

The Coalition for Gun Control lobbies for firearm policies and practices to be based on the public health and criminology research evidence about firearm violence. Hardly an unreasonable stance, you might think. But I was shouted down every time I cited that evidence: that the person most likely to kill you is a member of your own family, that only a minuscule proportion of robberies involve violence, that having a gun in the house increases the chance of both homicide and suicide. That elderly people are the group least likely to be victims of violence (Grey Power had weighed in supporting gun ownership for self-defence). That antisocial and even illegal behaviour is relatively common among 'normal' young men, but they generally grow out of it. In other words, the world does not divide neatly into Good Guys (who should be armed) and Bad Guys (who should be shot).

They wouldn't have a bar of it. Shouting, booing, total rejection of the concept of 'research' or 'crime statistics'. One codger leapt to his feet and urged everyone to read the book *How to Lie with Statistics*. I stressed repeatedly that the popular perception of a society crawling with dangerous criminals is based on media images rather than reality. Shouted down: 'We can see with our own eyes, every night on the television, what is happening out there.' (Excuse me, wasn't that what I just said?)

One gun lobbyist, at least, was somewhat familiar with the law of self-defence and said he would ascertain the degree of threat posed by the intruder and then decide whether to shoot. Most of the audience, however, believed that when the big moment comes there'll be no time for deliberation: 'you have to shoot as soon as you hear a noise'. Thankfully, not many of them actually own guns.

My fellow 'experts' on the panel were four men in suits: a florid gun enthusiast, a reluctant assistant commissioner of police, a minister who (unlike all other religious leaders I've ever met) thought killing intruders was fair enough because the only other possible outcome was to be killed yourself, and a former housebreaker and armed robber who now works in offender rehabilitation.

This last bloke shone like a beacon of dignity in the face of the mob, saying it's preferable to address the reasons why young men turn to crime, rather than rely on the downstream solution of killing them in the act. He'd done his time in prison, 14 years or nearly half his life. No matter, it was obvious this lot would've liked to kill him on the spot — for his past sins, but also for his present opinions.

The cry went up that anyone who harbours 'criminal intent' should have to cop any consequences, including death (Applause). I pointed out that the criminal justice system assigns a graded series of penalties for different offences, and the penalty for breaking and entering is not summary execution (Shouted down). The ex-offender then asked who in the room had never done anything illegal. Even in hysterical mode it seems people are inclined to tell the truth: almost no one put their hand up.

Mercifully, there were a few in the audience not completely intoxicated by the fantasy of righteous violence. One woman said she had been the victim of a serious crime, was very concerned about crime, but was even more concerned to live in a society ruled by law. She was most frightened, she said, by the views being expressed by the people around her.

After 90 minutes the taping session ended. There was a lot of self-conscious coat-straightening as the audience filed out, and you could see a fair number of people felt slightly

embarrassed about having been part of a mob baying for blood. Not everyone, though: as I left the studio carpark a couple of young women jeered after me: 'Lezzo sleeeeeeeze!'

A beautiful and sophisticated night in the City of Churches.

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## LEGAL AID

### ***What the Justice Statement didn't say***

#### **The Legal Aid Commission of Victoria has been abolished. MARY ANNE NOONE explains.**

The chapter on Legal Aid in the Federal Government's Justice Statement includes this paragraph:

The Government is committed to ensuring that the Australian public receives an efficient and effective service for its investment. The Access to Justice Advisory Committee concluded that the Commonwealth Government had not been sufficiently energetic and innovative in legal aid policy. This Statement will address that criticism and marks a significant shift in the Commonwealth's role in legal aid.

What the Justice Statement fails to mention is that the significant shift in the Commonwealth Government's role includes the abolition of State legal aid commissions and abrogating control of legal aid to State Attorneys-General. The Commonwealth Government has adopted the controversial changes to the Victorian Legal Aid Commission as a model for all State and Territory legal aid commissions. The federal Justice Minister, Duncan Kerr is reported as saying, 'The Victorian legislation is a model that the Commonwealth feels closest to'.

In the *Legal Aid Commission (Amendment) Bill*, the Victorian Attorney-General, Jan Wade, seeks to turn the Legal Aid Commission of Victoria (LACV), an independent statutory body, into Victoria Legal Aid (VLA), a 'new and more business like corporate body' over which she will have control.

Section 12M of the proposed legislation gives the Attorney-General power to direct VLA in relation to the performance of its functions or exercise of its duties and any policies, priorities or guidelines of VLA.

Although the Bill prevents the Attorney-General from interfering with individual grants of legal aid, her power to direct enables her to order that certain classes of individuals should or should not get legal aid, to the exclusion of others. For a large number of legally aided people the opposing party is the government: the police, the Department of Health and Community Services. There have been several recent examples where the Victorian Government has fought vigorously in the courts and been on the losing side (Northlands, Children of God, Richmond Eight). This Bill gives the Attorney-General the power to limit the availability of legal aid in particular types of cases and to particular groups of people.

Responding to this criticism of the Bill, the Attorney-General has relied on the fact that she has to consult with the Commonwealth Attorney-General before giving written directions. Section 12M does contain the phrase 'after consultation with the Attorney-General of the Commonwealth'. However, there is no definition of consultation nor any specific procedures for what would happen if the Commonwealth did not agree with the State Attorney-General.

Additionally in s.12D(3), the State Government gives itself the power to remove the directors of VLA (including those nominated by the Commonwealth) without notice, without the need to give reasons and with no requirement to consult the Commonwealth Government. This raises issues of grave concern about the integrity and independence of VLA and indicates that the control of VLA rests with the State Government.

The VLA five-member board of directors is to be constituted solely on the nominations of the State (3) and federal (2) Attorneys-General. There will no longer be nominees from the legal profession, community legal centres, salaried legal aid staff, the council for social services nor the community.

The Introduction to the Justice Statement states:

The Commonwealth will also assert its proper role and authority as the major provider of legal aid funding. It will ensure that community needs regarding legal assistance are addressed fairly and efficiently, and that legal aid policies and priorities are oriented properly to meet community expectations.

The Justice Statement provides no detail on how the Commonwealth intends to implement this aim but without genuine input from the above groups, the VLA and the Commonwealth cannot ensure that community needs are met. The management and provision of legal aid in Victoria will suffer.

The Bill also contains another example of limiting the community's access to the Supreme Court (s.49A). Yet again a State Government seeks to remove traditional common law rights of redress to the courts while increasing the power of Government Ministers.

If the State Government proceeds with the proposed changes, the nature of legal aid in Victoria will alter radically. The current system relies on a partnership between various sections of the legal profession, the community and both the State and Federal Governments. This will be replaced by a legal aid system with the State Attorney-General in control.

Commonwealth support for the abolition of the Victorian Legal Aid Commission by the *Legal Aid Commission (Amendment) Bill* does signal a significant policy shift in the way the Australian legal aid system operates, a policy change that does not rate a mention in the Justice Statement and appears inconsistent with other policies in the statement.

A further worrying aspect of the Commonwealth's support, is that it ignores developments in Victoria which clearly threaten the rule of law. The removal of Victorians' common law rights of redress and interference with the independence of the judiciary do not fit easily with the Commonwealth's view of a democratic society as articulated in the Justice Statement:

Australians also reap the benefits of living in a democratic society governed by the rule of law . . . Government decisions about our rights and entitlements cannot be made arbitrarily and are subject to independent review. We cannot be harmed or deprived of our property, or otherwise injured by our fellow citizens, without recourse to the law, whether as a means to prevent further harm or to seek redress.

The Commonwealth Government cannot claim a leadership role in access to justice and the provision of legal aid while at the same time disregarding the violation of individuals' rights and liberties which is occurring within Victoria and relinquishing power to direct legal aid policies and priorities to a State Attorney-General.

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Resources are not infinite, and the pressure from the Government to reduce expenditure and to introduce budget savings has been criticised as inappropriate in the child welfare field, but any further extension of the legislation seems likely on the experience to date, to exacerbate the problems of inadequate child protection resources and burgeoning community demand.

It seems likely that, as such voices of concern as Justice Fogarty are being dismissed and as the child protection system is already overburdened, the mandatory reporting legislation as originally conceived will not be realised. That is not to say that nothing has been achieved—the increases in notification rates referred to above are testimony to a changed perception of community responsibility for the care of children from a wide range of potential notifiers. Mandatory reporting legislation, among other things, represents a public commitment to children and their rights, and the increased awareness across the community of child protection issues and of the need of children for protection, is itself a valuable outcome.

But if, as seems clear, the impetus for mandatory reporting in Victoria was at least partly to avoid the gross abuses typified by Daniel Valerio from occurring again, then the failure to enact the legislation to its original scope is a major shortcoming. As reporting rates increase, and as uncertainty about when and if other professional groups will be mandated to report continues, and resources to the family support and preventive arms of the child protection network diminish, the potential for a child to be abused or neglected—even seriously—but to nevertheless fall between the 'gaps' in the child protection system, remains. Perhaps the original legislation was just political expediency—a quick and convenient way to appear to be doing something—rather than a well-thought-through policy representing a clear commitment to children.

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## References

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2. Protective Services Division, HCS *Mandatory Reporting—Implementation Strategy*, November 1993.
3. Refer ref. 2 above.
4. *Age*, 27.8.94.
5. Clark, R., 'Child Protection and Social Work', Chapter 2 in P. Swain, (ed.) *In the Shadow of the Law—the Legal Context of Social Work Practice*, Federation Press, 1995, p.13.
6. HCS data, June 1994, unreported (personal correspondence with the author).
7. *Age*, 27.8.94 noted the earlier concerns of ACOSS and CWAV.
8. See Goddard, C. and Liddell, M., 'Child Abuse and the Media: Victoria Introduces Mandatory Reporting after an Intensive Media Campaign' (1993) 18(3) *Children Australia* 23.
9. Refer to comments by Justice Fogarty quoted in the *Age* on 20.11.93, 19.2.94, 18.3.94, 27.8.94.