

# briefcase



Victoria  
Legal Aid  
Lawyers And  
Legal Services

Inside this edition:

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02 | More help needed for  
mentally impaired

03 | Grants process simple  
and quick

03 | Bevan Warner VLA's new  
managing director

## No cuts to criminal law services - for now

Victoria Legal Aid has averted cutting its criminal law services by just over \$5million per annum despite the increasing demand across all state-funded operations, including summary and indictable crime and children's court services.

Last April VLA managing director Tony Parsons told the private profession: 'The expenditure reductions have become necessary because VLA's cash position is becoming unacceptably tight.'

However, the State Government then decided to bring forward a financial review of VLA operations. This has paved the way for VLA's criminal law services to continue as usual for the time being.

'The Expenditure Review Committee of Cabinet had requested a review to inform the State Government about VLA funding for the 2009 Budget,' Mr Parsons explained. 'But the

decision to bring forward that review, which is now well underway, means we will not be cutting our criminal law services.

'Of course, we will review our position in the light of the outcome of the ERC review.'

Mr Parsons pointed out that VLA was still under great pressure to maintain its services in the wake of increased demand across several areas. These include:

- payments to the private profession (the Bar and solicitors). Expenditure to private practitioners for State and Commonwealth funded services has significantly increased in recent years, with a 20% increase - an extra \$13million - from 2006-2007 to 2007-2008
- demand for legal aid for child protection matters has almost doubled since 2004, with 2886 applications in 2004-2005 and approximately 5500 in 2007-2008.

Expenditure has more than doubled in the same period, from \$3.177million to \$8.578million. These increases correspond closely to the increased number of protection workers that have been appointed over the past four years

- the increased demand for summary crime matters has meant that over the past two years there has been an additional \$2.1million expenditure on summary crime
- demand for grants in three categories of indictable crime - committals, county court pleas and county court trials - has increased over the past three years, with a 9% increase in the 12 months to April 2008.

'VLA has been meeting increasing demand and fee increases over recent years,' said Mr Parsons, 'but our capacity to continue to address these pressures is approaching its limit.'

### New magistrates bring VLA experience to the bench

Victoria Legal Aid congratulates former lawyers Sharon Smith and Jane Gibson, who were both appointed as magistrates to the Children's Court in July.

Ms Gibson worked at VLA between 2001 and the end of 2006. Her roles included in-house counsel and Children's Court advocate.

Sharon Smith has practised in criminal law in all Victorian jurisdictions and worked at Victoria

Legal Aid from 1996 to February of this year, first as a deputy section leader of the duty lawyer section and then as an Associate Public Defender (Committals) and finally as a Public Defender.

In April senior lawyer John Bentley was appointed a magistrate. Mr Bentley began at Victoria Legal Aid in late 2004, having previously worked with both the Victorian and Commonwealth Office of Public Prosecutions.

'These appointments reflect the great expertise of VLA's lawyers,' said managing director Tony Parsons. 'Ms Gibson, Ms Smith and

Mr Bentley will each bring extensive knowledge to their new roles, knowledge partly gained from working at VLA. We wish them the best in their appointments.'

Other former VLA lawyers to become magistrates have included Angela Bolger, Ann Collins, Michelle Erlich, Fiona Hayes, Bob Kumar, Cathy Lamble, Nunzio LaRosa, Kay Macpherson, Carmen Randazzo, Kay Robertson, Fiona Stewart and Christine Thornton. Ms Thornton was appointed a County Court judge in June.



# More help needed for mentally impaired

Victoria Legal Aid has called for magistrates to be given the power to make a broader range of dispositions in mental impairment cases and for the possibility of a specialist list in the Magistrates' Court where there is a real potential for a mental impairment defence.

The recommendations are two of nine Victoria Legal Aid made to the Attorney General in June in an issues paper about the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.

The paper also points out, in a detailed list of concerns about current practices, that supervision orders are extremely harsh and are only appropriate for very serious offending.

'They are particularly problematic for offenders with an intellectual disability,' said out-going VLA managing director Tony Parsons.

Over the past 12 months, VLA convened a number of discussions and forums about the use of the defence of mental impairment particularly as it is used in the Magistrates' and County Courts.

In November 2007 Mr Parsons hosted an extensive cross-agency roundtable chaired by the Chief Magistrate Ian Gray. Seventeen key criminal justice system stakeholders attended, including representatives from courts, Criminal Bar Association, Victoria

Police, Forensicare and the Mental Health Legal Centre.

'It's clear, very clear, that we can do more - and must do more - to help defendants who are mentally impaired,' said Mr Parsons. 'The criminal justice system is not the appropriate mechanism for helping people who need mental health services.'

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (the Act) allows a person to be excused from criminal responsibility if, at the time the crime was committed, the person was mentally impaired and the effect of the mental impairment was that he or she did not know the nature and quality of the conduct or did not know that the conduct was wrong (s.20).

If a person is found not guilty by reason of mental impairment, the disposition varies dramatically depending on which court hears the case. Some stakeholders characterised this as an 'all or nothing' response.

If the case is heard in the Magistrates' Court (summary offences or indictable offences tried summarily), the magistrate must discharge the person without conditions (s.5).

However, if the offence is heard in the County Court (indictable offences), the procedure is far more complex. Specifically:

- a committal hearing must be completed in the usual way (s.8)
- a hearing may be conducted to determine whether the person is unfit to stand trial (s.11) and
- a trial is conducted to determine guilt (ss.15-18).

Further, the outcome may have a significant impact on a person's liberty for many years. If the County Court finds a person not guilty by reason of mental impairment, the judge must:

- declare that the person is liable to supervision (s.23) or
- order the defendant be released unconditionally (but only after considering relevant experts' reports and any report by family members or victims) (ss. 23 and 40).

A supervision order may be custodial or non-custodial. That is, it may:

- commit the person to custody in an appropriate place (usually Thomas Embling Hospital if the person has a mental illness) or commit the person to custody in a prison (if there is no practicable alternative) or
- release a person on conditions specified by the court (s.26).

A supervision order is for an indefinite term, although a nominal term must be fixed (ss.27-28). For example, the nominal term for a serious offence is equivalent to the maximum term of imprisonment available for that offence. If a person breaches the conditions of a non-custodial supervision order, the court may increase the conditions of the order or make a custodial supervision order.

The VLA issues paper lists many concerns about current practices, including:

- perceived opposition to the mental impairment defence
- expense of procedures for cases heard in the County Court

... continued on page 04



# Grants process simple and quick

For some private practitioners, applying for a grant of assistance through Victoria Legal Aid remains a mysterious adventure: the unknown of how, when or in what circumstances assistance will be granted. However, if you are familiar with the *VLA Handbook*, the *Notes on Guidelines* and other resources available on the VLA website the whole process can be both simple and quick.

There are a few simple steps to remember before applying for assistance:

- always ensure you are applying for a matter that is funded
- always ensure all the questions of the application form are completed
- always ensure you have your client's up to date and current proof of means
- always ensure, if legal proceedings have commenced, you have all appropriate court documents.

VLA has produced a number of worksheets to assist you with what VLA takes into consideration when assessing requests for assistance. These worksheets cover a number of topics including such things as guidelines and when it is appropriate to seek funding for a particular disbursement such as an expert report. These can all be located on VLA's website at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

As VLA moves increasingly towards electronic communication, it is becoming ever more important for private practitioners to become familiar with our website. All important announcements, such as changes to our guidelines or means test policies are placed on the website, as are all current versions of the application forms and tax invoices. By accessing these regularly you will know you are claiming the correct fees and avoiding any delay in payment of accounts.

Also available on the website is a quarterly newsletter called E News which keeps you up to date with any changes and provides clear and concise information. By providing regular updates and reminders on a number of topics it can act as a quick reference guide for you and your staff.

Finally, VLA has produced a new information sheet designed to help clients understand how grants of legal assistance work. *Who pays for a grant of legal assistance?* is just one of many VLA publications that will assist you to explain to clients various aspects of legal proceedings and services funded by VLA.

To order copies of any of VLA's publications visit [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

## Bevan Warner VLA's new managing director

Bevan Warner, Victoria Legal Aid's new managing director, took up his position on Monday 4 August.

Mr Warner was formerly General Manager, Legal Aid Western Australia, for just over 10 years.

In announcing the appointment in June Attorney-General Rob Hulls said 'Mr Warner has an impressive track record in driving reform, and his significant experience and expertise will be a valuable addition to legal services in Victoria.'

The track record includes the following achievements:

- increased State and Commonwealth funding for Legal Aid WA from \$14million to \$40million, and improved awareness of client needs and circumstances
- a joint State/Commonwealth review of community legal services that resulted in new centres and an additional \$1.125million in recurrent state funding for the sector
- additional Legal Aid offices in Albany, Geraldton and Kununurra

- introduction of Grants On-Line for service providers and legal practitioners to process applications faster and to ensure subsequent client dealings and payment claims were handled in a timely and responsive fashion
- implementation of a lawyer-based mediation program for separating couples, providing assistance to approximately 500 families per year
- significantly improved relationships with the Law Society of WA, the Community Legal Services sector and private practitioners undertaking legal aid.

Prior to joining Legal Aid WA Mr Warner was Director of Corporate Development in the WA Aboriginal Affairs Department for five years. There he developed an appreciation of the diversity and underlying causes for over representation of Aboriginal people in the criminal justice system.

Attorney-General Rob Hulls said: 'Mr Warner will take over the reform agenda initiated by his predecessor Tony Parsons, which has significantly improved access to legal



advice and representation for all Victorians. I welcome Mr Warner to VLA.'

Mr Parsons has known his successor seven years and said of Mr Warner's appointment: 'He's just the person we want to take this great organisation to the next level. He has rich legal aid experience and an extensive knowledge of the workings of government and political machinery.'

'Mr Warner's a terrific person. And he's a legal aid person, passionate about our work. I'm thrilled to be handing over to him.'

## More help needed for mentally impaired

- limited options in the County Court to make less onerous orders
- limited service options for people with a mental impairment in the community
- absence of accurate data in the Magistrates' Court
- ethical and practical problems for counsel in raising the defence when the client is unable to give instructions
- inconsistencies between the state Act and the equivalent Commonwealth legislation.

Recommendations made by VLA to the Attorney General include:

- the mental impairment defence be preserved
- appropriate use of the defence should be encouraged
- many impaired defendants need mental health treatment rather than a punitive response
- magistrates to be given the power to make a broader range of dispositions in mental impairment cases

- some level of specialisation by magistrates may be appropriate and the establishment of a specialist list in the Magistrates' Court for cases where there is a real potential for a mental impairment defence should be explored
- consideration be given to a specialist contest mention list that would ensure that courts have access to appropriate reports for cases where there is a potential for mental impairment defence
- findings of not guilty by reason of mental impairment should not be listed on LEAP criminal record reports or National Criminal Records Checks
- an appropriate form of criminal justice diversion be available for mentally impaired offenders
- mental health services need additional funding to support effective diversion strategies
- the legal profession and judicial officers would benefit from more information about mental impairment issues

**It's clear, very clear,  
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mentally impaired**

- co-ordinated response by Department of Justice and Department of Human Services that is solution focussed.

'VLA believes the implementation of these recommendations would go a considerable way to helping some of the most marginalised and most distressed members of our community,' said Mr Parsons.

### New VLA publications

Four of Victoria Legal Aid's most popular publications have recently been updated and republished.

*Your day in court: a guide to attending the Magistrates' Court* gives clients information about what to expect and what to do if they

have to go to court for criminal offences. It covers how the court system works, getting advice, pleading guilty or not guilty, and tips for going to court. It also contains sample charges, letters and character references.

In this edition there is new information about CISP, court listing times, and some clarification about penalties.

*Road to court: a guide to traffic offences in the Magistrates' Court* includes information for clients about driving offences, demerit points, licence suspensions and cancellations and what to do when in court. This edition has new information about hoon driving and graduated licences, while the drink and drug driving sections have been updated.

*Fines: your options for dealing with fines* answers many frequently asked questions, including:

- What happens if I get a fine?
- What if I cannot pay the fine on time?
- Can I ask the agency to review my fine?

The booklet also includes two extra pages of legal words and plain language definitions. The changes are substantial. If you have any old copies of the brochure can you please discard them and order new copies.

*Your Rights: police powers in Victoria* gives the public information about what to expect and what to do if approached by police – giving name and address, getting arrested, being searched, signing papers, taking part in identification parades. There is specific information about rights for people under 18 and for people with a mental impairment.

In this edition there are also sections about terrorism laws, graffiti and the Victorian Charter of Human Rights.

**These free Victoria Legal Aid publications, and many others produced by VLA, can be ordered at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au) or by calling 9269 0223**



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