



Lifting the Lid off the Law

Darebin Community Legal Centre Newsletter

Autumn 2009

Have your Say on Human Rights in Australia

The deadline for submissions to the National Human Rights Consultation is approaching ...

As many readers will be aware, the federal government announced a national public consultation on human rights in Australia in December last year. The consultation is a once-in-a-generation opportunity for all Australians to have their say about the protection of fundamental rights and freedoms in Australia.



The government has established an independent committee, chaired by Father Frank Brennan, to conduct the consultation. The consultation committee has been holding "community consultations" across Australia, and is accepting submissions from

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**DAREBIN
COMMUNITY LEGAL
CENTRE INC**

265 High Street Preston VIC 3072
T: 03 9484 7753

E: Darebin_VIC@clc.net.au

W: www.communitylaw.org.au/darebin

ABN 89 024 520 609 Reg No. A0017302L

individuals and organisations until **15 June 2009**. The committee is seeking people's views on:

- Which human rights (including corresponding responsibilities) should be protected and promoted?
- Are these human rights currently sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

Darebin Community Legal Centre (DCLC) is encouraging its members, clients, volunteers and community partners to put in a submission to the consultation and have their views about human rights taken into account. *This does not need to be difficult or time-consuming!* We realise that the consultation is taking part over a very short time-frame. Luckily, there are a number of ways you can make a "no-fuss" submission to the consultation:

- You can use the enclosed DCLC human rights questionnaire as a starting point. Fill in as much or as little as you want to, and send it straight to the committee, or return it to DCLC.
- There are several places you can complete an online submission:
 - www.humanrightsconsultation.gov.au
 - www.amnesty.org.au/yourhumanrights/consultation
 - www.getup.org.au/campaign/rights
- You can email case studies or thoughts that you would like us to consider including in a DCLC submission to Darebin_VIC@clc.net.au.
- Participate in the Darebin Human Rights forum (see [final page](#) of this newsletter).

If you would like more information about the legal aspects of human rights in Australia, or if you would like support to put in a more detailed submission, feel free to contact DCLC. ■

Legal Update: Important Changes to Family Violence Laws

Important changes to laws aiming to protect people from family violence came into effect in mid-December last year.

The changes were introduced by the new *Family Violence Protection Act*, which replaced the existing family violence laws in Victoria. The new laws make a number of significant changes to the intervention order system in Magistrates' Courts in Victoria. Some of the principal changes are summarised below.

What types of family violence are covered?

The new laws recognise that family violence can take many forms. They define "family violence" to include behaviour which someone engages in towards a family member which is:

- physically or sexually abusive;
- emotionally or psychologically abusive;
- economically abusive; or
- threatening or coercive.

The definition of "family violence" also includes behaviour which in any other way controls or dominates the family member and causes them to feel fear for the safety or wellbeing of themselves or another person.

It also covers behaviour which causes a child to hear, witness or be exposed to family violence.

"Family violence" includes behaviour which in any way controls or dominates a family member and causes them to feel fear for the safety or wellbeing of themselves or another person.

An important aspect of the changes is that under the new definition, one act of 'family violence' may be enough to obtain an intervention order. Under the old

definition, a person seeking an intervention order needed to show that there was a pattern of behaviour.

What types of "family member" are covered?

The new law expands the definition of "family member" to include:

- a spouse or domestic partner
- someone who has had an intimate personal relationship (including non-sexual) with you
- someone who is or was your relative
- a child who normally or regularly lives (or used to live) with you
- a child who has or used to have an intimate personal relationship with you.

"Family member" also includes any person who you regard (or used to regard) as being like a family member if, because of the circumstances of your relationship with them, it is reasonable to think of them that way.

Harassing conduct by non-family members is covered by other laws with different rules, including stalking legislation.

Other changes

The new law introduced a number of other changes, including the introduction of "Family Violence Safety Notices", which are in effect temporary intervention orders that a police officer can issue out of hours if they believe that a person needs immediate protection. The police then have to make an application for an intervention order to the court within 72 hours.

DCLC continues to operate an outreach family violence service which provides advice and assistance to people seeking intervention orders at the Heidelberg Magistrates' Court. Please contact DCLC if you require further information. ■

IMPORTANT NOTE:

The articles in this newsletter do not constitute legal advice. It contains general information only. Every situation is different, and changes to the law occur quickly. You should not act on any of the content of this newsletter without obtaining advice from a lawyer about your particular situation.

Police Shooting in Northcote: Four Months On

What happens in Victoria when children are killed by police?

On 11 December last year, 15 year old Tyler Cassidy was fatally shot by police at All Nations Park in Northcote. He is apparently the youngest person to be killed in a police shooting in this state.

At the time of the shooting, DCLC issued a statement expressing our condolences for Tyler's family and friends, and calling for a greater focus on training for police in dealing appropriately with young people in crisis. Now, four months later, our thoughts are still very much with Tyler's family as they face the distressing and, for the families of victims, often unsatisfying process of police investigation and coronial inquest.

We are not in a position to speculate as to the extent to which individual police may have failed in their duty to Tyler. His death nonetheless needs to be seen in the context of Victoria's shameful history of unnecessary police shootings. A 2005 report into fatal shootings by Victoria Police noted that there had been 29 such shootings from 1990 to 2004 - a substantially higher number than in any other Australian jurisdiction. The report highlighted a number of shortcomings in police training, including inadequacies in the ability of police officers to appropriately assess the real threat posed by people wielding edged weapons.

Police who are called upon to come to the assistance of people in crisis need to be adequately trained and supported to be able to do so safely and in a way that respects the human rights of all concerned.

In Victoria, deaths at the hands of police are investigated by the police themselves, under the supervision of the Coroner.

Only a rigorous and genuinely independent investigation of Tyler's death will reveal what can be done to prevent future deaths, and what can be done to better support police officers who must deal with people in crisis. That is what is required by international human rights standards, which have now been enshrined in our law by the Victorian Charter of Human Rights.

DCLC opening hours:

- **Mon to Thurs – 9.30 am to 4.30 pm (closed for lunch 1 pm to 2 pm)**
- **Tuesday Night Drop-in Service from 7 pm**
- **Wednesday Night By-Appointment Service from 7 pm**

In Victoria, however, deaths at the hands of police are investigated by the police themselves, under the supervision of the Coroner and the Ethical Standards Division of the Victoria Police. The conflict of interest, both apparent and real, involved in this situation falls well short of community expectations that children's internationally-recognised right to life, survival and development will be taken seriously.

Because Tyler died while police were attempting to apprehend him, his death is considered to be a death in custody. When people die in police custody, the Coroner is legally required to hold an inquest hearing following the police investigation. A coronial inquest is similar to a court proceeding, at the conclusion of which the Coroner must, if possible, make findings on the cause of the death and how it occurred.

The Coroner can also make comments on issues of policy or practice that contributed to the death and recommendations on how future deaths might be avoided. A recent study, however, found that these recommendations are most often ignored by government agencies.

The coronial process is, in theory, different from ordinary 'adversarial' court processes in that it is strictly about fact-finding, rather than adjudicating between opposed parties. In reality, however, police are represented in court by experienced barristers, while bereaved families face considerable hurdles to obtaining legal representation which might allow them to participate fully.

Neither our community, grieving families, nor Victoria Police are well served by the current arrangements for investigating police shootings. ■

HUMAN RIGHTS IN DAREBIN – COMMUNITY FORUM

ALL WELCOME!

DCLC and Darebin City Council invite you to a Human Rights forum and community consultation.

Thursday 4 June 2009, 2pm to 4pm

Reservoir Civic Centre, 23 Edwardes Street, Reservoir

The forum will aim to facilitate discussion about human rights issues which are important to Darebin residents, and provide some last-minute tools for people wanting to have their say in the National Human Rights Consultation process. Please contact DCLC for further details.

**Darebin Community Legal Centre's
Committee of Management**

Chairperson Kiera Dingle

Secretary Sarah Davey Moor

Treasurer Merrin Mason

Public Officer Donna Williamson

Committee Members:

Daniel Tatton

Helen Brown

Peta Murphy

Camilla Pandolfini

Eve Stagoll



Have we got your contact details wrong?

Please tear off and mail this slip to **Darebin Community Legal Centre, 265 High Street Preston VIC 3072.**

Alternatively, you can email your corrected details to Darebin_VIC@clc.net.au.

Name:

House number and street name:

Suburb:

Postcode:

I wish to continue receiving the DCLC newsletter

I prefer email. My email address is:

I prefer to receive a hard-copy – please mail to the above address.

Please remove my name from your mailing list.*

* You can also contact us by email or telephone (9484 7783) if you no longer wish to receive this newsletter.