availability and willingness to accept referrals.⁹⁵

Referral services

Referrals mainly come from the courts on behalf of unrepresented parties.⁹⁶

Members provide advice, representation and other services in matters before the court.⁹⁷ Applicants requesting pro bono assistance contact the Chief Executive of the Bar who assesses the case and tries to find a barrister willing to take on the case pro bono.

Referral criteria

There are no specific referral criteria. Pro bono services will be offered to members of the community who cannot acquire the services of a barrister due to financial difficulties.⁹⁸

Details of referrals

No information was available about the number or main areas of law for referrals.

Major changes since inception

The Referral Services Coordination Project undertaken byQPILCH recommends that referrals through the Bar Association and the Queensland Law Society Referral Scheme be managed byQPILCH.⁹⁹ The aim of this proposal is to coordinate the current referral schemes of Queensland into one pro bono legal service organisation. This idea is based on the organisational structure ofPILCH Victoria. The Bar Association has indicated support for the proposal and is assessing its level of commitment.¹⁰⁰

It is proposed that the coordinated scheme will commence with government and stakeholder support from 1 July 2006. The project will then be reviewed and an interim evaluation conducted after one full year of operation (30 June 2007), with a view to a full evaluation at the expiration of three years (30 June 2009).

With the assistance of funds from the Grants Committee of the Queensland Law Society, QPILCH appointed solicitor Rebekah Leong, part time from October 2004 to April 2005 to

94 See <http://www.qldbar.asn.au/6.html>

95 Voluntas Pro Bono Directory, 5th Ed, Victorian Law Foundation December (2001) at 26.

96 Ibid.

97 Ibid.

98 Exchange of Christmas Greetings and Presentation of Senior Council, December 2001 at www.courts.qld.gov.au/publications/articles/speeches/2001/dj121201.pdf

99 See <http://www.qpilch.org.au/ReferralServicesCoordination.htm>

100 Ibid.

carry this project forward. Rebekah continues to work at QPILCH and still coordinates this project.

For more information, please email: referral@qpilch.org.au.

Funding

The current arrangements are unfunded.

Organisational structure and staffing

There are no formal structures other than contacting the Chief Executive of the Bar Association of Queensland.

Promotion

The Scheme is not widely advertised. It is mainly accessed by the courts on behalf of unrepresented parties.¹⁰¹

Contact Details

Dan O' Connor
Chief Executive Officer
Bar Association of Queensland
Level 5, 107 North Quay
Brisbane 4000
Tel: (03) 3236 2477; Fax: (07) 3236 1180
Email: chiefexec@qldbar.asn.au
Website: www.qldbar.asn.au

¹⁰¹ Voluntas Pro Bono Directory, 5th Ed, Victorian Law Foundation December (2001) at 26.

Victoria

Law Institute of Victoria Legal Assistance Scheme (LIVLAS)

History of the Scheme

Initial establishment and founders

LIVLAS was an initiative of the Young Lawyers' Section of the Law Institute of Victoria¹⁰² and was established in 1999 as a joint project of the Law Institute and the Victoria Law Foundation. A grant from the Foundation substantially paid for salaries for the first year and the Victoria University of Technology provided furniture and computer equipment.

Reasons for establishment

The scheme had its origins in a report from the Young Lawyers' Section of the Law Institute titled 'Bridging the Gap'. This examined access to justice and found a gap between the need for more pro bono services and the ability of the profession to meet the need.¹⁰³ Solicitor Mark Woods who led the team implementing the scheme said at the time of launch:¹⁰⁴

We had faith that lawyers in Victoria would not be slow to come forward when there was a need because we knew that they were already doing enormous amounts of pro bono work which had gone largely unrecognised.

While it is clearly impossible to meet all the need for pro bono work in Victoria, by centrally organising the work the profession hopes to meet some of it in a much more effective way.

In future, if a solicitor is unable to take on a particular case, which comes this way, he or she will have somewhere to send the client for help.

Also, by limiting the number of referrals to each solicitor each year it is hoped to spread the burden more evenly among participating solicitors.

Stages of establishment

LIVLAS was initially administered by the Law Institute of Victoria (LIV) and ran for 18 months at the LIV offices before negotiations were made for the Scheme to trial in the offices of the Public Interest Legal Clearing House (PILCH). In October 2002, LIVLAS joined the Public Interest Scheme and the Victorian Bar Legal Assistance Scheme (VBLAS) to be administered by PILCH.¹⁰⁵ The administration of LIVLAS by PILCH has streamlined the provision of pro bono services, increasing efficiency and facilitating ease of referral between the Schemes where an applicant requires a barrister and a solicitor.

102 Media release at http://www.liv.asn.au/media/releases/19990129_freeresort.html

103 Ibid.

104 Ibid.

105 Annual Report, 2001-2002, PILCH at 11.

The LAS was formally (re)launched in May 2003 by Attorney-General Rob Hulls and the new arrangement was referred to by Bill O'Shea of the Law Institute of Victoria as an affirmation of the commitment of Victorian solicitors to pro bono services.¹⁰⁶

Overview of the Scheme

Aims and objectives

In the interests of access to justice, the Scheme co-ordinates the provision of legal assistance to disadvantaged members of the community. The Scheme arranges for solicitors to act pro bono for meritorious applications. The Scheme aims to foster the development of efficient pro bono services delivery in the Victorian legal profession and to increase access to justice.¹⁰⁷

The objective of the Scheme during its trial period at PILCH was to promote the Scheme 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.

Focus

The Scheme focuses on those in financial need who have meritorious legal problems. LIVLAS is distinguished from the PILCH Public Interest Scheme as it does not require referrals to have a public interest element. Applications in all areas of law except personal injury are considered for referral.

Members

Members of the Scheme are volunteer solicitors in private practice who are also members of the Law Institute of Victoria. There are over 500 lawyers who have registered to provide pro bono services under the Scheme. This figure represents only 5% of Victorian practitioners with current practising certificates¹⁰⁸ and includes solicitors from small suburban, regional and rural firms, as well as from large city firms with formally co-ordinated pro bono programs.

Referral services

Member solicitors offer all services required of a solicitor, from legal advice to representation. Applications for assistance are assessed for eligibility by the Manager of the Scheme.¹⁰⁹

If the applicant meets the eligibility criteria, the Scheme Manager requests a solicitor practising in the relevant area of law to accept the referral. If the solicitor accepts the referral, the applicant is advised to contact the solicitor directly. The Scheme may remain involved in facilitating the provision of legal assistance but in most cases has no further involvement once a successful referral is made.

Under the Scheme, solicitors provide legal advice and assistance free of charge. In some circumstances, a client may be required to cover disbursements or other out-of-pocket expenses. Where a matter is successful and costs are awarded, the solicitor may recover costs on a party-party basis. Where a client enters into a fee-paying agreement with the solicitor, the solicitor is no longer acting pro bono, and the matter is no longer administered by the Scheme.

106 Media release: http://www.liv.asn.au/media/releases/20030514_lasl.html

107 "State's Solicitors Offer Free Last Resort Help," Media Release, Law Institute of Victoria http://www.liv.asn.au/media/releases/19990129_freeresort.html at 29 January (1999).

108 PILCH VIC Annual Report 2004-2005 at 13.

109 LIVLAS Application Form, <http://www.liv.asn.au/public/finda/pdf/lasapp.pdf>

Other services

As a referral agency, LIVLAS does not itself provide any legal services. However, LIVLAS undertakes regular project work.

In February 2005, PILCH received a grant from the Victoria Law Foundation to run a pilot project involving travel to a rural and regional area to promote pro bono services and speak to practitioners, court officers and community workers about areas of unmet legal need in the communities. LIVLAS has been actively involved in this project.

In 2004-2005, LIVLAS made a submission to the Department of Justice in support of a Homeless Persons' Legal Clinic proposal to amend the *Equal Opportunity Act 1995 (Vic)*, to make unlawful discrimination on the basis of homelessness or unemployment. LIVLAS has also played a direct role in assisting with, and contributing to, PILCH submissions, including a Communication to the United Nations Committee of Human Rights on behalf of an asylum seeker and, recently, a submission to the Victorian Human Rights Consultation Committee on the introduction of a Victorian Charter of Rights.¹¹⁰

Referral criteria

Each application for assistance is assessed according to the applicant's means and the legal merit of the matter concerned. To be eligible for assistance, an applicant must be a resident of Victoria or have a legal action which arose in Victoria, have a legal problem which has legal merit or a reasonable prospect of success, be unable to gain the assistance from another source (such as Victoria Legal Aid or a community legal centre) and unable to afford legal assistance. During 2004-2005, the Scheme took an active role in seeking review of decisions to refuse a grant of legal aid. In several cases it was successful in securing grants of legal aid for applicants.¹¹¹

Details of referrals

Year	Applications	Referrals	% Applications Referred
2002-2003	407	91	22.4
2003-2004	595	116	19.5
2004-2005	725	139	19.2

Applications which are determined to be ineligible for assistance under the Scheme fall into three broad categories: matters that are more appropriately dealt with by another agency, matters where legal aid is available, and matters found to lack a reasonable prospect of success.

An applicant can seek review to the Access to Justice Committee of the Law Institute of Victoria of a decision of the Scheme Manager to refuse an application for assistance. The Committee's decision is final.¹¹²

In 2004-2005, the most common areas of law where LIVLAS facilitated legal assistance were insurance and torts (16.7%), bankruptcy, debt recovery and fines (15.9%), property, building and tenancies (12.9%), family and defacto (12.1%), and migration (9.8%).¹¹³

110 PILCH VIC Annual Report 2004-2005, at 13.

111 Ibid.

112 LIVLAS Guide to the Application Form, <http://www.liv.asn.au/public/finda/pdf/lasguide2app.pdf>

113 See http://www.liv.asn.au/media/releases/19990129_freeresort.html

Major changes since inception

Initially administered by the Law Institute of Victoria, LIVLAS came under the administration of PILCH VIC in October 2002. The Scheme was re-launched in May 2003 at the offices of PILCH. In December 2004 a full-time manager was appointed, reflecting increased demand for LIVLAS services.

Funding

At its establishment, LIVLAS was funded by a grant from the Victorian Law Foundation. The Victoria University of Technology also provided office equipment for LIVLAS to run its daily operations.¹¹⁴

LIVLAS is now funded by the Law Institute of Victoria (LIV) and the Legal Practice Board. The LIV also provides LIVLAS with direct promotional support and IT assistance. Funding during the 2004-2005 period was increased primarily to allow for LIVLAS to be staffed by a full-time Manager for the first time.

Organisational structure and staffing

LIVLAS is administered by PILCH. The staff of LIVLAS includes a manager/solicitor and an administrative assistant. In response to an increase in workload, in March 2006, the LIV provided additional funding to employ a solicitor for one day per week.

Promotion

LIVLAS promotes participation in the Scheme by advertising through Law Institute of Victoria publications, the Magistrate Court Registries, the Equal Opportunity Commission of Victoria and Victoria Legal Aid offices.¹¹⁵ Pamphlets have been published by LIVLAS and a section of the website of the Law Institute of Victoria provides information on its services. In 2003-2004, LIVLAS was extensively promoted to the profession through personal contacts with LIV members and firms and more formal presentations to CLCs. The LIVLAS entry on the LIV website was also updated to reflect the new location and improved operation of the scheme.¹¹⁶

Current Directors

LIVLAS is not an incorporated entity and therefore does not have directors. LIVLAS is accountable to the Access to Justice Committee at the Law Institute of Victoria.

Contact details

Street address:

550 Lonsdale Street, Melbourne VIC 3000

Mailing Address:

GPO Box 13121 Law Courts

Melbourne VIC 80180

DXC 38227 Flagstaff

Tel: (03) 9225 6675; Fax: (03) 9225 6678

Email: livlas@vicbar.com.au

Website: <http://www.liv.asn.au/public/finda/legaladvice/legaladvice-The.html>

114 Ibid.

115 PILCH Annual Report 2002-2003 at 10.

116 PILCH Annual Report 2003-2004 at 12.

The Victorian Bar Legal Assistance Scheme (VBLAS)

History of the Scheme

Initial establishment and founders

The Victorian Bar Legal Assistance Scheme (VBLAS) was established in 1995 on a voluntary basis by the Victorian Bar. It was run principally by the Honorary Secretary of the Bar Council.

Reasons for establishment

The Victorian Bar recognised the need to establish a system to address the growing demand for legal assistance from the courts, community organisations and the general public.¹¹⁷

Stages of establishment

Due to the increasing volume and complexity of applications for pro bono assistance and the desire to put the administration of the Scheme on a more professional footing, arrangements were made in mid 2000 for PILCH VIC to administer the Scheme. Management was passed onto PILCH and the Scheme became known as the Victorian Bar Legal Assistance Scheme (VBLAS).¹¹⁸

Overview of the Scheme

Aims and objectives

VBLAS was established to assist people whose matters have merit but who are unable to access legal assistance because of lack of funds.

Focus

The Scheme focuses its services toward members of the community who have no ability to pay for legal services but whose cases have merit or concern an important legal issue.

A significant distinction between VBLAS and the Public Interest Scheme of PILCH is the lack of public interest criteria in assessing cases for eligibility for assistance under VBLAS. Aside from the direct requests from the community, VBLAS receives requests for assistance from judges, courts, tribunals, PILCH, community legal centres and the Law Institute of Victoria.

Members

Members of VBLAS are members of the Victorian Bar who have expressed a willingness to provide assistance on a pro bono basis and whose practices cover a wide range of areas of law. The number of barristers who volunteered to participate in VBLAS in 2005 was over 500, more than 25% of the practising list.¹¹⁹ Many other barristers, although not formally registered as members, have welcomed requests to assist when approached.

117 Speech by Murray Gleeson at the launch of the Victorian Bar Legal Assistance Scheme, 16 February 2001 at www.hcourt.gov.au/speeches/cj/cj_vicbar.htm

118 Voluntas Pro Bono Directory, above n 95 at 13.

119 PILCH VIC Annual Report, 2004-2005 at 10.

As administrators of the Scheme, PILCH (Vic) maintains a database of members. There is no membership fee.

Referral services

VBLAS provides referrals for pro bono advice and representation in cases which call for the retainer of a barrister. VBLAS relies upon the more than 400 Victorian barristers who have indicated a willingness to accept instructions for pro bono representation.¹²⁰ Matters referred to barristers cover diverse areas of law including family, crime, migration, contract, trusts, tort, personal injury, Transport Accident Commission (TAC), employment, debt recovery, tenancy and discrimination.

Members of the community in need of assistance telephone the VBLAS office for an application form. Forms are completed and necessary documentation must be provided by applicants for assessment by VBLAS administrators. The application form may be dispensed with where requests for assistance are urgent.¹²¹

Member barristers assist in proceedings instituted in courts and tribunal sittings, arbitration and mediation proceedings and other matters that might give rise to such proceedings in Victoria, including any appeal, application for leave or special leave to appeal to an appellate court in such proceedings, wherever that application may be heard. Other services provided by members include:

- The provision of legal advice and representation in cases where the retainer of a barrister is needed;
- The preparation of court documents;
- Representation at a hearing; and
- Other assistance that a barrister is ethically permitted to provide.

VBLAS only refers matters for pro bono assistance and does not refer matters for reduced or other fee arrangements.

Other services

VBLAS also undertakes projects and provides training to solicitors. In 2004, VBLAS ran the Migration Law Training Program for solicitors with the assistance of PILCH member firms.¹²² In 2005, VBLAS coordinated two well-received training sessions, hosted by the Federal Court, on the topic of pro bono migration litigation. Following the training, at least 22 new barristers registered to participate in the pro bono migration list operated by VBLAS.

VBLAS also developed a mentor scheme for junior barristers undertaking migration matters through VBLAS, the Federal Court Order 80 and the Federal Magistrate's Court Part 12 Schemes.¹²³ In April 2005, VBLAS coordinated a training session in conjunction with the Tenants Union of Victoria, focusing on a recent successful appeal to the Supreme Court from a decision of the Victorian Civil and Administrative Tribunal relating to the procedures attending use of the 'danger' provisions under the *Residential Tenancies Act 1997* (Vic), which allow for eviction with less than 24 hours notice.

In July/August 2005, VBLAS, in conjunction with the Family Violence Sub-Committee, consulted with key stakeholders including judges, court staff and academics on family violence issues. Following these consultations, on 28 October and the 2 November, 2005 VBLAS and the Committee organised family violence training sessions as part of the Bar Readers Course. The aims of the training included providing an overview of the new family violence court framework and practice, promoting an understanding of the area of practice,

120 'Overview of VBLAS', at www.pilch.org.au (13 February, 2006).

121 Voluntas Pro Bono Directory, above n 95 at 13.

122 Annual Report 2003-2004, PILCH VIC, at 10.

123 Ibid.

developing knowledge of issues affecting clients and encouraging more barristers to become involved.

In February 2006, VBLAS and the Family Violence Sub-Committee organised a seminar presented by Judge Hyman of the Superior Court of California that explored the cross-over between family violence and intervention order and criminal law issues.

The staff of VBLAS participate in project, policy and advocacy activities, in addition to day to day inquiry and referral work. VBLAS has contributed to law reform through drafting submissions to Parliamentary Inquiries on subjects directly relevant to its casework. VBLAS prepared a joint submission in April 2005 on behalf of the Victorian Bar and PILCH to the Commonwealth Senate Legal and Constitutional Legislation Committee Inquiry into the *Migration Litigation Reform Bill 2005*. The submission drew on previous submissions prepared by PILCH and the Victorian Bar in 2003 and 2004 on the various reforms to the *Migration Act 1958 (Cth)* that impact significantly on pro bono practice in this area.

VBLAS also made a submission to the Department of Justice in support of a Homeless Persons' Legal Clinic proposal to amend the *Equal Opportunity Act 1995 (Vic)* to make discrimination on the basis of homelessness or unemployment unlawful.

Referral criteria

VBLAS is not a substitute for legal aid and applicants who may potentially come within Legal Aid Guidelines are required to have first sought legal assistance from Victoria Legal Aid. Furthermore, applicants to VBLAS should not be eligible for assistance from community legal centres or no-win-no-fee firms.

For applications to be successful the following criteria are used:

- The applicant must be a resident of Victoria and have a legal problem requiring the assistance of a barrister.
- The case must have legal merit (a good prospect of success).
- The applicant must pass a means test showing that he/she does not have the financial ability to obtain legal assistance from a barrister on a full fee-paying basis.
- The applicant must be unable to obtain appropriate legal assistance from any other source.
- An application for Legal Aid has been made in respect of the case, but has either been refused or there was no decision made in relation to the application.

Details of referrals

Year	Number of Inquiries	Number of Referrals	% Referred
2000-2001	142	50	35.2
2001-2002	219	49	22.4
2002-2003	289	70	24.2
2003-2004	284	154	54.2
2004-2005	374	184	49.2

Applications are usually unsuccessful where they do not satisfy the merits test or are matters that fall within Victoria Legal Aid guidelines.

The main areas of law in which assistance was provided in 2003-2004 and 2004-2005 were migration and criminal law.¹²⁴

Major changes since inception

Since 2000, VBLAS has been administered under the umbrella organisation Public Interest Law Clearing House (PILCH). Whilst VBLAS maintains its distinct identity, the alliance between PILCH and VBLAS ensures a more efficient, coordinated approach to providing pro bono assistance. Notably, the Law Institute of Victoria Legal Assistance Scheme is also co-located at PILCH, providing ease of cross-referrals between pro bono barristers and solicitors.

Statistics demonstrate that stakeholders such as courts and community legal centres are approaching VBLAS more regularly for assistance. In the reporting period 2004-2005, 39.8% of inquiries were made through community legal centres, 8.5% through Victoria Legal Aid and 8.5% through court registries.¹²⁵

Funding

VBLAS is funded by the Victorian Bar with support from the Legal Practice Board.¹²⁶ This funding was increased significantly (from approximately \$84,000 to \$118,000) in the 2004-2005 financial year to allow VBLAS to employ additional staff to meet the increased demands for assistance.

Organisational structure and staffing

VBLAS is administered by PILCH. During the reporting period 2004-2005, VBLAS ceased to rely on PILCH secondee solicitors, drawn from the PILCH member firms, to perform casework. VBLAS now has the benefit of a full-time dedicated Solicitor/ Manager position and an administrative assistant two days per week. VBLAS also continues to be assisted by the PILCH staff, volunteers, student interns and fellows and seconded administrators.¹²⁷

Promotion

Participation in VBLAS is consistently promoted to potential volunteer barristers by the Manager speaking at each Bar Readers' Course throughout the year. Further, in May 2004 a letter inviting new participants to volunteer for VBLAS and the other pro bono Schemes was sent out to all members of the Victorian Bar by the Chairman of the Legal Assistance Committee (LAC).

The Manager of VBLAS is also extensively engaged in the promotion of the Scheme, both to the legal profession and the broader community. VBLAS is promoted through PILCH and Victorian Bar publications, including regular updates in the PILCH newsletters *PILCH Matters* and *Pro Bono in Practice*, the Bar newsletters *In-Brief* and *The Bar News* and annual reports for PILCH and the Bar.

Current Directors

VBLAS is not an incorporated entity and therefore does not have directors. VBLAS is accountable to the Legal Assistance Committee of the Victorian Bar.

Contact details

Victorian Bar Legal Assistance Scheme
Level 1, 550 Lonsdale Street, Melbourne, 3000.
PO Box 13121, Law Courts, Vic, 8010
DX 38227 Flagstaff

124 Id at 11; PILCH VIC Annual Report, 2004-2005, at 12.

125 PILCH VIC Annual Report, 2004-2005 at 10.

126 Annual Report 2003-2004, PILCH VIC at 9

127 PILCH VIC Annual Report, 2004-2005 at 10.

Contact details (cont)

Tel: (03) 9225 6687; Fax: (03) 9225 6686

Email: administrator.vblas@vicbar.com.au

Website: www.pilch.org.au

Public Interest Law Clearing House (Vic) Inc

History of the Scheme

Initial establishment and founders

The Public Interest Law Clearing House (Vic) Inc (PILCH) was established in 1994 as a project of the Consumer Law Centre of Victoria (CLCV), supported by the Fitzroy Legal Service, six Melbourne law firms¹²⁸ and the Victorian Bar Council.¹²⁹ PILCH was modelled on PILCH New South Wales which had been established two years before, and on the New York Lawyers for the Public Interest Pro Bono Clearinghouse (NYLPI).

PILCH is now an independent not for profit legal centre whose mission is to further the public interest, improve access to justice and protect human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education.

Reasons for establishment

PILCH was established for two main purposes. Firstly, to assist disadvantaged individuals and groups to obtain legal assistance. Secondly, to provide an opportunity for the legal profession to contribute to making the legal system accessible to all members of the community. Prior to the establishment of PILCH, many public interest cases were run by community legal centres or with funding from legal aid, however, the pursuit of these matters often relied on the client's ability to find a lawyer who had the capacity and expertise to take the matter on.

Stages of establishment

PILCH was separately incorporated in 1994, however CLCV managed and provided accommodation and infrastructure to PILCH for the first six years.¹³⁰

PILCH was an initiative of Denis Nelthorpe, Director of CLCV and Greg Connellan at Fitzroy Legal Service. Initially they met with representatives from various law firms in Victoria and the Victorian Bar to garner support for PILCH in Victoria. They then submitted an application to the Victoria Law Foundation (VLF) for seed funding. One of the law firms provided advice about the most suitable legal structure for PILCH and also assisted with drafting its Constitution. Once PILCH was established and funded, other firms were approached on a systematic basis to join PILCH.

Members of PILCH provided initial funding¹³¹ but operations were mainly funded by CLCV (\$25,000) and the VLF (\$50,000). The funding from CLCV ceased in 1999 and the grant from the VLF ceased in 2001.

128 The firms (and the Victorian Bar) originally involved were: Corrs Chambers Westgarth, Freehills, Mallesons Stephen Jacques, Minter Ellison, Phillips Fox and Wisewoulds.

129 S. Burchell and E. Hunt, 'From Conservatism to Activism: The Evolution of the Public Interest Law Clearing House in Victoria', (2003) *Alternative Law Journal* 28(1) at 9.

130 *Ibid.*

131 There were 13 members 5 months after incorporation and 18 members after 12 months. Members paid \$50.00 per partner per law firm and per Bar Council member.

There was no trial period of operation. The project became fully established with a permanent Director, once the funding from the VLF was secured.

Overview of the Scheme

Aims and objectives

The objectives of PILCH are to:

- improve access to justice and the legal system for those who are disadvantaged or marginalised;
- identify matters of public interest requiring legal assistance;
- seek redress in matters of public interest for those who are disadvantaged or marginalised;
- 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 community organisations to pursue 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.¹³²

Focus

PILCH is committed to innovation and creativity in pro bono and has become the main facilitator of pro bono legal services in Victoria. PILCH's core business is to receive and assess applications for legal assistance from the public and refer them to pro bono solicitors and barristers through four pro bono Schemes: the Public Interest Scheme, the Law Institute of Victoria Legal Assistance Scheme (LIVLAS), the Victorian Bar Legal Assistance Scheme (VBLAS) and the Homeless Persons' Legal Clinic (HPLC).

The Schemes provide assistance to applicants whose matters have legal merit, who are unable to obtain legal assistance from an alternative source (such as Legal Aid or a community legal centre), and who are experiencing financial hardship.

The Public Interest Scheme has an additional criterion that aims to identify and support non-profit organisations with public interest objectives that require legal assistance, and individuals whose matters are of broad public concern, or are of significance to disadvantaged or marginalised groups.

Referrals through the Public Interest Scheme may involve advice or representation in a range of areas of law. There are many referrals of transactional matters for not for profit community organisations which are well-suited to corporate law firm members, as they involve their traditional areas of practice, such as taxation, incorporation, property, employment law, intellectual property and insurance. Other matters involve advice or representation for individuals in public interest matters. These are legal issues which affect marginalised or disadvantaged groups or which impact on a large number of people. Examples include systemic discrimination claims, coronial inquests, or matters affecting detained persons (such as prisoners, immigration detainees and persons with a mental illness).

Members

PILCH has a diverse membership of 27 law firms, 4 corporate legal departments, 24 community legal centres, all 5 Victorian law schools and 3 professional associations,

132 Annual Report 2001-2002, PILCH at 1.

including the Law Institute of Victoria and the Victorian Bar. A list of PILCH's current members is available on the PILCH website at www.pilch.org.au.

Referral services

The lawyers at PILCH assess all requests for assistance against the Schemes' guidelines and ensure that applicants who are ineligible for legal aid, meet a means test and have matters with legal merit are referred for pro bono assistance. The Public Interest Scheme also applies the additional public interest test. If an applicant is eligible for assistance, the lawyers at PILCH refer the matter to a law firm and/or counsel and deliver a brief to the pro bono lawyers which clearly identifies the material facts and issues and includes the key relevant documents, so that the pro bono lawyer can start work on the matter.

Other services

PILCH manages the LIVLAS, VBLAS and the HPLC schemes. PILCH also runs fellowship intern and volunteer programs. It produces publications and is involved in community legal education. PILCH publishes three separate periodicals each aimed at a different audience. *Pro Bono in Practice*, a bi-monthly e-newsletter which covers issues, casenotes and practice issues is directed towards pro bono coordinators and lawyers doing pro bono work. *PILCH Matters*, a periodical newsletter, issued from 2006 in a PDF format, informs members and the wider community of PILCH's activities and includes articles, issues and reports of cases with which PILCH is involved. *PILCH E-News* is a six weekly email newsletter sent only to PILCH members. It reports on operational issues for PILCH including staffing and casework statistics.

In 2002, PILCH began a Fellowship Program¹³³ which invited member firms to sponsor their summer and winter clerks to work at PILCH at the conclusion of their clerkship. The students were paid by the sponsoring law firm and worked under supervision of PILCH staff. The program has continued each year with some fellows becoming on-going volunteers for several years. PILCH offers 8 Fellowship positions each year.

PILCH also takes on penultimate and final year law students and graduates as volunteers. They can volunteer as Interns (normally working at PILCH for one or two weeks full time unpaid) or as 'ongoing volunteers' one day per fortnight during normal office hours.¹³⁴ In 2003-2004, PILCH accepted 19 law students as volunteers, 8 students as interns, 3 students under university placement programs and 9 seasonal clerks under the Fellowship Program.¹³⁵ In 2004-2005, PILCH coordinated 24 students volunteering on a fortnightly basis, 24 students completing an internship during university vacation periods, a Fellowship program with 8 seasonal clerks from PILCH member firms, and 3 students under the university placement program.¹³⁶

Referral criteria

The following criteria are used for eligibility for assistance under PIS:

- the applicant could not apply for or has been refused legal aid;
- the applicant cannot afford legal services at applicable charging rates; and
- the case fulfils the public interest criteria.

Cases which satisfy the public interest criteria are those which:

- affect a significant number of people; or
- raise matters of broad public concern; or

133 PILCH VIC website, Fellowship Program at www.pilch.org.au

134 Ibid.

135 PILCH Annual Report 2003-2004 at 5.

136 PILCH VIC Annual Report 2004-2005 at 5.

- impact on disadvantaged or marginalised groups.¹³⁷

Details of referrals

Year	Inquiries/Applications	Referrals	% Referred
2000-2001	449	135	30%
2001-2002	483	143	30%
2002-2003	423	144	35%
2003-2004	473	150	31%
2004-2005	543	186	34%

As the statistics show, PILCH receives a large number of inquiries from applicants who do not fit within PILCH or the other Pro Bono Scheme guidelines. Although these matters are not eligible for referral, the applicants may be able to obtain legal advice or pursue alternative legal and/or non-legal solutions from organisations or agencies, which are not PILCH members. In these cases, PILCH will review the applicant's inquiry and/or application, and where appropriate, actively refer the applicant by contacting the alternative agency or organisation to ensure it may be able to assist.

In the 2004-2005 year the main areas of law where referrals were made included commercial, intellectual property or information technology, criminal and administrative or constitutional law. Of the referrals made under the Public Interest Law Scheme in 2004-2005, 53% were for not for profit organisations, 35% were for individuals, and 12% were for groups.¹³⁸

Major changes since inception

Following independence from CLCV in 1999, PILCH took on the administration of VBLAS in 2000 and LIVLAS in 2002.

In September 2001, PILCH established the HPLC, which is funded by the Department of Justice and donations from a law firm and a corporate legal department. HPLC provides civil, administrative and some summary criminal legal services at crisis accommodation centres and welfare agencies. Legal services are provided by volunteer lawyers from PILCH member law firms and corporate legal departments.

In 2006, the Human Rights Law Resource Centre (HRLRC), a joint initiative of PILCH and Liberty Victoria, was incorporated as an independent community legal centre. The HRLRC aims to promote human rights in Victoria and Australia, particularly the human rights of people who are disadvantaged or living in poverty, through the practice of law. It also aims to promote the development of Australian law and policy consistently with international human rights standards, through casework, litigation, policy analysis, education and advocacy.

Funding

PILCH funding comes primarily from membership fees. PILCH also receives grants for discrete projects. PILCH receives no government funding.

Organisational structure and staffing

PILCH is managed by a Board of Directors made up of member representatives. PILCH staff number over 20 and include an executive director, an administrative assistant, a coordinator, two solicitors (on secondment from member law firms and organisations), a scheme manager and coordinators for each of the Schemes and others associated with publications and

¹³⁷ 'Eligible Criteria' at www.pilch.org.au

¹³⁸ PILCH VIC Annual Report 2004-2005 at 5.

administration.¹³⁹ PILCH is also assisted by interns, student-placements, volunteers and fellows.

Publications

PILCH aims to provide its members and the community with practical information regarding pro bono work undertaken in Victoria through a quarterly electronic publication, PILCH Matters. This publication covers recent developments in pro bono, relevant cases and general issues affecting practitioners in the pro bono area. It also features recent referrals to members and 'spotlights' an individual practitioner from a PILCH member. PILCH Matters is circulated to the legal profession and the wider community.

The PILCH website (www.pilch.org.au) provides accessible information about the programs offered by PILCH, forthcoming training and seminars, law reform campaigns, training materials, and pro bono practice resources.

Promotion

PILCH also promotes its services by giving presentations at conferences, to lawyers and community groups and through its website. PILCH also advertises its volunteer program at the Universities in Victoria and has a promotional stand at several careers fairs. PILCH staff have also been interviewed and featured in various radio shows, newspapers and journals.

Current Directors

There are 17 Board members¹⁴⁰ and the current President of PILCH is David Krasnostein from the National Australia Bank.

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139 Ibid at 19.

140 Bruce Moore (Treasurer), Maddocks; Andrew George (Secretary), Andrew George Solicitors; Judith Dickson (Alternate) La Trobe University, School of Law & Legal Studies; John Emerson, Freehills; Robert Jamieson, Blake Dawson Waldron; David Krasnostein, National Australia Bank Ltd, Legal Department; Sarah Matheson, Allens Arthur Robinson; Richard McGarvie SC, Victorian Bar; Fiona McLeay, Clayton Utz; Jeannie Paterson, Monash University Law School; Helen Rhoades (Alternate), University of Melbourne Law School; Dominique Saunders, Law Institute of Victoria; Stephen Sawyer, Phillips Fox; John Sharkey, Deacons; Peter Seidel, Arnold Bloch Leibler; Anna Stewart, Consumer Law Centre Victoria.

Western Australia

Law Society of Western Australia Law Access Public Interest Law Clearing House

History of the Scheme

Initial establishment and founders

The Law Society of Western Australia (WA) Law Access Public Interest Law Clearing House (PILCH) was established in October 1992.¹⁴¹ It was founded by the Law Society of Western Australia following a 12 month investigation by the Law Society's Pro Bono Committee.¹⁴² It was strongly supported by the Pro Bono Committee Chairman and then President of the Law Society, John Chaney, as well as the major law firms in Western Australia.¹⁴³

Reasons for establishment

The WA PILCH was established to coordinate the provision of free, reduced fee, cost-recovered or fixed fee legal advice or representation by the legal profession.¹⁴⁴ In particular, it aimed to better coordinate and administer the piecemeal pro bono efforts that were in existence at the time and to counter the public criticism over the cost of legal representation and services. In creating this scheme, the Law Society of Western Australia hoped to create a better public relations profile and dispel perceptions of the legal profession as only being interested in money.¹⁴⁵

Stages of establishment

Impetus for the establishment of a pro bono scheme came from an article in *Brief*, the journal for the WA Law Society. There was also public support from Steven Penglis at Freehills, who stated that Freehills would be prepared to be involved in a broader initiative established by the Law Society.¹⁴⁶

The Law Society Pro Bono Committee was set up at the beginning of 1991 following consultation with the Executive of the WA Law Society. It was made up of volunteers and senior members of major firms solicited by the then Law Society President, John Chaney. It was established with the financial and resource support of major firms and also included representatives from smaller firms, the Legal Aid Commission, Aboriginal Legal Service as well as a representative from the Community Legal Centres (CLCs).¹⁴⁷

The committee formulated the aims and objectives for the scheme. They wanted to coordinate and provide leadership on the issue of the provision of pro bono services, to identify the true community needs in relation to legal assistance and to inform the public of the profession's voluntary work in order to dispel negative perceptions about the role of lawyers in the justice

141 The Law Society of Western Australia, 'Law Access Public Interest Law Clearing House' Law Access – Law Society of WA <http://www.lawsocietywa.asn.au/access.html> at 21 March 2005.

142 John Chaney, 'Blazing the Pro Bono Trail' (1991) 18 *Brief* 6 at 6.

143 *Ibid.*

144 See n 141

145 John Chaney, above n 142.

146 *Ibid.*

147 *Ibid.*

system.¹⁴⁸ During this process, the committee also consulted the major community legal centres in Perth and the legal profession who were approached with questionnaires and interviews designed to elicit information about the needs of the community and to determine what kinds of services the legal providers were willing to contribute.¹⁴⁹

The scheme extended the existing pro bono services and informal schemes such as the Shopfront legal advice service, established in the 1960s by Fred Chaney, Ian Temby and Peter Dowding and the legal assistance service run by the WA Law Society in the 1960s, before the implementation of legal aid.¹⁵⁰

Overview of the Scheme

Aims and objectives

The Scheme aims to coordinate free, reduced fee, cost recovered or fixed fee legal advice or representation given by the legal profession to people in the community who are in genuine need of legal assistance but who cannot afford the usual fees for legal representation and/or are unable to obtain legal aid.¹⁵¹

Focus

The scheme provides a wide range of pro bono referrals including referrals for advice, documentation and representation in civil court actions, in criminal trials, appeals and pleas in mitigation; in negotiations between non-profit organisations and the government; in Administrative Appeal Tribunal cases and for refugees in detention. The majority of applications for assistance relate to commercial litigation. There are generally no referrals for family law cases.

Referral services

Services include referrals for general advice, preparation of legal documents, mediation of disputes, perusal of agreements and court representation. Referral assistance is also offered to CLCs including the provision of opinions on issues affecting the legal centre, on individual client matters for legal centre clients, representation in court appearances and in negotiations on behalf of legal centre clients.

Referral assistance is also offered to not-for-profit organisations and community groups through the provision of general advice on constitutions, leases, obtaining public benevolent institution status and resolution of internal disputes. Additionally, the Scheme actively promotes mediation processes where appropriate.

Other services

The Law Society maintains a register of legal practices and their areas of practice to facilitate easy referral of members of the public to law firms that can assist them. The service developed from an initiative of the Small Practices Committee of the Law Society, the Small Business Development Corporation and a community organisation 'Business in the Community Inc.' which established the database, to enable easy access to legal services that were needed quickly and at an affordable rate.

The Coordinator of Law Access has, where appropriate, actively encouraged mediation of disputes. A number of matters that have been referred to Law Access have been resolved by referring the parties to LEADR or other community based mediation services. In some cases

148 John Chaney, above n 142 at 7.

149 Ibid.

150 Ibid.

151 Information about the Scheme taken from The Law Society of Western Australia, 'Law Access Public Interest Law Clearing House' www.lawsocietywa.asn.au/access.html at February 2006.

the Coordinator has been able to get the parties to negotiate a solution without resorting to Court action. It also administers the Shopfront Lawyer Service which is a service that provides 20 minute appointments to obtain general legal advice after paying a \$25 booking fee.¹⁵²

Referral criteria

Applications for referral are assessed by the Manager with assistance from law student volunteers using the following criteria:

- a clear inability to pay for legal services;
- a genuine legal problem;
- inability to obtain legal aid; and
- a need for greater assistance than just an initial consultation and advice from a solicitor or CLC.¹⁵³

Law Access may also provide short term assistance in urgent cases or where referrals are not successful. Such assistance may include drafting pleadings or action as the applicant's solicitor when a member of the Bar has agreed to assist the applicant and another solicitor cannot be found.

Once an application is assessed as meeting the criteria the matter is advertised (with appropriate anonymity), among the members of the Law Society in the Society's weekly email to members.

Major changes since inception

The name of the scheme was changed from Law Access to Law Access Public Interest Law Clearing House in 2002 to more accurately reflect the nature of the service provided.

Funding

Funding for the administration of the scheme is provided by the Law Society and from grants from the Public Purposes Trust.

Organisational structure and staffing

The day-to-day running of the scheme is the responsibility of the Manager. The Scheme is provided as a Community Service by the Law Society of Western Australia and is not a separate legal entity.

Promotion

The Scheme is promoted on the Law Society website.

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152 See Shopfront Lawyer at <http://mail.lawsocietywa.asn.au/web/LawAccess/FirstPage.htm#shopfront>

153 See Applications to Law Access, at <http://mail.lawsocietywa.asn.au/web/LawAccess/FirstPage.htm#other>