

FLS BRIEFS

APRIL 06

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ORGANISATIONAL

Welcome to our first edition of e-news for the year 2006.

We will endeavour to forward all the members a bi-monthly newsletter to keep you informed about the organisational activities. The last 18 months have been a period with significant staff change, new projects and a few changes to our service delivery model.

After the AGM in September the Implementation Group (IG) under the leadership of John Chesterman (Convenor) have embarked on revisiting our Constitution developed many years ago. The changes to the constitution have been undertaken to ensure Fitzroy Legal Service meets the requirements of the Incorporation Act and that the constitution reflects our current practices. A lot of emphasis has been put on consultation with our membership and staff. Look forward to General Meeting, when you can vote on the changes.

We continue to receive the same funding from Victoria Legal Aid. We focus on Law Reform Activities, Community Legal Education, Casework and Advice, Social Action projects in our catchment. Some of the highlights include the IR Reform Campaign, Stolen Wealth Legal Support Line, series of training organised on Criminal Law, Family Law and other relevant topics for community workers.

Our night service is very popular and we are well supported by our 153 night volunteers. Over the last six months we have seen more than 800 clients through the night service. We continue to provide specialist Family Law Clinic and Outreach Clinic at North Richmond. Training sessions have been regularly offered to our volunteers.

The Practice Team has had a wonderful year with great outcomes for our clients at court.

Jon Faine launched the Law Handbook 2006 in November 2005. The book has been highly appreciated by the community and this is reflected through our great sales. As we enter the 35th year of publication, we say goodbye to Kath Harper our editor of 6 years and welcome Carmen Harbour our new Editor. We are also looking forward to have the book online for our subscribers.

The Drug Outreach Lawyer Project and the Emerging Trends project have been well received by the community agencies and the target group. The project works with marginalised and disadvantaged communities to advocate for changes to law in the area of drug and alcohol and support the harm minimisation principles.

Joel Orenstein has successfully completed his Articled Clerkship (AC) and will enter the kingdom of law as a Practitioner. We also warmly welcome Hui Zhou to our AC program this year.

The Administration team have worked very hard to accommodate change and strived to develop excellent policies and procedures to support the work of the organisation.

I would like to thank City of Yarra, Allens Arthur Robinson, Free Hills, Mallesons, Victorian Law Foundation, Reichstein Foundation and other funding organisations for their ongoing support.

Finally, a big thank you to IG members, staff, volunteers, other CLC members and community agencies for their ongoing work to Fitzroy Legal Service.

**Rachna Muddagouni,
Executive Officer**

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SOCIAL ACTION

NEW! VICTORIAN ANTI-TERRORISM LAWS

On 7 March 2006, the Victorian Parliament passed amendments to the *Terrorism (Community Protection) Act 2003*, in accordance with an (COAG) agreement made in late 2005 with the Commonwealth Government.

In January, Fitzroy Legal Service made oral submissions to the *Scrutiny of Acts and Regulations Committee* opposing the amendments and extension of police powers. Although the Victorian legislation contains safeguards that do not exist in the Commonwealth legislation, FLS opposed the all amendments because they are, in short, unnecessary, disproportionate and potentially in breach of Australia's human rights obligations under the *International Covenant on Civil and Political Rights* (among others).

State and federal Police in Victoria now have powers to, among other things:

- Detain a person for up to 48 hours, without charge, in order to "prevent" the commission of a terrorist act,
- Detain a person for up to 14 days, pursuant to a Court Order, without charge, in order to "prevent" the commission of a terrorist act, or to "preserve evidence";
- Prohibit a detained person from contacting other persons;
- Monitor the content of communications between a detained person and his/her lawyer;
- Stop, search and seize powers anyone within specified geographical areas (authorization required).

It is an offence under the Act for a detained person to disclose the fact of his/her detention, or the existence of a preventative detention or prohibited contact order, except as permitted under the Act. It is also an offence for a lawyer to disclose a client's detention or prohibited contact except as permitted by the Act.

**Contact: Simone Elias,
Legal Projects Officer, FLS**

SENTENCING AND DRUGS – COURT OF APPEAL AMICUS CURIAE APPLICATION

Fitzroy Legal Service became aware of a number of sentence appeals listed to be heard together on 31 January 2005 in the Court of Appeal by a bench of 5 justices. These appeals dealt with important sentencing principles concerning the level of seriousness, for sentencing purposes, of various drugs of dependence.

Fitzroy Legal Service was not a party to these appeals – it did not act for the appellants or the Crown.

However, given the importance of the principles being dealt with in these appeals, in particular their significance in relation to sentencing and drug law and policy, Fitzroy Legal Service wished to ensure that the Court of Appeal had access to what it considered were relevant factual and legal submissions.

Fitzroy Legal Service's law reform agenda and special knowledge in the areas of drugs and sentencing added to its desire to ensure the Court was properly informed and the issues were adequately ventilated. It did not appear that the Director of Public Prosecutions or those acting for the appellants dealt with many of these issues in their submissions.

Fitzroy Legal Service therefore filed extensive written submissions seeking leave to be heard as an amicus curiae in these appeals. At common law, an amicus curiae may be granted leave by a court to assist the court on particular points of law or relevant facts which would assist the court in a way that the court would not otherwise have been assisted.

Fitzroy Legal Service advanced the following submissions:

1. The current law being considered in by the Court holds that in the absence of expert evidence of the seriousness of a drug, courts should not distinguish

between them in terms of the seriousness of the offence.

- FLS argued that defendants should not be required to adduce expert evidence of the seriousness of particular drugs in order to rebut a presumption of seriousness in relation to particular categories of drugs.
 - FLS argued that this principle would operate particularly unfairly in relation to impecunious defendants who could not afford to do so, as well as legally-aided defendants where legal aid did not extend to cover these expenses.
 - FLS argued that there is a public interest in ensuring consistency of sentencing. A situation where an offender receives a lesser sentence because he or she has the means to elicit expert evidence should not be countenanced.
2. Parliament is not the sole arbiter of offence seriousness (through the setting of maximum penalties applicable to drug offences). The current law being considered by the Court wrongly suggests that this is so, contrary to High Court authority (*R v Ibbts 1987*) which establishes that the heinousness of the conduct in a particular case depends not on the statute defining the offence but on the facts of the case.
 3. Assessment of the seriousness of particular drugs for sentencing purposes should be based on empirical medical and other evidence, rather than a judges personal opinion or personal opinion of community attitudes of the effects or seriousness of particular drugs (as expressed by sentencing judges in the cases under appeal, *R v Pidoto; R v Yacoub and O'Dea*).
 4. The Court of Appeal should receive proper evidence of the seriousness of particular drugs by way of an amicus curiae submission, and make a guideline judgement resolving some of these issues for the benefit of future courts confronting this problem;

FLS was able to draw the attention of the Court to current studies and reports in Australia that provided empirical assistance on the issue of relative drug harm. The reception of such material is important in light of the fact that the judgment of the Court will presumably give guidance to the proper exercise of sentencing discretion for courts at all levels in Victoria in subsequent cases. FLS obtained statements from academic experts in WA, NSW and South Australia on the state of learning in relation to the harms (medical, social, psychological etc) which were filed with the Court of Appeal.

On 31 January 2006, the Court of Appeal indicated that leave was granted to FLS as an amicus curiae, and that written reasons would be given for this decision when the judgment was handed down (on a date to be fixed).

It is likely that the Court of Appeal's judgment in relation to the granting of leave to FLS as an amicus curiae will set a precedent or criteria for amicus curiae intervention in future public interest matters, which will be of particular interest to public interest lawyers and non-government organisations wishing to intervene in appeals dealing with matters of public interest.

Holding Redlich acted as FLS's solicitors, via a referral from PILCH. Barristers Patrick Tehan QC, Lachlan Carter and Justin Wheelahan also acted on our behalf pro bono in this matter.

**Contact: Stan Winford,
Policy/Project Officer, FLS**

BAIL ACT

Fitzroy Legal Service responded to the Victorian Law Reform Commissions review into the operation of the bail system in Victoria.

We argued strongly that any reform of the Bail Act should seek to address the inequitable aspects of the bail system on disadvantaged accused, including people with substance use or mental health issues and people experiencing homelessness.

Further, we argued that a lack of appropriate services, accommodation or other resources to support an accused in meeting bail criteria should not operate to undermine the presumption of innocence or liberty.

We argued that the Act should promote principles consistent with individual human rights.

**Contact: Stan Winford,
Policy/Project Officer, FLS**

SENTENCING REVIEW

The Sentencing Advisory Council is currently conducting an inquiry into the use of suspended sentences in Victoria. Fitzroy Legal Service wrote an initial submission in response to a Discussion Paper released by the Council, and a further submission following the release of the Council's Interim Report.

In the Interim Report, despite the strong arguments against this course in most of the submissions, the Council recommended the abolition of suspended sentences and a new set of sentencing options to replace them.

Fitzroy Legal Service, along with many other contributors, vehemently opposed these recommendations, arguing that they would lead to greater rates of incarceration, a lack of discretion and reduced options for Courts sentencing offenders.

The Council's Final Report is currently being considered by the Attorney-General, but has not yet been publicly released.

**Contact: Stan Winford,
Policy/Project Officer, FLS**

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PERIN SYSTEM FINES – AMNESTY UNTIL 31 MAY

The PERIN Court has announced a fines cost waiver available to people who make instalment payment plans before 31 May 2006. This means that people who have fines and infringement notices for parking, fare evasion, speeding and City Link tolls may be able to have the additional fees on their fines waived during this "amnesty" period.

All client's should be advised of this. There are Fee waiver fact sheets on the centre table and copies should be provided to clients.

Contact: Will Crawford, Drug Outreach Lawyer, FLS

or visit our website to access fact sheets http://www.communitylaw.org.au/fitzroy/files/links/PERIN_fact_sheet.htm.

CASEWORK AND NIGHT SERVICE

The aim of the practice team is to provide a high level of legal advice and court advocacy, principally on behalf of socially and economically disadvantaged members of the community. Most of the work carried out by the team is in the area of criminal law, however we do provide advice and sometimes representation in relation to child protection matters, intervention orders and Victims of Crime applications. Most of our clients are funded by way of grants of assistance from Victoria Legal Aid, although we also provide a low fee service for clients who are ineligible for Legal Aid funding. In certain circumstances we are able to assist clients on a pro bono basis.

INTRODUCING THE PRACTICE TEAM

Anjali Mitra is an experienced lawyer who comes to FLS having been a prosecutor for the Commonwealth DPP and more recently, a defence lawyer for Victoria Legal Aid. She has regularly appeared in the Magistrates' Court and the Children's Court (criminal and family divisions), where amongst other things she has conducted bail applications, pleas of guilty, contest mentions and contested hearings. She has also appeared in the County Court for appeals and other hearings.

Adrian Snodgrass is FLS's newest addition and comes to us from New South Wales where he was admitted to practice after completing his Articles of Clerkship with the Aboriginal Legal Service in Redfern. Since being in Melbourne Adrian has appeared in both the Magistrates' and Children's (criminal) jurisdictions and in the specialist Drug Court at Dandenong.

William Crawford has been with Fitzroy Legal Service as the Drug Outreach Lawyer for two years, during which time he has worked with many local drug and alcohol agencies and community services to deliver legal advice and representation to people affected by substance abuse. Will regularly appears in the Magistrates' Court and is experienced in dealing with discrimination cases and PERIN court matters, which deals with overdue on-the-spot fines.

Anjali, Adrian and Will are available to provide advice and representation to all defendants in criminal or other proceedings, from trivial matters to serious indictable offences. In particular they welcome referrals from local community agencies so that FLS is able to continue its tradition of servicing the legal needs of the most marginalized and disadvantaged members of the community. Representation is not limited to people living locally to Fitzroy or surrounding areas and in that context referrals are also welcomed from other Community Legal Services.

NIGHT SERVICE

We continue to provide free legal advice service five nights a week, Mon to Fri from 6.30pm to 9.00pm. Our volunteers support this service and we are indebted to them for their time, skills and knowledge. This year we have two new staff on board.

Peter Cotter –

Peter joins the team at FLS as Night Legal Coordinator, having been a volunteer of the service since 2003. He works at Leo Cussen Institute.

Peter sees his role as helping to develop a more stable and coordinated Night Legal Service. He hopes to achieve this by providing greater communication with the volunteers, more training opportunities and social and team building sessions.

Peter feels the relationship between FLS and volunteers is a two-way street. FLS provides volunteers with some unique opportunities and in return the service expects a commitment to attendance and participation.

Melinda Cavalieri – Monday and Wednesday nights.

Melinda studied Law as a mature age student at Deakin University, Burwood. She has experience as a volunteer and casework at several CLC's, including the Mental Health Legal Service, Western Suburbs CLC and Tenant's Union.

Melinda joined Clayton Utz as an articulated clerk and remained there, practising as a commercial litigator, until she left to start a family.

Melinda feels that the night service provides a vital service to the community and it is a rewarding experience being involved in it. She sees her role as essentially a link between the night and day service, and aims to contribute by providing support to the night volunteers by keeping them up to date with current office procedures, resources and legal issues.

PUBLICATIONS & STAFF

Simon Roberts is our new
Communication/Publication Officer

Hurry and get yourself
a copy of the Law
Handbook 2006



THE LAW HANDBOOK 2006 – AVAILABLE NOW FOR \$75

Whether you practise the law, study it or need to know about it ‘just in case’, The Law Handbook 2006 is your helping hand in understanding the law in Victoria.

Published for nearly 30 years by the Fitzroy Legal Service, The Law Handbook continues to be a practical tool for organisations and individuals – it’s easy to understand and to use; is written by people who know the law; and is comprehensive in its content.

Fully revised, The Law Handbook 2006 has added a new chapter on domestic building while still covering a wide range of legislation – from consumer to employment to family law – and offering practical advice on how to deal with the legal system.

To order The Law Handbook 2006, contact the Fitzroy Legal service at publications@fitzroy-legal.org.au or on 9411 1309. You can also visit the

Fitzroy Legal Service’s entire bookshop at www.fitzroy-legal.org.au.

PLEASE UPDATE!

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Solicitor Advocate
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Hui Zhou

NIGHT SERVICE

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