



Lifting the Lid off the Law

Darebin Community Legal Centre Newsletter

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Independent investigation of police shootings and deaths in police custody is a human right

Friday 11 December 2009 marked one year since 15-year-old Tyler Cassidy was fatally shot by police in Northcote. If the shooting had occurred in Belfast, London, or Toronto, his death would have been investigated by an independent civilian body.¹ In Victoria, the investigation into his death, as with other police shootings and deaths in custody in this state, has been carried out by Victoria Police. As we have noted in previous newsletters, this represents a clear conflict of interest and is contrary to international human rights standards.

117 people died in police custody or custody-related operations in Victoria between 1990 and 2007.² According to the OPI, a recent internal Victoria Police review found that there were ten critical incidents involving use of firearms by police between

February 2006 and December 2008. Three of these resulted in fatal police shootings.³

We were reminded yet again that preventable deaths in custody continue to occur by the saddening news of three further deaths following police actions over the 2009-2010 holiday period.

"Every person has the right to life and has the right not to be arbitrarily deprived of life."

Section 9, Charter of Human Rights and Responsibilities Act 2006

INDEPENDENT INVESTIGATION
OF POLICE SHOOTINGS
IS A
HUMAN RIGHT

*Darebin Community Legal Centre is currently running a **postcard campaign** aimed, in conjunction with initiatives of other Victorian community legal centres, at raising the profile of issues around the lack of effective, independent investigation of deaths involving police in Victoria.*

You will find a copy of a postcard calling for the establishment of an independent body to investigate police shootings and other deaths in custody enclosed with this newsletter. We ask that you consider filling it in and sending it to the Victorian Attorney-General.

If you need more copies of the postcard to distribute to friends or colleagues, or if you have comments or questions, please send an email to Darebin_Vic@clc.net.au.

1. Tamar Hopkins (2009) An Effective System for Investigating Complaints against Police.
2. Australian Institute of Criminology (2009) Deaths in Custody in Australia: National Deaths in Custody Program 2007, p 74.
3. Office of Police Integrity (2009) Review of the Use of Force by and against Victorian Police, p 10.

We consider that the right to life, which is now protected by our Charter of Human Rights and Responsibilities, cannot be said to be taken

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seriously unless civilian deaths involving police are followed by effective, state-initiated investigations which are, at minimum:

- Genuinely independent;
- Prompt;
- Open to public scrutiny;
- Able to facilitate full participation by the family of the victim; and
- Capable of ascertaining whether police have acted lawfully and in accordance with human rights and internal disciplinary standards. ■

More information

A comprehensive report on effective systems for investigating complaints against police, prepared by the Flemington-Kensington Community Legal Centre is available at:

- www.communitylaw.org.au/flemingtonkensington/cb_pages/policecomplaints.php

Farewells and Welcomes

Sadly, a number of our fantastic committee of management members have resigned over the last few months. We would like to thank **Helen Brown**, **Peta Murphy**, **Camilla Pandolfini**, and **Daniel Tatton** for all their hard work and support over recent years and to wish them the very best for the future.

We welcome several new members onto our management committee in 2010: **Owen Bradfield**, **Bronwen Jennings** and **Michael McIerick**. They are all past or present volunteers at the centre. We thank them for their willingness to take on this new role and look forward to working with them in 2010.

We are also very pleased to welcome some new staff members to the centre. **Lily Hardman** and **Elisa Whittaker** have joined our family violence duty solicitor team at the Heidelberg Magistrates' Court. **Grant Webster**, who has previously been involved with the centre as a volunteer and, more recently, as locum principal solicitor, has accepted a permanent position as our new principal solicitor. Welcome to all! ■

Free Community Information Sessions Wills, Powers of Attorney, Guardianship

Over the first half of 2010, Darebin Community Legal Centre will - with the assistance of Darebin Council, the Law Institute of Victoria and other partner organisations - be delivering a series of free community information sessions focussing on Wills, Powers of Attorney, Guardianship and Administration and planning for the future.

The sessions will be geared towards seniors and their carers, people living with a chronic illness, and carers of people with impaired decision-making ability. We intend to offer sessions in English and a range of community languages. Please contact DCLC if you would like to attend a session or you think your client group could benefit from a presentation.

Details of the first session are below.

WILLS AND POWERS OF ATTORNEY INFORMATION SESSION - NORTHCOTE

Date: Thursday, 25 February 2010

Venue: Northcote Library, 32-38 Separation St, Northcote (opposite Northcote Plaza)

Time: 10.30am to 12.30am

Places are limited for these sessions - **Please RSVP** by Monday 21 February to Darebin Community Legal Centre on (03) 9484 7783.

New police powers: the Victorian government “moves on” from human rights

Legislation introducing a range of extraordinary new police powers was rushed through parliament shortly before the 2009-2010 holiday period. These unwarranted new powers have been handed to police with very little community consultation, in the face of strong opposition from social justice and legal organisations, minor parties and community members, and with very little in the way of evidence to support government and police claims that the powers will be effective in reducing violence in our communities.

Further, the Victorian government itself has accepted that aspects of the new laws breach its own Human Rights Charter.

Under the Charter, parliament is entitled to enact legislation notwithstanding that it breaches Charter rights. For instance, parliament might introduce legislation which limits one right (eg, free speech) but which can be justified as a demonstrably reasonable means of advancing a competing public policy aim (eg freedom from racist hate-speech).

The Victorian government itself has accepted that the new laws breach its own Human Rights Charter.

However, because the model of human rights protection which has been adopted in Victoria has the maintenance of “parliamentary sovereignty” as one of its explicit values, parliament is also free to introduce legislation which clearly breaches Charter rights *even if the human rights breaches in question aren’t capable of being justified as proportionate means of pursuing a legitimate policy objective.*

One way that parliament can do this is to make an express declaration in the new legislation that the legislation “overrides” the Charter. Another way is to simply pass the legislation, admit *sotto voce* that it isn’t quite human rights compatible (say... in the busy period before Christmas), and hope that no-one notices. The government opted for the second approach in this instance. And so, in an exquisite display of parliamentary irony, the *Summary*

Offences and Control of Weapons Acts Amendment Bill 2009 was passed in the Legislative Council on International Human Rights Day in December 2010, with barely a ripple in the media.

What new powers have police been given?

The new changes to the *Control of Weapons Act 1990* and the *Summary Offences Act 1996* give police the power to:

- randomly search people in “designated areas” – even if there is no reason to suspect that the person being searched is carrying a weapon. The experience in jurisdictions like the UK which have also introduced random stop-and-search powers has not tended to demonstrate any significant relationship between the deployment of those powers and the incidence of the types of crime (particularly knife crime) which police and politicians use to justify them;
- Direct people to “move on” from a public space and not return for up to 24 hours – even where no crime has been committed (for instance where police *think* that a person *might* breach the peace). A person who fails to comply with a move on direction can be fined \$580. Evidence from other jurisdictions which have introduced similar powers suggests that they are frequently used in ways that discriminate against Indigenous people, young people, homeless people, sex-workers and non-white people. In New South Wales, figures released by the NSW Ombudsman indicated that 16 year olds were 19 times more likely to be “moved on” than 36 year olds. One Queensland study found that over a third of people moved on in that state were young Indigenous people;

Police now have the power to direct a person to “move on” if they think she might breach the peace.

- issue hefty on-the-spot fines for public drunkenness, failure to “move on” and other related offences.

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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.

In addition, the new laws:

- introduce the vague new offence of “disorderly conduct”, whose ambit for the time being would appear to be limited only by the reaches of human imagination; and
- significantly increase penalties for public drunkenness.

Darebin Community Legal Centre is concerned that these new laws have the potential to increase conflict and resentment rather than genuine community safety. We are also troubled by the government’s decision (with the support of the opposition) to introduce such far-ranging changes to police powers without consulting with the community or providing evidence that the new laws and powers will provide effective means of responding to the problems they purport to address.

Nor, of course, does the fact that the Victorian government is already actively undermining its own Human Rights Charter bode well for the future.

People who receive fines, are told to “move on” or otherwise feel that they have been treated unfairly under these new laws should contact their [local community legal centre](#). ■

Resources

- VLA has a brief but clear summary of the new laws at: www.legalaid.vic.gov.au/2672.htm

Unpaid fines?

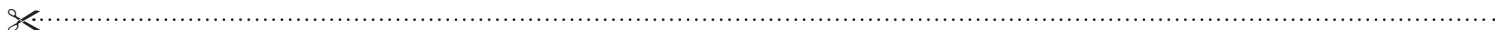
The Victorian government is currently offering a [waiver of administrative fees on fines](#) for people who pay their fines or enter into a payment plan before **19 March 2010**.

The waiver covers fines from most government agencies and a number of local councils (but not Darebin Council).

In some cases, applying for the waiver could result in a saving of up to \$120 per fine.

Please get in touch with DCLC or your local community legal centre if you need further information or assistance with an unpaid fine.

You can also contact the Civic Compliance **fines hotline** on **1300 221 249**. ■



Have we got your contact details wrong?

Please tear off and mail this slip to **Darebin Community Legal Centre Inc, 265 High Street Preston VIC 3072**. Alternatively, you can email your corrected details to Darebin_VIC@clc.net.au.

Name:

Address:

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.