

# briefcase



Victoria  
Legal Aid  
Lawyers And  
Legal Services

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## Victoria Legal Aid has responded to the Director of Public Prosecution's campaign to increase sentences for aggravated burglary.

The DPP has given notice to nearly every person charged with aggravated burglary that he intends to 'challenge' current sentencing practices.

The notice is accompanied by a long submission, which concludes that the sentence for an 'ordinary' aggravated burglary should be between five and 10 years – a sentence two or three times longer than might currently be imposed.

Through its Public Defenders Unit, VLA has prepared a submission saying that any change to sentencing practices should be argued in the Court of Appeal, not in every individual case.

Saul Holt, VLA's Director of Criminal Law and Senior Public Defender said that 'making this submission in every case creates anxiety and uncertainty for accused people.

'It also makes it very difficult for defence lawyers to give accurate advice to clients about a likely sentence.



## VLA on sentencing - belongs in the Court of Appeal

'These matters should be dealt with in the Court of Appeal where thorough and considered arguments can be made.'

The submission also demonstrates that a longer sentence is not necessarily a better sentence, and the case for longer sentences in aggravated burglary is not made out.

The economic cost of longer prison sentences can be as much as \$90,000 per prisoner per year, according to Council of Australian Government figures. For example, if the 66 people imprisoned by the higher

courts for aggravated burglary in 2008-09 had their sentences doubled, jails would require an extra 132 beds and their annual running costs would increase by almost \$12 million.

'This campaign burdens busy sentencing judges with additional complex points of law on every aggravated burglary sentencing and eats into the public purse.

'Although not a consideration for sentencing, it is pertinent for the public to know the cost and understand that extra prisons will likely be required,' Mr Holt said.

*Continued on page 02*

## Hampel launches defenders unit

County Court Judge Felicity Hampel launched Victoria Legal Aid's new-look Public Defenders Unit on 29 October, at the Lionel Murphy Centre in Queen St.

Judge Hampel described the unit, which now has 11 very experienced advocates, as akin to a centre of excellence. She said VLA was well-placed to see trends in criminal defence.

Her Honour also spoke highly of the collegiate aspect of a team such as the Public Defenders Unit, of the scope for sharing and learning from colleagues' knowledge and experience.

VLA's public defenders take on some of the state's toughest matters, including high-profile homicide, arson, rape and drug cases.

To contact the Public Defenders Unit call (03) 9269 0221 or email [public\\_defenders\\_clerk@vla.vic.gov.au](mailto:public_defenders_clerk@vla.vic.gov.au)



County Court Judge Felicity Hampel



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## VLA on sentencing - belongs in the Court of Appeal

The submission is being filed in all of VLA's in-house cases and has also been made available to private practitioners and to the Criminal Bar Association for their use.

The *Sentencing Act 1991* formally recognises VLA's role in assisting the Court of Appeal in giving guidance on sentencing.

'Where the DPP takes a system-wide approach to sentencing it is important that the approach is tested and challenged and VLA is in the best position to take up that role,' said Mr Holt.

Copies of the VLA submission are available by ringing VLA's Public Defenders Unit on (03) 9269 0221 or by emailing [public\\_defenders\\_clerk@vla.vic.gov.au](mailto:public_defenders_clerk@vla.vic.gov.au)

## \$200,000 boost for VLA

The Legal Services Board has given Victoria Legal Aid almost \$200,000 to support the continued implementation of the Victorian Legal Assistance Forum (VLA).

VLA aims to help clients across the legal assistance sector by combining resources wherever possible.

'Over nearly two years, the forum has organised very successful legal assistance forums and working groups across Victoria,' said VLA's project manager, Victoria Legal Aid's Rachna Muddagouni.

'The grant of \$196,000 is great news for VLA. It will assist VLA in maintaining the momentum it has generated since being formed in February 2009.'

Recent VLA events have included the launch of Footscray Legal Community Centre's Burmese Legal Needs Research Report. The launch was held at Victoria Legal Aid's Lionel



Murphy Centre in October and was part of a morning seminar about understanding the legal needs of newly arrived communities.

VLA's Managing Director, Bevan Warner, was recently appointed the new chair of VLA.

The Victoria Law Foundation's Executive Director, Joh Kirby, is the new Deputy Chair.

VLA members include Victoria Legal Aid and:

- Victorian Aboriginal Legal Service
- Aboriginal Family Violence Prevention and Legal Service
- Federation of Community Legal Centres
- Victoria Law Foundation
- Public Interest Law Clearing House
- Victorian Bar
- Law Institute of Victoria.

For more details visit [www.vlaf.org.au](http://www.vlaf.org.au) or contact Rachna Muddagouni on (03) 9269 0256.

## Law reform

Victoria Legal Aid makes submissions to Commonwealth and state governments on reform issues affecting legal aid services and legal aid clients. Road safety, defensive homicide, and cybercrime are some recent issues addressed by Victoria Legal Aid's Justice and Law Reform program.

### Road Safety Act

VicRoads' review of the *Road Safety Act 1986* recognises that the Act, in its current form, is lengthy and complex. In VLA's experience, the Act regularly confuses clients, lawyers and prosecutors, and requires simplification.

VLA's submission highlighted five key topics it considers should be a focus of the review:

- the structure and length of the Act
- the drink-driving provisions
- the alcohol interlock provisions
- the offence of driving whilst suspended or disqualified; and
- provisions relating to infringement notices.

### Defensive homicide

In its contribution to the review of the offence of defensive homicide, VLA noted that while

five years have passed since the offence of defensive homicide was introduced, it has been rarely applied. More time may be required to assess whether these circumstances still warrant the status of a separate offence.

VLA argues that the offence of defensive homicide should be retained. In self-defence cases, the offence provides a jury with more options than the 'all or nothing' choice between a murder conviction or acquittal. There will be cases involving the killing of a family member or intimate partner where this will be extremely important. Furthermore, the retention of the offence is important to avoid confusion in murder trials where the verdict of manslaughter is also left to the jury.

VLA strongly believes that there is a need for more education and training for the legal profession, courts and the wider community in relation to family violence, and supports the ongoing provision of such continuing education. This includes a need for family violence risk assessment training amongst



the legal profession and the courts, an approach that VLA is currently implementing in-house. There would also be significant value in including a specific focus on the occurrence of homicides in the context of family violence.

### Cybercrime

The Department of Justice has conducted community consultations about its cybercrime strategy.

VLA has contributed to the consultation via its membership of the Bendigo Legal Assistance Forum (BLAF).

BLAF developed a joint response and sought ongoing engagement in the development of the strategy.

BLAF members reported an increase in the number of matters before the local courts that contain a cyberbullying/sexting component. The increase in casework representation for young people was particularly noticed by Victoria Legal Aid lawyers in the Bendigo region.

## Webb wins LIV award

Victoria Legal Aid lawyer Daniel Webb has won the 2010 Law Institute of Victoria's Young Lawyer of the Year Award.

Daniel, 26, joined VLA in March 2008 as an articulated clerk.

In his first year of legal practice, Mr Webb has run complex and significant public interest litigation, including two *Charter of Human Rights and Responsibilities* test cases in the Supreme Court.

Before joining VLA, Mr Webb, originally from Western Australia, volunteered at the Cambodian Centre for Human Rights in Phnom Penh, Transparency International in Port Moresby and the Cape York Land Council in Cairns.

Mr Webb is a civil lawyer in VLA's Civil Justice Program.

In October this year he took leave to take up a 12 month Lawyers Beyond Borders/Australian Volunteers International role as the Peoples' Lawyer in Kiribati, a Pacific coral atoll with a population of 100,000.



VLA lawyer Daniel Webb



## Specialists pass with flying colours

Victoria Legal Aid congratulates its new accredited criminal law specialists: Ballarat's Kylie Moloney, Geelong's Wendy Gibbons, Sunshine's Cavell Warren, and Melbourne's Shannon Dellamarta and Saul Holt were all accredited by the Law Institute of Victoria in October.

VLA now has 30 accredited criminal law specialists amongst 126 lawyers practising criminal law across the state. 'That's a very high representation of top-notch, especially well-regarded lawyers here at VLA,' said VLA's Director of Legal Practice, Meagan Keogh. 'It not only reflects well on the lawyers themselves but also on VLA's criminal law practice.'

'This is fantastic,' said Ms Keogh.

'It's not easy to gain this accreditation. There is a tough three hour exam, an advocacy exercise in front of a magistrate, and a peer discussion about a theoretical case.'

'You are expected to be across all areas of state and federal criminal law and procedure, which requires a lot of study. Accreditation, therefore, carries a lot of gravitas.'

Ms Keogh noted that not all lawyers who strive to be accredited specialists pass the assessment but this year VLA had a 100 per cent success rate, an outstanding result.

According to the LIV, 'Practitioners who are accredited as a specialist are recognised as having an enhanced skill level, as well as substantial involvement in established legal specialty areas. The LIV requires such specialists to demonstrate superior knowledge, experience and proficiency in a particular area of law to ensure that recognition as an accredited specialist is meaningful and reliable.'



## Increase in criminal law fees

Following 18 months consultation, a comprehensive report has recommended \$3.5 million be invested to increase fees in criminal matters. The report proposes specific changes to the fee structure designed to ensure the involvement of experienced lawyers in legal aid work, and recognises that recent changes to criminal procedures will only be effective through investment in good preparation and early resolution of cases.

The VLA Board has accepted the report's recommendations to change the fee structure in indictable, serious youth crime, appellate crime and bail. This includes a one third increase in committal brief fees, a new post-committal negotiation fee to ensure continuity of case knowledge, new fees for sentence indication hearings, reading fees for solicitors and a doubling of fees for serious cases in the Children's Court.

In summary crime, the report recommends a whole of job fee that would add \$2.7 million to payments to private lawyers, amounting to an increase in expenditure of 22%. The current median summary crime fee is \$645 and under the proposed changes for summary crime, every case will attract a fee above that median, with a quarter of cases

receiving a 'complex case' fee of more than twice the current average. Unlike the current fee structure, the whole of job fee is based on input hours and an underlying hourly rate. The proposal also recommends that fees be indexed annually. The new arrangements would ensure Victoria continues to provide aid for a greater range of summary cases and see practitioners paid more than their counterparts in other states.

'Discussions are continuing with the LIV and the Bar on elements of the package and ways to enhance briefing practices, and the increases are expected to flow early in the new year. The review confirmed that a simplified fee structure aligned to good practice would help government better understand the benefits of investing in the important work undertaken by defence practitioners' said Managing Director, Bevan Warner.

VLA will review input hours and hourly rates with the profession on an ongoing basis. This will ensure they are reasonable, having regard for the performance of prosecutorial agencies with whom defence practitioners must liaise. When this package of measures is implemented VLA will be exploring further ways to support solicitors and counsel with serious indictable matters.

# Collaboration the key to child protection

Family group conferencing, lawyer-assisted mediation and a finer appreciation of the roles of lawyers and child protection workers are the keys to helping children and families at risk, said Victoria Legal Aid's Director of Family, Youth and Children's Law Services, Judy Small.

Ms Small's comments were in the wake of the Victorian Law Reform Commission's report into child protection procedures, released in early October, and subsequent media debate.

The commission's report outlines five options for reform of the legal system around child protection, with a focus on promoting early resolution and giving more say to families.

Family group conferencing before court applications are made is a central feature of options one and two. VLA supports this change, as does the Attorney-General Rob Hulls, who noted that the report 'marks the end of the adversarial system for child protection matters'.

'Legally-assisted conferencing will help redress the power imbalances inherent in the system,' said Ms Small, 'thereby protecting the rights of children and families at risk, while providing for earlier resolution of matters.'

Ms Small said that comments in the media which pit lawyers and social workers against one another do a disservice to both professions.

'It is particularly unhelpful at a time when the professions are working together to break down the barriers that have historically arisen between them.'

'In the past six months interdisciplinary training of child protection workers and lawyers in non-adversarial processes has helped each profession better understand the other in their joint quest for better outcomes for children at risk.'

'All lawyers working in the child protection system want the best possible outcome for vulnerable families and children. The system



in which they have long worked includes an adversarial legal process, which does not always serve children and families well.'

Ms Small pointed out that most lawyers welcome the Victorian Law Reform Commission's proposals for earlier intervention and less adversarial processes.

The newly-introduced processes in the Children's Court, known as new model conferencing, consist of a meeting where the family, with the advice of lawyers, has the opportunity to put forward its strengths, and child protection workers are able to voice their concerns about the children's safety.

'Lawyer-assisted family group conferences are more likely to result in stronger agreements,' said Ms Small, 'agreements that are more acceptable to families.'

'This means fewer matters being taken to court. And that can only benefit children, families, lawyers and child protection workers.'

## A win for rights in Ballarat

A magistrate dropped several charges against a client after a Victoria Legal Aid lawyer successfully argued a case of unlawful arrest.

'This has been a really significant victory for our client,' said Koulla Roussos, Deputy Managing Lawyer of VLA's Ballarat office. 'I believe the public interest aspect of this case makes it very important.'

Ms Roussos was representing a young man charged with a range of matters, including resisting arrest, assaulting police, and being drunk in a public place.

The Ballarat lawyer's investigations led her to Senior Counsel Dyson Hore-Lacey, who concluded that there was merit in a case of unlawful arrest.

With the pro-bono support of junior barrister Erin Ramsay, Ms Roussos and Mr Hore-Lacey conducted a case that went to the very heart of the organisation's principles, those of access to justice and defending basic civil rights.

The matter ran for two days, with Magistrate Kaye Robertson dismissing all charges and ordering police to pay nearly \$6000 costs.

The magistrate found that there was no lawful basis to the arrest, interpreting Section 13 of the *Summary Offences Act* strictly.

This was strengthened in light of Victoria's *Charter of Human Rights and Responsibilities*. Under Section 21 of the charter people must not be subjected to arbitrary arrest.



'The most significant violations of human rights often happen for the most trivial things,' said Ms Roussos. 'If you feel like you've got a meritorious matter worth investigating, there are avenues that exist for taking these further.'

'The significance is especially important in criminal law because we should remember that the rule of law also applies to law enforcement and it is worth scrutinising the circumstances of arrest,' she said.



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