

# briefcase



Victoria  
Legal Aid

Lawyers And  
Legal Services

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## Children to benefit from family law changes

**Children at risk are the top priority in recommendations to amend Victoria Legal Aid's (VLA) family law service mix.**

The recommendations to the Board ensure greater emphasis on prevention, early intervention and dispute resolution services.

In particular, the changes prioritise Independent Children's Lawyers' appointments, people who have experienced family violence or abuse, and children who are at risk.

Family, Youth and Children's Law Director, Judy Small said the proposals were consistent with the National Partnership Agreement on Legal Assistance Services (National Partnership Agreement).

'We want to shift our focus from *what* we fund to *who* we fund, with a general emphasis on funding children rather than adults in court proceedings, and only the most vulnerable adults,' she said.

'In relation to funding adult parties, we have shifted our priorities from litigation to family dispute resolution funding.'

Under the National Partnership Agreement, family law priorities include matters that involve a grant of legal aid to help:

- children, including the appointment of a court appointed, independent children's lawyer
- people who have experienced, are experiencing, or are at risk of experiencing family violence
- family members resolve complex issues relating to living arrangements, relationships and financial support of their children.

A discussion paper was released in January and sought input from the Family Law Courts, Victorian Bar Association, Law Institute of Victoria and the Commonwealth Attorney-General's Department, as well as Community Legal Centres, Family Relationship Centres, and staff. A number of submissions were received which informed the final recommendations. The changes are expected to come into effect on 1 July 2011.

## Celebrating 30 years of Victoria Legal Aid

Victoria Legal Aid has commissioned Melbourne artist Sue E. Armstrong to produce an artwork to commemorate our 30th anniversary this year.

Ms Armstrong, a fine artist and mental health consumer consultant, is the convenor of the community art group Penguin Artists. She is a former arts law student and is a member of many groups which provide support and advocacy for women with mental illnesses.

Ms Armstrong has completed commissions

for the City of Moonee Valley and the Victorian Women and Mental Health Network. Her work has appeared in numerous community exhibitions including the State Trustees' *Connected 10* and *Mind Australia's Art of Interruption*.

Ms Armstrong's artwork will be launched by the State Attorney-General, Mr Robert Clark, at our official 30th anniversary event in June.

Managing Director Bevan Warner said the 'completed artwork will be seen by the thousands of people who visit us each year. People with a disability make up a significant proportion of our clients and we have a mandate to prioritise services to people who are marginalised and vulnerable to unfair treatment.'

'Most people don't think about legal aid because they will never need our help but for people with a disability who typically can't afford legal advice and representation, legal aid is a vital service at times of acute need.'



Sue E. Armstrong

Photo courtesy Glen Daniels, Leader Newspapers

# VLA closes its last Black Saturday insurance file

**VLA's last Black Saturday client only recently learned whether her insurance claim would be treated as fraud or coincidence.**

Following the tragedy of the Black Saturday bushfires, survivors faced another battle to rebuild their lives. For our client, this included dealing with a rejected insurance claim.

Our client's daughter took out home and contents insurance cover by phone for their small rural property near Yarra Glen at around 4.30pm on 7 February 2009 – Black Saturday. The policy officially took effect from 4.52pm.

The property is located about 35 km from Mount Disappointment, which is where the East Kilmore bushfire hit around 4.30pm. That same fire swept through the client's property around two hours later.

The family and their animals survived by huddling in the dam. The family home was saved, but a self-contained cottage on the property was destroyed.

Using a map of the area found on Google and a chat with one neighbour, the Queensland based insurer concluded that the client



must have known her property was under immediate threat of bushfire when the policy commenced and refused her claim.

The family contacted our Bushfire Insurance Unit for assistance about three months after the fire, with lawyer Jenny Lawton taking up the case. Following unsuccessful negotiations with the insurer and its internal dispute resolution office, the matter was referred to the Financial Ombudsman Service (FOS) in September 2009.

The dispute came down to whether the daughter had truthfully answered the question: 'Is the property under immediate threat of bushfire?' Curiously, the insurer had helpfully suggested the daughter assess the risk by looking out of the window to see if there was fire.

In undertaking research for the case, it quickly became apparent that warnings and urgent threat messages for townships in the path of the East Kilmore fire were not issued until after the fire hit the client's area. In addition, due to the peculiar angle of the valley where she lived, no smoke plume was visible. Evidence tendered to the Ombudsman on behalf of the client included wind charts, geographical maps, photos and statutory declarations from immediate neighbours. In addition, phone records were submitted to demonstrate that the valley's 'fire guard phone tree' did not swing into action until 5.22pm, when the first neighbour at the top of the ridge became aware of the threat.

The Ombudsman determined there was no evidence that the threat of bushfire was apparent at the time the policy commenced and that the insurer must meet the claim. The Ombudsman also held the insurer must pay interest on the claim from August 2009.

Ms Lawton said the case demonstrated the need for independent review of refused insurance claims to assist people in their dealings with insurance companies.

## Home equity threshold sees more people supported

**Legal aid reforms that came into effect on 18 January allow more people who have equity in their home to apply for a grant of legal assistance.**

'People with up to \$300,000 equity in their home can now be considered for a grant of legal assistance,' said Bevan Warner, Managing Director Victoria Legal Aid.

'Prior to these reforms, a person with more than \$100,000 equity in their home was automatically refused assistance. Lifting the home equity threshold will especially help low income earners and people who may be struggling to pay off their mortgage on the back of rising house prices.'

It is expected that these measures, estimated to cost around \$1.1 million annually, will help up to 500 more people this year. Lifting the home equity threshold means that fewer people are automatically excluded.

Last financial year Victoria Legal Aid helped 87,000 people with legal advice and lawyers at court, arranging individual legal representation for 43,414 clients.

Practitioners on VLA's panels can find out more in the 'allowable assets' section of the new and improved VLA Handbook for lawyers.



# New lawyers program recruiting now

The opportunity to be an advocate and stand for something is now open to first and second-year lawyers who can apply to be part of our New Lawyers Program.

The program provides 13 new lawyers with comprehensive training and development over two years. New lawyers work across civil justice, criminal law and family law programs. They will also be based for six months in one of 14 suburban and regional offices across Victoria, where they will gain experience in a variety of complex and challenging work.

Current New Lawyer Sally Szmerling completed a six month placement at Shepparton and regards the program as 'the perfect introduction to what turned out to be

a fast paced rotation full of new challenges and plenty of court appearances.'

'From providing advice at Dhurringile Prison and Wangaratta Hospital, to being duty lawyer at the Shepparton Magistrates Court, I learnt not just about new areas of law, but also about what life is like in the country, and the unique challenges faced by people in regional areas,' she said.

Director of Legal Practice, Meagan Keogh, describes the New Lawyers Program as a unique opportunity for first and second year lawyers to:

- receive hands-on experience during rotating placements
- interact with clients on a daily basis

- undertake appearance work in courts and tribunals
- work closely with expert lawyers across practice areas.

'Unlike large commercial firms of a comparable size, the legal work we do allows junior lawyers to work directly with clients to help solve their legal matters,' said Ms Keogh.

Aimee Cooper, another new lawyer in the program, said that 'it's been challenging and rewarding, and I know the knowledge and skills I'm gaining will be valuable to any jurisdiction I end up practising in. To top it off I get to work with experienced and passionate practitioners, and to work for an organisation that helps the people in our community who need it the most. What other first year lawyer job offers all that!'

'I can honestly say I've been blown away by the level of training and breadth of experience provided through the program,' Ms Cooper said.

Applications for the 2011 New Lawyers Program close on Friday 15 April 2011. The new group of 13 first and second-year lawyers will begin the program in September.

For more information, phone Leah Borsboom 9269 0537, email [nlp@vla.vic.gov.au](mailto:nlp@vla.vic.gov.au) or visit [www.legalaid.vic.gov.au/newlawyers.htm](http://www.legalaid.vic.gov.au/newlawyers.htm)



New lawyers: Back row l to r: Elizabeth Richard, Joni Gear, Josephine Polak, John Molloy, Allison Jones, Stephen Peterson, Lauren Hodes, Jonathan Makary  
Front row l to r: Aimee Cooper, Toby Verey, Anna Renou, Sally Szmerling

## New specialist criminal law teams

Four new specialist teams came into effect in January this year to form Criminal Law Melbourne, known previously as the Criminal Law Division, VLA.

'The new Advocacy, Sexual Offences, Indictable Crime, and Appeals and Strategy teams will better position VLA to respond to the increasing complexity of criminal law, and the creation of specialist teams, lists and courts by prosecution agencies and courts,' said Saul Holt, Director Criminal Law Services.

'They join our existing areas of specialist criminal law practice in Youth Crime, Social Security and the Public Defenders Unit.'

### Purpose of the teams

The teams will provide leadership and professional guidance to staff in their areas of specialisation across Victoria.

'With more than 150 criminal lawyers working from 17 locations, the specialist teams support the largest criminal defence practice in Victoria catering to more than one third of legally-aided clients. Our staff practice also boasts 31 LIV Accredited Criminal Law Specialists,' said Mr Holt.

Lawyers with expertise in the issues and interests of priority client groups will work across the four new specialist teams. This includes clients who have mental health issues, have an intellectual disability, are from a culturally and linguistically diverse background, are in custody, or who are homeless.

'These teams and our increased organisational focus on our most vulnerable and disadvantaged clients will ensure the highest quality representation for legally-aided clients, and contribute to the fair and effective operation of Victoria's criminal courts,' said Mr Holt.



Specialist criminal law team leaders l to r: John McLoughlin, Laura McDonough, Vince Callabiano, Gavin Green

# Testing our obligations towards young asylum seekers

Clarifying the obligations of the Minister of Immigration and Citizenship in relation to unaccompanied children asylum seekers is at the heart of High Court proceedings which began in December 2010.

Acting on behalf of four asylum seeker children from Afghanistan, VLA asked the court to determine whether the Minister breached his guardianship obligation, and his duty of care, by detaining them.

The four were suffering from a range of symptoms of physical and psychological harm, having been held in immigration detention since February 2010.

Each made a claim for a protection visa, fearing persecution if they were returned

to Afghanistan. They were transported to Christmas Island, and then to the mainland and detained in a facility run by the Department of Immigration and Citizenship for some months.

'These children arrived in Australia without their parents. The Minister of Immigration and Citizenship, by law, became their guardian,' said Acting Co-Director of Civil Justice, Access and Equity, Joel Townsend.

'The Migration Act says that children should only be detained as a last resort, and gives the Minister options other than detention,' said Mr Townsend.

While the action did not succeed in releasing the children from detention at that time, the

children were released into the community on 10 February under a residence determination.

The interlocutory proceedings were just one element of ongoing proceedings instituted on behalf of the four boys, in accordance with the relevant Commonwealth guideline.

Mr Townsend said the upcoming case will examine an 'unsettled and important point of law and it is in the public interest for the Minister's obligations to be clarified as the outcome may affect all children in detention.'

'We are the primary public law migration practice in the State that represents clients at judicial review. This case is an important one as it fits with our mandate to assist vulnerable groups in the community,' he said.

## Do not knock brings home residents' rights

A short film about consumer rights in relation to door-to-door salespeople has provided an accessible and cost effective way to protect hundreds of people.

Launched in December, the *Dealing with door-to-door sales* dvd supports the work of the *Do Not Knock* campaign, based on a simple sticker to deter salespeople from approaching people at home.

More than 400 copies of the dvd have been distributed to individuals and community groups and dozens of people have watched it or downloaded it online.

More than 15,000 stickers and 10,000 flyers have been distributed over the past 12 months. Many more resources have been distributed by *Do Not Knock* campaign collaborators, Footscray CLC, Fitzroy Legal Service and the Consumer Law Action Centre.

Targeting older people and those with limited literacy, the aim of the campaign is to educate

people about the rules that protect them from misleading or aggressive door to door selling, and where to get help if they encounter problems.

It also shows how people can handle things differently if problems arise, and highlights the availability of *Do Not Knock* stickers and flyers.

The National Partnership Agreement on Legal Assistance Services (National Partnership Agreement) prioritises community legal education as an effective preventative measure. By encouraging people to take action to protect themselves from unscrupulous practices, the *Do Not Knock* campaign helps prevent legal problems from occurring that may place an additional burden on grants of legal aid.

The film can be viewed or downloaded from [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) or ordered free of charge using the order form at [www.legalaid.vic.gov.au/publications.htm](http://www.legalaid.vic.gov.au/publications.htm) or by phoning 9629 0223.

The film has captions and a transcript is available. Free 'Do not knock' stickers and flyers are also available.

## Reducing delays in Court of Appeal

New procedures introduced in February aim to reduce delays in the Court of Appeal. They should also see trial counsel develop a broader range of skills that will ultimately benefit legally-aided clients in criminal trials and pleas.

The changes require more of trial counsel in the early preparation of key documents at the leave stage to ensure continuity between trial, and sentence and conviction appeals. The new fee structure has been weighted towards the increased contribution of counsel, particularly trial counsel. Grants of legal assistance will be available in more cases because the leave to appeal stage will be separately funded for both conviction and sentencing appeals.

Most cases pending will require some level of conversion to the new system.

For more information on the new guidelines and fees, see our website at [www.legalaid.vic.gov.au/forlawyers](http://www.legalaid.vic.gov.au/forlawyers) or contact the Legal & Policy Unit – phone (03) 9606 5351



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