



Public Interest Law Clearing House
The Hon James Woods AO QC
Chairperson
The New South Wales Law Reform Commission
GPO Box 5199
SYDNEY NSW 2001
AUSTRALIA

Dear Mr Woods

Re: PILCH Vic submission to the New South Wales Law Reform Commission: Consultation paper 13-Security for costs and associated costs orders 19 August 2011

The Public Interest Law Clearing House (PILCH) NSW promotes pro bono legal services, links people and not-for-profit organizations with lawyers in public interest work and speaks out on public interest issues.

'Public Interest' work includes advancing the rights of the disadvantaged, vulnerable or marginalised, seeking to avoid or responding to injustice, protecting people's civil rights against decisions of the state, and responding to matters of public concern.

'Matters of Public Concern' refers to public or group concerns, as opposed to private or individual interests. Examples of such concerns include homelessness, protection of the environment and Aboriginal 'stolen wages'.

One of the principles that underpin our work is that poverty should not be a bar to accessing justice, including the ability to litigate. As a pro bono clearing house we struggle with issues around the costs to our members of running public interest litigation and the risk of adverse costs orders. On a number of occasions this has meant that matters of public importance that require resolution have not been raised in court.

PILCH NSW supports PILCH Victoria's submission on Security for costs and associated costs orders.

In particular we draw your attention to section 4 of the Submission: *Costs orders and pro bono litigants*. We endorse the proposal that clients represented on a pro bono basis should be entitled to recover costs. These costs should be recoverable by the barristers and solicitors that undertake often lengthy and costly litigation on a pro bono basis.

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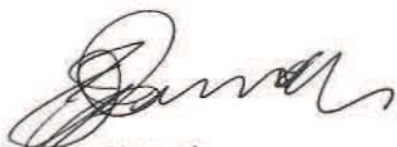
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Litigation matters are the most difficult to refer because of the resource commitment required by members to run them. For example, a member firm recently estimated that the cost of an appeal to would be in excess of \$300,000. This was a significant part of their annual pro bono budget, which meant that they were able to take on less other work. In this instance, if successful and they were not able to recover costs, then they are unable to retain capacity for further pro bono assistance.

There has been some discussion about whether, when a public interest matter that is litigated successfully on a pro bono basis, costs should be able to be recovered. PILCH NSW supports the recovery of costs for pro bono litigants. This is to ensure at the commencement of public interest litigation there is a level playing field. Should the other party be aware that the matter is being litigated on a pro bono basis and costs cannot be recovered there is no financial impetus to consider settlement in the early stages. Indeed, it could be argued that the other party may decide to defend a matter that they consider does not have much merit as they have nothing to loose. This would contribute to an already overstretched court system. Further, it means that an unsuccessful defendant in not having to pay costs, effectively obtains a windfall.

Yours sincerely



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