

Community Law News

AN E-NEWSLETTER OF THE FEDERATION OF COMMUNITY LEGAL CENTRES VIC

The e-newsletter of the Federation of Community Legal Centres (Victoria) Inc, the peak body for Victoria's community legal centres. Community Law News is directed towards community legal centres, the broader legal and social justice sectors, law reform bodies and interested members of the public. For information on Community Law News, or to subscribe, please contact administration@fclc.org.au

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Community legal centres are independent community organisations providing free legal services to more than 100,000 Victorians each year. Community legal centres integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and that are preventative in outcome. The day to day work of community legal centres reflects a 35 year commitment to social justice, human rights, equity, democracy and community participation.

High Court holds refugee offshore processing to be unlawful and unfair

Two Sri Lankan asylum seekers secured a landmark win in the High Court of Australia, represented by the Refugee and Immigration Legal Centre and pro bono counsel. They established that the Department of Immigration and Citizenship's process of determining whether they were owed protection as refugees was conducted unlawfully, and that they were denied procedural fairness. The Department and the Minister were ordered to pay their legal costs.

The two Tamil asylum seekers, whose names have not been released, arrived by boat in 2009 seeking the protection of the Australian Government. The first asylum seeker, as a Tamil businessperson with a brother in the Liberation Tamil Tigers of Eelam (LTTE), feared that if sent back to Sri Lanka he/she would be at serious risk of persecution from the Sri Lankan army, agencies of the government and paramilitary groups. The other asylum seeker, another Tamil in fear of the Sri Lankan authorities, was also concerned that if their escape from Sri Lanka and attempt to seek asylum in Australia became known to the Sri Lankan authorities, they would be in even graver danger.

The two asylum seekers, like all people seeking asylum who arrive by boat on parts of Australia "excised" from the migration zone, were prevented from applying for a protection visa under the Migration Act. Despite abandoning the "Pacific Solution" the Labour Government never repealed this Howard Government enactment. Instead they introduced a new administrative process to assess refugee claims, which informs the Minister's exercise of his power to grant a protection visa.

The asylum seekers had their applications for refugee protection rejected both initially and upon review by contractors of the Department. In both instances, the decision-makers relied heavily on information about the Sri Lankan political situation to conclude that their perceived link to the LTTE gave them no legitimate reason to fear return. However, this information was not made available to the asylum seekers prior to the decision and they were given no opportunity to respond. The decision-makers entirely ignored the asylum seekers' argument that Tamil business owners or Tamils perceived to be wealthy were an at-risk social group. The decision makers, following guidelines published by the Department, did not consider the legal principles of the Migration Act binding, including its authoritative interpretation of the United Nations Refugee definition.

The High Court held that this method of assessing the refugee claims cannot be done in a vacuum and must comply with Australian law. In addition, the Court held that the process must be fair, as it affects the rights and interests of the asylum seekers by prolonging their detention. The rejection of the two Tamil asylum seekers was tainted by the decision-makers' misunderstanding of their power and

Law Handbook Online 2011

The Law Handbook Online 2011 edition is now available. The new edition has more content on the impact of the Charter of Human Rights and Responsibilities Act 2006 (Vic) on Victorian legislation and the following sections have been expanded:

- Arrest and courts
- Consumer and credit issues
- Neighbours and noise
- Employment conditions
- Disability
- Work injuries
- Privacy rights and
- Freedom of information

Hardcopy versions of the Law Handbook can be obtained by contacting Fitzroy Legal Service.

The Law Handbook Online is supporting the new "Reaching Agreement" website which can be found in the Neighbours and Noise section. Reaching Agreement is a joint initiative of the Dispute Settlement Centre Victoria and the Appropriate Dispute Resolution Directorate.

The Reaching Agreement website www.disputes.vic.gov.au/reachingagreement/ features how-to videos with tips on simple and effective ways to resolve neighbourhood disputes. The videos are presented in English, Australian sign language and seven other community languages. Guides to dispute resolution services in Victoria are also available in English and ten community languages from the website.

Jobs in Community Law

Working in a CLC is about making a real difference to people's lives through the law. The latest community law and public interest law jobs are at www.communitylaw.org.au

Current CLC jobs (at 29 November) are:

- Lawyer – Gippsland Community Legal Service
- Graduate Lawyer (CLC Graduate Scheme) - Barwon Community Legal Service
- Community Development Advocacy Training Officer & Social Change Lawyer - West Heidelberg CLS

the failure to afford an opportunity to respond to the critical and adverse country information.

The full impact of the decision is not yet clear but it is hoped it will bring about a fairer and more rigorous decision-making process in the assessment of refugee claims by past and future asylum seekers who arrive by boat. It is a significant step towards removing the different standards arbitrarily applied to those people who arrive by boat and those who arrive by plane.

Lisa Harrison, Federation of Community Legal Centres

Sector Development Update

The Federation works with its members and stakeholders to build a stronger and more effective community legal sector. Resources and information on our sector development work are available at www.communitylaw.org.au. For more information, contact Claudia Fatone at claudia.fatone@fclc.org.au.

Current initiatives/highlights include:

- **CLC Law Graduate Scheme** – A 2010 graduate position with Barwon CLC has recently been advertised and the Federation is working hard towards continuing the successful scheme and is currently seeking funding for a 2012 position. Further details are available on the Federation website;
- **Professional development** – The Federation continues to work with organisations including the Law Institute of Victoria, Victoria Legal Aid and pro bono providers to provide free and low cost professional development opportunities for CLC staff. Recent sessions included training on the new civil procedure legislation and recent family law developments;
- **Workplan Development Workshop** – The Federation and Victoria Legal Aid convened a workshop to help CLCs with the process of developing their new CLSP workplans;
- **Federation Toolkit update** – a number of new resources have been placed on the Toolkit, including an updated Funding Kit with information on how and where to seek funding (Managing the Organisation/Funding & Grants), a Children's Court Practice Direction regarding the new model conferences (CLC Legal Practice/Child Protection), new modules for the Valuing Volunteers Training Kit (Managing People/Volunteers) and CDCLEWS Network Skills Register (Law Reform & Community Legal Education). For information/passwords to access the toolkit: administration@fclc.org.au;
- **Pro bono matchmaking at the National CLC Conference** – The Federation co-convened a session at the National CLC in Melbourne in October which outlined a range of ways CLC can work with private-law firms and showcased a number of relationships, from both the CLC and law-firm perspectives;
- **Improving legal referrals** – The Federation has been working to improve legal referrals in the legal assistance sector through the Victorian Legal Assistance Forum's Legal Referral Working Group; and
- **Multiple Business Agreement** – The CLC employer group, assisted by Jobs Australia, has reached in-principle agreement with the Australian Services Union on a new CLC Multiple Business Agreement. The draft agreement has been sent to CLC employers who have been asked whether they are willing to be a party to the agreement. Once the CLC employer parties have been determined, relevant CLC employees will vote on approving the agreement.

Taser report released

CLCs have long argued that Tasers are not the panacea to reducing police use of a firearm. There are substantial dangers that Tasers can kill or harm when used on vulnerable groups or in particular ways. Evidence from overseas, and increasingly from Australia, suggests that Tasers are prone to police misuse. We also know that lethal force by police can be avoided in many instances with non-violent intervention and other lower use of force strategies.

The Federation's report *Taser Trap – Is Victoria Falling For it?* brings together internal Victoria Police documents obtained through freedom of information legislation, as well as publicly available information and the experience of CLCs. The report warns that death and serious injury in connection with Taser use in Victoria is a real possibility. The report was released in October and is available on www.communitylaw.org.au.

ADR report released

Alternative dispute resolution (ADR) is now the centrepiece of Victorian and national civil justice policy. Types of ADR include mediation, conciliation and expert appraisal.

In some ways, CLC clients stand to benefit from ADR more than any other social group. Many CLC lawyers agree that ADR can be very useful in resolving disputes quickly, cheaply and effectively. At the same time, it is important to recognise that some CLC clients are profoundly disadvantaged, and these disadvantages can prevent some people from participating in ADR on an equal footing.

A new report by Lucie O'Brien of the Federation analyses the use of ADR in CLCs and recommends how ADR may be used to maximise its benefits while ensuring it does not compromise the rights of disadvantaged people.

The report is available at www.communitylaw.org.au.

Outstanding CLC work honoured in the Law Institute President's Awards

At the recent President's Awards, Phil Lynch, the Executive Director of the Human Rights Law Resource Centre and founding Coordinator of the PILCH Homeless Persons' Legal Clinic, was honoured with the Paul Baker Award, recognising outstanding human rights work. Read more about Phil in the Justice Profile in this edition.

Tamara Hopkins, the Principal Solicitor at the Flemington and Kensington Community Legal Centre won the Community Lawyer Award. Tamara is a leading practitioner in the areas of policing and human rights. She is committed to helping the victims of police ill-treatment, and demonstrated innovation in case work, research, community education, policy and law reform.

Antoinette Braybook (Aboriginal Family Violence Prevention Legal Service) was a finalist for the Access to Justice Award and Chris Povey (PILCH), Jeni Lee (Seniors Rights Victoria) and Adrian Kennedy (Fitzroy Legal Centre) were finalists for the Community Lawyer Award. Barbara Shalit from the Mental Health Legal Centre was also a finalist in the Mentor Award.

...and groundbreaking debt relief work honoured with the Tim McCoy Award

Long serving community lawyer Denis Nelthorpe received the Tim McCoy Award for 2010. The award recognises outstanding work in the community law or legal aid movement with a particular focus on the promotion of human rights for socially and economically disadvantaged Victorians.

This year's award recognises Denis' Bulk Debt Negotiation Project which has developed an innovative method of resolving debts owed by poor and disadvantaged consumers to insurance companies and major lenders.

A creditor cannot legally enforce a debt against a debtor whose only income is from Centrelink and whose only assets are basic household items. Yet, many creditors continue to chase debts when there is no realistic prospect of any recovery.

Through the project, Denis has assisted over 500 clients referred to him from over 100 CLCs and financial counsellors around Australia. The clients, who typically have experienced severe social and financial hardship, owed debts to major lenders and insurance companies. Denis engaged in coordinated bulk negotiations with these organisations, and so far, has resolved over \$2 million of debts with a further \$2.5 million currently under negotiation.

Denis' innovative work is alleviating stress for disadvantaged debtors, reducing reliance on emergency relief services, and helping lenders to identify debts which should not be pursued due to the disadvantage experienced by the debtor. His work is also improving the way CLCs and financial counsellors resolve debt matters, saving many hundreds of hours of work through the efficient resolution of matters. Denis' work is transforming the debt collection practises of major organisations through negotiated resolutions to stop attempts to collect debts where it would be unethical to do so.

Typically humble in receiving his award, Denis noted the contribution of others to his project.



Phil Lynch at left with human rights friends

Justice Profile – Phil Lynch

Phil Lynch is the Executive Director of the Human Rights Law Resource Centre

How did you first get involved with CLCs?

I joined North Melbourne Legal Service – a great, grassroots CLC – as a supporter and volunteer in 1999 and was somehow co-opted to the Management Committee in 2000. As the new kid on the block, the Committee foisted the joys of being Treasurer on me – a rude awakening to the funding struggle and inadequacies that CLCs continue to confront.

What spurred you to found the Homeless Person's Legal Clinic (HPLC) and then the Human Rights Law Resource Centre (HRLRC)?

After completing my articles at Allens Arthur Robinson, I was seconded to PILCH in 2001, then only a very small CLC comprising an Executive Director, an Administrator and two secondee lawyers! I worked on the Tampa litigation and assisted the ED to develop a proposal for Australia's first specialist homeless persons' legal service. I was then employed to establish and manage the HPLC, which was both a daunting and exciting task for a junior lawyer. I was privileged to be assisted and mentored by CLC stalwarts such as Denis Nelthorpe, Gary Sullivan and Emma Hunt, together with leading advocates in the homelessness sector.

The HRLRC was established as a joint initiative of PILCH and Liberty Victoria, with then Liberty President, Chris Maxwell QC, being a driving partner. The Centre was set up in 2006 to respond to what we identified as both the challenge and

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CLC and Victoria Legal Aid collaboration spreads the “Do Not Knock” message

Some of the most successful ideas are the simplest. The “Do Not Knock” campaign began with a simple sticker that residents could display to stop door to door sales people from visiting.

Started by the Consumer Action Law Centre in 2009, and further developed by the Footscray CLC with involvement from Fitzroy and Springvale Monash CLCs, the campaign has evolved and now involves collaboration with Victoria Legal Aid.

The “Do Not Knock” campaign aims to:

- educate people about their rights when dealing with door-to-door salespeople ;
- stop people from entering into contracts that are not in their financial interests; and
- empower people to report breaches of the rules that govern door-to-door sales.

Michele Lee, a playwright and community legal education officer at Victoria Legal Aid, wrote a short play to support the campaign, which was presented to community groups in Carlton and Geelong during Law Week in May. “The play was a fun and engaging way to let people know that there are rules that protect them from misleading or aggressive door-to-door selling, and where to get help if they encountered problems,” said Jenny Lawton, lawyer at Victoria Legal Aid. 'It also shows how people could handle things differently if problems arise, and highlights the availability of ‘Do Not Knock’ stickers and flyers which are part of the community campaign to let people know their rights.'

The play has now been adapted into a short, engaging film by Ms Lee called “Dealing with door-to-door sales”. It tells the story of Marcello and his encounter with a door-to-door salesperson. Ms Lawton talks in the film about Marcello's experience and what he might have done differently.

The creative impetus for the film came from the collaborative efforts of organisations involved in the campaign. Footscray CLC project manager Michelle Chumbley said “I found the film funny, informative and entertaining. I think it will be a fantastic tool for CLCs and other groups who perform community education on door-to-door sales and a good lead in to the ‘Do Not Knock’ message.”

Stickers, flyers, face-to-face sessions and complaint letters are all available as part of the broader “Do Not Knock” campaign and public feedback has been positive, with one Coleraine resident saying “thank you for the door to door sales advice on your website. I live in a small country town in Victoria, and we get small groups door knocking in this area weekly. I have ordered some of your ‘Do Not Knock’ stickers and flyers to distribute to community members, in particular the many retirees and elderly people living in the community.”

The film can be viewed or downloaded from www.legalaid.vic.gov.au or ordered free of charge through the website or by calling 9269 0223. The film has captions and transcript is available. Free stickers and flyers are also available.

Dina Jaballah, Victoria Legal Aid

opportunity of mainstreaming human rights in Australian law, policy & practice.

Where will the HRLRC be in 10 years?

Much will depend on the external environment and the lessons we learn and apply, but my vision is of the Centre as a leading regional human rights organisation contributing to the normative development of international human rights law and mechanisms, while continuing to work directly in promoting and protecting human rights in Australia and the Asia-Pacific.

If you could change one thing about

Australian human rights, what would it be? I would enact a comprehensive, justiciable and enforceable Charter of Human Rights at the national level and in each state and territory. This could provide the institutional, regulatory, normative and educative framework for the enhanced realisation of human rights across Australia.

What should CLCs be working towards?

Revolution. Revolution. CLCs need to continue to provide access to justice through legal service provision whilst also striving to achieve systemic and structural reform through our strategic action.

Who is the most inspirational person you've met (loved ones aside)?

As a diehard Sydney Swans fan, I'm tempted to say Warwick Capper... Probably Albie Sachs, a South African freedom fighter who was badly injured by a car bomb in an assassination attempt by security forces but recovered to play a leading role in South Africa's peaceful transition to democracy and was a lead architect of South Africa's inspirational and transformative Bill of Rights.

You've got three beautiful children and you've shared parenting responsibilities with your wife Lucy (also a successful CLC lawyer). Any advice for working dads who want to play an active role in their kids lives?

I've never been too keen on receiving parenting advice, so I'm not too keen on

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Law firm - CLC collaboration allows disadvantaged country residents to control their future

Wills and powers of attorney allow people to take control of their future. However, the cost of having these documents prepared can be barrier for disadvantaged people. The Hume Riverina Community Legal Service (HRCLS) has seen many clients who wanted these documents but could not afford to pay a private solicitor. Local health professionals were also requesting assistance from the centre with these documents for their patients.

To address this issue, HRCLS with the assistance of about eight local law firms, commenced a scheme to promote access to low cost wills, powers of attorney and enduring powers of guardianship for people with limited financial capacity and health issues.

HRCLS has longstanding and strong links with the private profession through its involvement in both regional Victorian and NSW law societies. When the scheme was implemented, the HRCLS Principal Lawyer was the Secretary of the Albury & District Law Society and another HRCLS lawyer was the President of the North East Law Association.

HRCLS took an initial pro bono scheme proposal to the Albury & District Law Society. Members were wary of the service being pro bono as they believed that it devalued their work and some lawyers had been involved in a similar past scheme and had negative experiences. As a compromise, it was agreed on a reduced rate for services with eligibility requirements to be controlled by the HRCLS under a voucher system. These requirements are similar to those of the Bendigo Health Outreach Scheme, a pro bono scheme coordinated by the Loddon Campaspe CLC but for those usually in palliative care.

The significant aspects of the scheme are:

- HRCLS has a list of firms willing to offer a number of wills, powers of attorney and enduring powers of guardianship each year at a discounted rate of \$50. The firms take instructions from eligible clients within five working days;
- HRCLS assesses eligibility and provides a voucher to eligible clients;
- Vouchers are only given to individuals who are financially disadvantaged and experience a particular vulnerability (eg ill health, language, isolation or disability); and
- HRCLS sees the client to complete a wills instruction sheet which is provided to the local firm.

This process is flexible and HRCLS can make arrangements for clients who can't attend our Wodonga office. At present, we are limited to participating firms being mainly in the Albury Wodonga area but we are recruiting outside this area and so far have one firm in Benalla and one in Deniliquin/Finley who are now involved.

We have found that the benefits of this scheme are:

- disadvantaged clients can have a will, power of attorney or enduring power of guardianship to enable their future to be organised according to their wishes;
- promoting to the public the importance of having these documents;
- developing a positive partnership between the private profession and the community legal sector;
- developing a positive partnership between the HRCLS, the private profession and health service providers (who are the main source of referrals);

imparting it. We do, however, have a long, long way to go towards genuine gender equality – people frequently comment that it's great that I have managed to juggle work and parenthood through part-time work, whereas people rarely comment on Lucy doing the same. We'll be much closer to gender equality when it is equally unremarkable for women and men to work part-time and spend time at home with their kids.

You're a fan of social networking sites. What are the benefits in using these new media?

The Centre is active on both Twitter and Facebook. We use both tools to share information, build our constituency and support-base, engage with and learn from fellow travelers from around the world, and inspire and be inspired to take human rights action.

As a well-read CLC leader, do you have any recommended books or articles?

Anyone interested in social justice, human rights and community law should definitely subscribe to the *Alternative Law Journal* (www.altlj.org).

As for NGO governance, strategies and practices, I would highly commend 'Forces for Good: The Six Practices of High-Impact Nonprofits' by Leslie Crutchfield and Heather McLeod Grant.

Any advice for young law students or lawyers keen to work in the social justice field?

Volunteer, support and donate generously to CLCs and human rights organizations!

HRCLS is also in the process of instituting the Hume Riverina Health Outreach Service (similar to the Bendigo Health Outreach Service) in which participating law firms will offer the above services pro bono to those in palliative care and where there is an urgency to instructions being given.

All in all, these services have great benefit to our disadvantaged and vulnerable clients of all ages and to the profession generally.

Karen Bowley, Hume Riverina Community Legal Service

Family violence, the legal system and the experiences of immigrant women

InTouch (formerly the Immigrant Women's Domestic Violence Service) provides a range of culturally sensitive programs and services including crisis support to women and children experiencing family violence. With a grant from the Victoria Law Foundation, we have just published a report which explores the barriers faced by culturally and linguistically diverse (CALD) women in accessing the justice system. The report "I lived in fear because I knew nothing: Barriers to the justice system faced by CALD women experiencing family violence" is based on data collected from interviews with over 50 CALD women, and surveys or consultations with representatives from more than 350 organisations.

While the women surveyed generally acknowledged that there were protective legal structures in place that ultimately helped them to escape the violence, it became apparent from the research that CALD women face additional barriers which put them at a distinct disadvantage when it comes to dealing with the legal system. The research identified that CALD women experienced barriers to the justice system on two levels: firstly, the barriers they face accessing the justice system and secondly, the barriers they face going through the justice and support systems.

These impediments mean that CALD women are less likely to report violence in the first place, they are quickly discouraged from progressing further with their complaints, and the outcomes they achieve are less favourable than they may have otherwise have been. Under-reporting is influenced by a lack of information about their legal rights and how to access them, a fear of authorities, and not knowing what constitutes family violence in Victoria. Considerable external pressure from family and community is also a significant factor. CALD women also face obstacles throughout the legal process such as language difficulties, intimidating court processes, prejudicial attitudes and inadequate support from services.

The report identifies the need to build a sense of self-empowerment in women to enable them to confidently navigate the legal system. One key recommendation is that funding be provided for outreach legal services into CALD services, health centres and neighbourhood houses as CALD women do not always access family violence or legal services in the first instance, but rather via culturally-specific organisations or generalist health services.

The report can be downloaded free of charge from www.intouch.asn.au or by phoning 8413 6899.

Lisa Cavallaro, InTouch

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