

To: Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam,

My brief essay below, clearly does not come within the terms of reference as stated in your web site and if it appears to be offensive or not worthy of consideration, I would not be offended if you decided to take it no further. It is a serious plea to fix the problem rather than fix the consequences of the problem that I believe should be stated at the very beginning of the senate inquiry, hopefully to put any possible outcomes into perspective and to alert the senate about far-more serious concerns and hopefully, draw attention to the need to take a fresh look at the whole archaic legal system that is clearly not doing what it is purports to do.

As a member of a few not-for-profit clubs, I believe that PILCH is a necessary, valued and altruistic part our legal system. However, there is a major problem in the adversarial legal system itself, wherein avenues for anybody but the very wealthy to try to seek justice are comparatively ineffective. Our adversarial legal system has evolved into being an inclusive governmental/business quango that severely restricts access to what have been regarded as basic rights. In a perfect legal system, there would be no need for PILCH or lawyers, because justice would be dispensed by Judges according to criteria prescribed in a hierarchical taxonomy of objectives that had at its ultimate criteria of impartiality, objectivity, honesty, righteousness and morality.

Our present set of laws are based upon precedent, and although precedent in itself is essential in any legal system to prevent "re-inventing the wheel", it is evolving into the infamous American-type laws, that do not support people going about their normal business, but instead promotes and rewards fringe operations that in turn reward lawyers who choose to defend and enshrine obvious criminality in the name of the criminals right to "justice". These "rewards" involving obscene amounts of money cannot help but to distort and corrupt the system and widen the gap between justice for the rich and for the not-so rich. More than that, the corruptive effect of massive amounts of money from the private sector has literally bought government which has in turn installed compliant members of the Judicial system, rather than truly independent judges.

Another of the basic problems is that laws are written by lawyers. Whilst this may be acceptable in a non-adversarial legal system, in an adversarial system there is always an inevitable conflict of interest. Because of our adversarial legal system instead of using a hierarchical taxonomical system, our laws are then written in such a way that provides no framework for attaining justice - however altruistic the writers of laws may be.

No longer can a group of citizens do what used to be free activities, such as kick a football or take a simple walk through the countryside because they might break a finger-nail because the wooden railings were not "correctly" sand-papered, or a person is charged with not providing a safe working environment when a burglar is cut by broken glass when he is breaking into your home.

Ordinary citizens must be protected from fools and criminals who should be made to bear the consequences of their own foolishness or criminality, and we the public should not be expected to make everything "safe", especially when our system has no criteria for judging what safe means.

Ordinary law-abiding citizens should not be penalised for not doing something that is deemed to be dangerous only with the wisdom of hindsight. What do our laws teach the fool or the criminal?

In education, we faced the same problem - how can we objectively assess whether that which we teach meets the noble objectives that we espouse? A taxonomical hierarchical structure for assessing the worth of proposed and existing courses of study according to educational criteria provided a solution. We in Education found that a criteria of a hierarchical taxonomy of objective worked for us, and I believe that the time is appropriate for it to be a necessary part our legal system too.

Raymond F. Smith.