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The Legal Aid Situation in Victoria, Australia

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Brief Chronology of Legal Aid in Victoria


- 1928: Public Solicitor's Office established
- *Legal Aid Act 1961* (Vic): run by legal profession
- *Legal Aid Act 1969* (Vic): established Legal Aid Committee
- 1974: National Legal Aid system created for federal law matters
- *Legal Aid Act 1978* (Vic): created Legal Aid Commission of Victoria – a statutory body responsible for administering legal assistance and advice to vulnerable people
- 1981: National Legal Aid system dispersed into state-based statutory bodies
- 1995: Renamed Victoria Legal Aid (VLA)

Community Legal Centres (CLCs)

- Salaried staff, volunteers and law students
- 1971: Monash Legal Referral Service opened
- 2014: still operating as the Springvale Monash Legal Service Centre
- 1979: First federal funding provided
- 2014: 40 CLCs operating



Lawyers And
Legal Services




Dietrich v The Queen (1992) 177 CLR 292

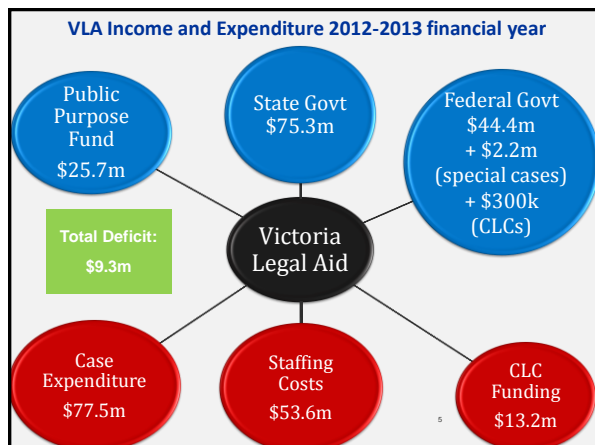
- There is no absolute right in law for an accused to access publicly funded counsel
- However, in most instances, a judge should stay proceedings when, through no fault of the accused, s/he is unable to obtain legal representation.

"The power to grant a stay necessarily extends to a case in which representation of the accused by counsel is essential to a fair trial, as it is in most cases in which an accused is charged with a serious offence"
(at 1)

"What makes a trial without representation unfair is the possibility that representation might affect the outcome of the case ... If an accused who is forced to represent himself is convicted, the prima facie position is that, had he been represented, he might have been acquitted"
(at 32)

"This case is one in which the accused was unrepresented because he lacked means to provide for his defence and because he was refused legal aid"
(at 37)

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Funding Cuts

Federal Cuts

- \$19.6m over 4 years from CLCs
- \$13.4m over 4 years from Aboriginal Legal Aid Services

Impact on VLA in 2012-2013 financial year

- 10% fewer grants of legal assistance; 14% fewer duty lawyer services
- 26 full-time positions cut

Sample of restrictions on VLA services

- Individuals seeking or responding to applications for personal safety intervention orders;
- Parents in child protection applications seeking access to their children;
- Adults facing low-level crimes where imprisonment is unlikely;
- Young people (18-25 years) unlikely to receive a supervisory or detention order;
- Funding of parents in family law matters limited to trial preparation and advice on how to conduct themselves in court; and
- Ceasing prison visiting services.

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Legal Activism

Traditional trial process in Victoria

- Barrister – trial specialist, responsible for running the trial AND
- Instructing solicitor – assist the barrister and accused before and during the trial

Legal Aid decision

- Restrict funding for instructing solicitors to trial preparation and two half trial days

Response

- February to May 2013: 47 applications to stay trial proceedings
- Impeded due process
- Removed an accused person's right to a fair trial

Sign the petition

Legal aid matters

Stand up for access to justice



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Judicial Activism – Staying Proceedings

“Substantially increases the likelihood of errors being made or important matters being overlooked by counsel – a risk that will not confront the prosecution. I am therefore of the view that in the circumstances as they are at present, the trial of the accused is likely to be unfair in the sense that it carries a risk of improper conviction”

(R v Chanuk [2013] VSC 48 (15 February 2013) at 47)

“This is a two-person case. I consider that one person, no matter how diligent or brilliant, simply cannot do to a proper standard what is expected of [the defence]. Put another way, I consider that I am unable to ensure that MK will receive a fair trial in the current circumstances”

(MK v VLA [2013] VSC 49 (18 February 2013) at 46)

“We see no reason to doubt that the lack of an instructing solicitor at trial would be productive of a very real and substantial risk of improper conviction”

(R v Chanuk & Ors [2013] VSCA 99 (2 May 2013) at 22)

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Interim Guideline – Victory or Chaos?

Funding provided as and when required for:

- The instructing lawyer who has prepared the matter for trial; or
- An instructing lawyer who is experienced and well versed in the facts of the case and the relevant law; or
- Junior counsel, where the assigned lawyer in consultation with their client determines that is more appropriate to ensure a fair trial in the particular case; or
- Junior counsel, where a legal practitioner who meets subsection a) or b) is not available or not preferred

"This guideline is not financially sustainable ... [and it] is not the most equitable use of the legal aid fund when so much of [the] budget is directed towards jury trials at the expense of other vulnerable clients ... Directing more funding to jury trials means that less money will be available for other vulnerable clients or services. We will ... [need] to identify further savings in our criminal law program"

(Bevan Warner, Managing Director VLA, 2013).

Where to from here?

January 2014

Delivering High Quality Criminal Trials : Consultation and Options Paper

"To address the long standing issue of how public money can be best spent through good quality, early trial preparation that enables appropriate early resolution of matters, skilled and focused trial advocacy and a reduction in appellable error and retrials"

(VLA 2014:18)