



Peninsula Community  
Legal Centre Inc

# Community Law News

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## Inaugural Law Week Breakfast

Peninsula Community Legal Centre was delighted to be the first community legal centre visited by the Hon. Robert Clark following his appointment as Attorney General and Minister for Finance in December 2010. Mr Clark visited the Centre in February this year to hear first hand of the Centre's vital work and the growing demand for free legal services.

Mr Clark again honoured the Centre by venturing out before dawn on a cold autumn morning to be the keynote speaker at its inaugural Law Week Breakfast, held on Wednesday 18th May 2011.

Law Week provides an opportunity to both promote a greater understanding of the legal system in the community and to facilitate greater access to the justice system. The breakfast attracted a large number of attendees not only celebrating Law Week, but also celebrating the valuable role that community legal centres play within the justice system. Mr. Clark acknowledged the important role of community legal centres in the provision of legal services to vulnerable and disadvantaged Victorians.

"Our network of community legal centres, with branches in metropolitan and regional Victoria, are essential to our legal system and provide legal assistance relating to credit and debt, car accidents, family law, victims of crime compensation, wills and powers of attorney,

neighbourhood disputes, fines and some criminal matters, and family violence and sexual assault," Mr. Clark said.

He also stated that "The goal of the Peninsula CLC – 'to empower and support disadvantaged community members in the South East and Westernport Region to use the law and legal system to protect and advance their rights and broaden their awareness of their responsibilities' – perfectly illustrates the role that our community legal centres play in the provision of an accessible and fair legal system".

Peninsula CLC is one of Victoria's largest generalist community legal centres. In 2010, the Centre received around 25,000 telephone calls, provided more than 13,000 referrals and undertook almost 10,000 client activities, including legal advice and ongoing casework services.

Peninsula CLC thanks all those who attended for supporting its inaugural Law Week Breakfast.



**Pictured Left to Right:** John Corcoran (Principal, Russell Kennedy); Geoff Shaw MP (Member for Frankston); Donna Bauer MP (Member for Carrum); Paul Bradley (Vice President, Management Committee, Peninsula CLC); Edward O'Donohue MP (Member for Eastern Victoria region); the Hon. Robert Clark (Attorney General and Minister for Finance); George Erlichster (Management Committee, Peninsula CLC); the Hon. Bruce Billson MP (Federal Member for Dunkley); and Helen Constas (CEO, Peninsula CLC).

## CONTENTS

Proposed Family Law Legislation Amendments .....	2
Rosebud Office .....	2
Family Violence .....	3
A Sample of 2010 .....	3
Advocating for a Fairer Justice System .....	4

*This newsletter was produced with pro bono support from Russell Kennedy*

# Proposed Family Law Legislation Amendments

On 24 March 2011 the Commonwealth Attorney-General, the Hon. Robert McClelland, introduced the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* ('Family Violence Bill') into Parliament and on 25 March the Senate referred the Bill to the Legal and Constitutional Committees for inquiry and report.

The Bill makes changes to the *Family Law Act 1975* to prioritise the safety of children in parenting matters where children and families are at risk of abuse and violence. Largely, the amendments take into consideration the reforms suggested by reports commissioned by the Attorney-General from former Family Court Judge, Professor Richard Chisholm, the Australian Institute of Family Studies and the Family Law Council. All three reports found that the family law system is not adequately protecting people, in particular women and children, from family violence and abuse and recommended changes to the legislation to better protect children and parents in violent situations.

The research reports identified current practices where parental involvement with children has been emphasised at the expense of protection for family members<sup>1</sup> and misperceptions of the law, resulting in the belief that there are two types of parenting matters, the 'ordinary' case and the 'case involving violence and abuse'.<sup>2</sup>

Peninsula CLC made a submission in relation to the draft exposure bill in January this year broadly supporting the amendments and suggesting further areas for reform of the legislation and has made a further submission to the Senate Inquiry.

Peninsula CLC believes that the Family Violence Bill is an important move to address many of the problems raised by recent research and evaluations of the Family Law Act, which have evidenced the inadequacy of the existing provisions of the legislation in dealing with issues of family violence and child abuse.

In particular, Peninsula CLC applauds the revised definition of 'family violence', which addresses the recommendations of the Family Law Council<sup>3</sup> and the Australian and NSW Law Reform Commissions<sup>4</sup>, to provide a general characterisation of prohibited behaviour, followed by some examples of the

manifestations of these behaviours which are non-exhaustive.

Peninsula CLC also supports the repeal of sections 60CC(3) (c) – the 'friendly parent' provision- and 117AB – cost provision- which have been shown to operate as disincentives to disclosures of family violence.<sup>5</sup>

Whilst Peninsula CLC generally endorses and supports the aims of the Family Violence Bill, Peninsula CLC also believes that the response to the evaluations from research and the recommendations entailed therein could be strengthened and therefore advocates for further amendments and initiatives to enhance the response to family violence and the effectiveness of the legislation.

More than 50% of clients seeking assistance from Peninsula CLC in the last financial year, sought advice surrounding family law issues. In addition to general advice and casework, the Centre has a dedicated Family Law Program, which provides a duty lawyer service at the Dandenong Federal Magistrates' Court, a family violence duty lawyer service at the Frankston Magistrates' Court and provides additional services to clients with family law matters through the partnership project of Peninsula CLC with the Frankston Family Relationship Centre.

1 Australian Institute of Family Studies, *Evaluation of the 2006 family law reforms*, December 2009, p.235

2 R. Chisholm, *Family Courts Violence Review*, 27 November 2009, p.9 and p.128

3 Family Law Council, *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues*, December 2009, p.27

4 Australian Law Reform Commission Report 114, *Family Violence – A National Legal Response*, October 2010, p.55

5 R. Chisholm, *op cit* n.2, pp110-123

## Rosebud Office

**It has been two and a half years since Peninsula Community Legal Centre first opened the doors of its Rosebud branch office to provide locally-based, free legal services to the Rosebud and surrounding community. Since that time the Legal Centre office has become a much valued community resource, with a steady volume of clients.**

Peninsula CLC has a long history with the Rosebud and Southern Peninsula communities, having provided visiting lawyer services there for almost 20 years prior to the opening of the Rosebud office. Peninsula CLC worked in partnership with supporters to expand its provision of free legal services in the region and ensure that locals are able to access the help they need, when they need it.

Since the Rosebud branch opened in December 2008 more than 1,200 people have sought legal assistance in relation to matters concerning family, civil and criminal law. Peninsula CLC is pleased to have been able to extend the service to include a Rosebud branch to provide a dedicated service within this community. Peninsula CLC is acutely aware that the Rosebud community has high levels of disadvantage which is compounded by its relative geographical isolation from

mainstream services. It is therefore crucial that Peninsula CLC maintains a local presence in Rosebud.

The life circumstances of Peninsula CLC clients can be severely affected by their legal problems and they are often not able to access other legal services. Being able to obtain free legal assistance can often help clients move on with their lives and become active participants in their local communities.

In the past year the top 5 areas for which advice was sought at Rosebud were family law, credit and debt matters, motor vehicle accidents, criminal law and injuries.

Peninsula CLC was delighted to receive confirmation in the Victorian Attorney-General's recent announcement that funding would be renewed to enable Peninsula CLC to continue to operate its Rosebud office and provide this essential service to the community.

# Family Violence

Recently Peninsula CLC has noticed that a great deal of attention has been paid to anti-social behaviour in Frankston. In particular this attention has been directed towards behaviours including 'hoon driving' and graffiti, however in directing attention towards these specific behaviours, other crimes persist and can be kept hidden from the community.

Family violence is a crime and a fundamental violation of human rights. It is unacceptable in any form and it is an increasing problem in the Frankston community. According to recent Victoria Police statistics, Frankston remains in the top 3 local government areas within Victoria for family violence incidences in raw data and when population data is factored in, Frankston has the highest family violence incident rate per capita of all metropolitan local government areas.<sup>1</sup>

Peninsula CLC can testify to these figures, having experienced an alarming rise of around 230% in demand for its family violence duty lawyer service at the Frankston Magistrates' Court over the past five years. The most significant rise was from 2006 to 2007 when the Court commenced its Specialist Family Violence Service and Peninsula CLC increased duty lawyer services from one to three days per week. However, demand has continued to grow since that time, including a further increase of 14% from 2009 to 2010.

According to Victoria Police data, there has been an increase across Victoria in family violence related assaults, in the 12 months to 31 December 2010, of 13.4%. Victoria Police noted a significant drop in crime in Frankston otherwise (more than 5%) for the same period.<sup>2</sup>

It is difficult to conclusively interpret the reasons for the rise in family violence incidences. The statistics may mean that family violence is now less hidden, but it may also be that the incidence of family violence has actually worsened. Either way, the figures are demanding us as a community to ensure a better response to family violence.

In addition to the impacts of violence within the family, long term research has shown that both adult and child victims of family violence are more likely to perpetrate assaults and other aggression outside the family than non-victims. The continued growth in incidences of family violence has implications for the wellbeing of the Frankston community, as the impact of family violence may express itself through displays of anti-social behaviour.

Peninsula CLC provides a duty lawyer service at Frankston Magistrates' Court specifically for family violence matters. Peninsula CLC also participates in efforts to improve family violence laws and in community education about family violence.

1 Victoria Police Online News Centre, [http://www.vicpolice.com.au/index.php?option=com\\_statistics&task=search](http://www.vicpolice.com.au/index.php?option=com_statistics&task=search), 16 May 2011.

2 Ibid

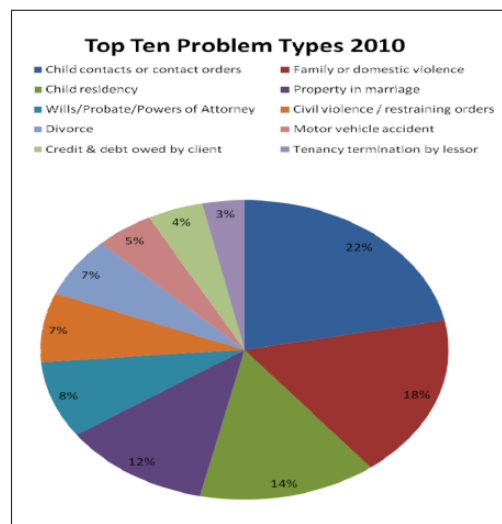
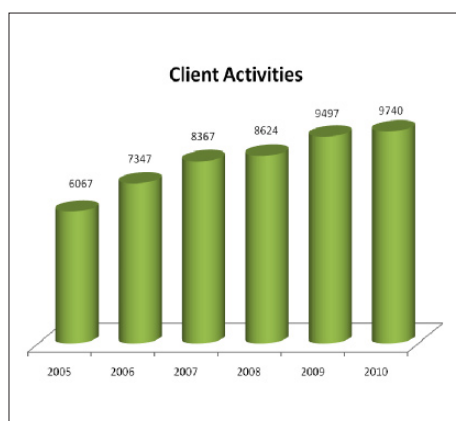
## Case Study

Client "Jane" sought an intervention order, in respect of her and her children's safety, against her former partner, the children's father, "John". Jane had been separated from John for some time, however there had been a history of family violence and Jane had made many decisions pertaining to their two children based upon fear of reprisal by John. At the most recent contact changeover John presented very aggressively, pulling one of the children from Jane's car with considerable force and physically assaulting Jane for trying to intervene. One child had been living with John for the past 6 months and had disclosed to John that he wanted to live with Jane.

Although Victoria Police had applied for the intervention order in favour of Jane and her children, after meeting with John's barrister, there was concern that the application could not cover the child in John's care and this matter would be best dealt with by the Family Court. Peninsula CLC's duty lawyer was able to convince the Prosecutors to pursue the application in full, despite John's opposition, and provided advice to Jane in relation to giving oral evidence and responding to cross-examination. Despite extensive cross-examination of Jane by John's barrister at the mention hearing, the Court was persuaded that an Interim Order was required for the protection of Jane and her children, including that the children reside in Jane's care pending final determination of the intervention order application and any ensuing family law proceedings.

## A Sample of 2010

Peninsula CLC has experienced a continual increase in service provision over the last few years and 2010 is no exception. Peninsula CLC is fortunate to have a dedicated cohort of volunteers, supporters and staff who continually make it possible to provide this level of service to the community. The sample adjacent shows the most common areas of law for which assistance was sought throughout the year and the increase in service provision in recent years.



# Advocating for a Fairer Justice System

In addition to the client specific work of Peninsula CLC, community legal education and law reform activities also play an important role. The Centre's law reform and policy activities are informed by justice concerns arising from its casework practice, as well as issues likely to affect clients and vulnerable community members.

Recent law reform initiatives include:

- A submission in response to the National Legal Reform Project of the Access to Justice Division of the Commonwealth Attorney General. The proposed new national legal regulation legislation presents a major opportunity for the legal profession to have clear and uniform national laws regulating the practice of law. Peninsula CLC broadly endorsed the terms and recommendations of the Consultation Package, focusing the submission on the regulation of community legal centres and consumer protection for the users of legal services.
- Concerns were raised in relation to the City of Frankston's introduction of non-smoking designated outdoor areas. Peninsula CLC wrote to Frankston City Council raising the possible discriminatory nature of any proposed law prohibiting smoking in a particularly designated area and that any such prohibition may be used as *de facto* move on powers, enabling law enforcement officers to give directions to people to 'move on' as a matter of discretion of the individual law enforcement officer.
- Peninsula CLC provides support to not-for-profit groups through provision of advice pertaining to legal structures, assistance in obtaining legal status through incorporation; and workshops to assist in understanding legal requirements, governance and taxation implications. A submission was provided to Treasury's proposal to develop a national Not For Profit (NFP) regulatory system supporting the notion of an independent national NFP regulator. The goals of national NFP regulation should promote good governance, transparency and accountability within the sector in order to advance the national NFP sector.
- Following a community meeting hosted by Victoria Police in Frankston, Peninsula CLC wrote to Victoria Police to provide input to the priority areas identified of Victoria Police in the Working Document, *The Way Ahead 2008-2013*. Peninsula CLC raised concerns as to the absence of family violence from the priority areas and noted that family violence includes inter alia property damage and financial abuse and does not neatly fit into the category of 'crime against the person'. The need for family violence to be included as a distinct area of focus for Victoria Police in 2011 and beyond is deemed by Peninsula CLC as essential.
- Comprehensive submissions were submitted to both the Commonwealth Attorney General's department and the Senate Legal and Constitutional Committees in respect of proposed amendments to the *Family Law Act 1975*.
- Every year a large number of clients seek assistance in relation to their obligations as an Attorney or Guardian and in relation to appointing a Power of Attorney. Peninsula CLC made a submission supporting the Victorian Law Reform Commission's proposal for the creation of new legislation rather than amending the existing legislation to address the complexities surrounding the existing legal framework regarding administration and guardianship.
- A submission to the Parliamentary Scrutiny of Acts and Regulations Committee charged with the review of the Charter of Human Rights and Responsibilities, outlining the importance of the Charter. The submission called for the expansion of the Charter to include *inter alia* a free standing cause of action for breach of a protected right and the need for a more comprehensive public education about human rights and responsibilities.

Peninsula Community Legal Centre law reform submissions and media releases are available on [www.pclc.org.au](http://www.pclc.org.au).



*Peninsula Community Legal Centre is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south-eastern communities for more than 30 years.*

*The Centre helps people use the law to protect and advance their rights, offering free advice on most legal issues. Ongoing assistance is targeted to assist clients who are experiencing disadvantage. In addition to its general services, the Centre operates Family Law, Child Support, Family Violence, Tenant and Consumer Advocacy Programs.*

*Community legal education, special projects and participation in law reform are also important aspects of the Centre's work.*



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