

STATE ELECTION: LIV CALLS PARTIES TO ACCOUNT



LEGAL AID TOPS BILL FOR STATE ELECTION

Legal aid funding is shaping up as a contentious political issue – but by no means the only one – in the lead-up to the 27 November state election.

Protracted federal government funding shortfalls and the changing fortunes of the state's Public Purpose Fund (PPF) last year in the wake of the global financial crisis have revealed the instability of legal aid's existing revenue streams. Both major parties are seeking more reliable means with which to fund it across Victoria.

The LIV will be calling on whoever wins government to guarantee minimum funding levels to Victoria Legal Aid (VLA), independent of commonwealth funding and any fluctuations in the PPF.

Among other justice issues facing voters this month, mandatory sentencing is firmly off the agenda but suspended sentences look likely to be scrapped as both the Brumby government and the Opposition talk tough on crime. The Greens intend to vehemently oppose any plans to abolish suspended sentences.

The abolition of mandatory sentencing for driving offences, due to come into force next July, will remain regardless of which side wins government on 27 November.

Doubts remain over the fate of the Victorian Charter of Human Rights and Responsibilities, condemned by the Coalition as a time-wasting expense that grants courts too much power.

Personal injury laws may be reviewed under a Coalition government amid concerns that current laws might be unfair to injured people.

The parties' policy responses were in answer to *Call To The Parties*, the LIV's 11-point statement of its key state election justice issues. (See pp29-32 of this *LIV* for the full responses and pp26-28 for individual statements from Labor, the Coalition and Greens.)

Call To The Parties was sent to major and minor political parties in the run-up to the state election and followed a similar publication focusing on 10 key justice issues for the 21 August federal poll.

Call To The Parties is part of the LIV's broader "Advocating Justice For All" platform, launched in September and built around the themes of:



STRONG FOUNDATION: LIV president Steven Stevens with Victorian Civil and Administrative Tribunal president Justice Iain Ross AO, County Court Chief Judge Michael Rozenes and LIV CEO Michael Brett Young at the *Advocating Justice For All* launch.

The LIV has worked hard to keep justice issues as a focal point of the state election campaign and succeeded in getting the major parties to declare their positions for this exclusive *LIV* coverage.

- supporting access to justice;
- protecting rights;
- advancing government transparency, access and accountability; and
- focusing on the future.

The parties' policy responses were one aspect of an extensive lobbying campaign by the LIV on a host of justice issues. This lobbying included:

- production of the publications based mainly on LIV Legal Policy and Practice Section submissions and existing LIV policies detailing major concerns around law reform, public access to justice and the profession;
- seeking responses from the two major parties and the Greens on the 11 *Call To The*

Parties issues before analysing the data and seeking clarification from the parties on their policy platforms;

- members of the LIV executive meeting with a broad range of state Labor, Coalition and Greens leaders to discuss their policies and lobby for changes to some aspects of each party's responses; and
- compiling the responses for presentation to members via the *LIV* and www.liv.asn.au.

The comprehensive project was designed to provide LIV members with informed analysis in the lead-up to the state election. It also brought justice issues to the forefront of the campaign by making the major and minor political parties accountable in their commitments to these issues.



Chronic legal aid underfunding in the past decade prompted the LIV to make legal aid its top priority for this state election.

The historic poor rates paid to private practitioners representing legally aided clients have led to grave concerns being raised about the ongoing viability of providing quality legal advice to disadvantaged people.

The LIV is seeking guaranteed minimum state funding for VLA that is independent of commonwealth contributions or fluctuations in the PPF.

In written responses to the LIV's *Call To The Parties* questions, the Brumby government claimed VLA had enjoyed "record funding" under its stewardship while the Opposition attacked Labor for "raiding" the PPF, promising to increase legal aid funding "over time" as the Budget allowed.

The government announced an extra \$49.9 million over two years for legal aid in the May Budget. However, the additional VLA funds might only prove enough to compensate for the downturn in the PPF since the global recession.

Victorian Attorney-General Rob Hulls has backed the LIV's demands for sustainable legal aid funding, but not without the help of the PPF. He said the government would

maintain sustainable funding levels to VLA, even during times of economic uncertainty.

"The government has increased legal aid funding every year since we came to office," Mr Hulls said.

"The Public Purpose Fund is an important source of legal aid funding in addition to funding provided directly by government."

He cast doubt on Coalition plans to fund legal aid without relying on the \$25-\$30 million the PPF provides for legal aid each year.

"The Liberal Party needs to come clean about how it will fund legal aid if it does not use the PPF," he said.

"To cut that [the PPF] would destroy legal aid and deny tens of thousands of vulnerable Victorians access to justice."

He rejected the LIV's call to be involved in negotiating national partnership agreements for legal aid on the grounds that the LIV was not a signatory.

In its written response, the Coalition attacked Labor for using the PPF to fund core government business it said should instead have been funded in the Budget.

However, in a subsequent interview with the *LIV*, Shadow Attorney-General Robert Clark conceded his party might inevitably need to draw on the PPF in the short term if it won office, until it could build a bigger Budget base income level.

Mr Clark said the Coalition agreed that low levels of legal aid funding helped cause injustice, but reiterated that the Coalition believed the PPF was set aside to fund specific community-based programs.

Greens justice spokesperson Sue Pennicuik said she was concerned that many people would suffer if they were denied legal aid.

"It's being whittled away to the point where you almost need to be homeless to get help these days," Ms Pennicuik said.

LIV president Steven Stevens said legal aid funding needed to be restored to pre-1997 levels, when the then Howard government dramatically slashed contributions to state legal aid commissions.

While he welcomed the state government's Budget increase, he warned legal aid remained the number one access-to-justice issue in Victoria.

"We recognise the shortfalls are due to decreases in federal funding since 1996," Mr Stevens said.

"[But] it doesn't matter where the money comes from just as long as it is forthcoming."

Victorian barrister Dr David Neal SC, who played a leading role in recent lobbying efforts on behalf of the LIV, Victorian Bar and Law Council of Australia, warned that the state government could no longer afford to rely on the PPF to finance legal aid.

He said the global financial crisis wiped off \$10 million in value from it last year and more was lost to a VLA budget blowout.

"The Public Purpose Fund is simply not a stable source of income," Dr Neal said.

Both Mr Stevens and Dr Neal called for fees paid to private practitioners representing legally aided clients to be substantially increased. Reports compiled by PricewaterhouseCoopers revealed lawyers doing full-time legal aid work in Magistrates' Courts earned only \$38,000 per year.

“This throws up concerns about the sustainability of private practice providing legal aid cases,” Dr Neal said.

At the time of writing, the LIV had rejected VLA’s proposed rate rise based on a “whole of job fee” model, which the LIV claimed only represented a nominal increase once inflation was taken into account.

Giving magistrates and judges more say in sentencing forms the basis of the LIV’s platform on protecting individual rights under the law.

The call follows political focus on issues surrounding mandatory sentencing, suspended sentences, double jeopardy and the presumption of innocence in Victoria in the past few years.

The Brumby government and the Opposition have each come out against mandatory sentencing, but both ignored the LIV plea to retain suspended sentences if elected.

A Labor government would limit the abolition of suspended sentences to “serious crimes”, while the Coalition plans to implement a blanket ban on any suspended sentences during its first term in government.

The LIV has sought greater focus on preserving judicial discretion in sentencing, with more emphasis on rehabilitating offenders rather than simply sending them to prison.

Both parties claimed abolishing suspended sentences did not automatically translate to prison time as judges could decide in favour of community-based orders in some instances.

The Brumby government said its decision to abolish suspended sentences followed the recommendations of the Sentencing Advisory Council.

It also repeated its pledge to remove mandatory sentencing for people twice convicted of driving while disqualified from July next year.

“Labor is determined to ensure that judges retain the power to make decisions on the merits of each individual case and to make more sentencing options available to the judiciary, not less,” Mr Hulls said.

Mr Clark denied Labor claims that the Coalition had pushed for mandatory custodial sentences. However, a Coalition government would introduce a blanket abolition of suspended sentences in its first term because Mr Clark claimed it was “not a genuine jail sentence”.

Ms Pennicuik said the Greens would not support any moves to drop suspended sentences.

“If the government wants to bring it on we would have to stop them,” she said.

Mr Stevens expressed disappointment that either major party would consider removing judicial discretion.



CASH CALL: LIV president Steven Stevens says that with legal aid funding being the LIV’s top election priority, it doesn’t matter where the additional funding comes from “as long as it is forthcoming”.

“It’s easy for politicians to jump on the ‘tough-on-crime’ bandwagon, but we need to maintain the discretion of the judiciary in deciding matters, as well as protecting individual rights,” Mr Stevens said.

The LIV’s call for a review to expand the reach of Victoria’s human rights Charter to improve access to remedies and include economic, social and cultural rights has drawn a mixed response from the parties, who remain firmly divided on its merits.

A re-elected Brumby government will review the *Charter of Human Rights and Responsibilities Act 2006* to consider including additional rights by October next year.

Labor claims the new laws strengthen democracy by making decisions more transparent and helping develop government policy.

However, the Coalition has condemned the Charter for imposing unwieldy administrative requirements on public bodies that cause delays and increase costs. It suggested

any injustice would be better tackled internally or through existing independent and accessible administrative law remedies.

Mr Clark said the Coalition had yet to decide if it would repeal the Charter but believed that the Charter was “badly formed”.

He refused to be drawn on whether a Coalition government would remove the courts from the process of implementing, interpreting and applying the Charter in accordance with other laws.

“I don’t want to commit at this stage but we have clearly identified that courts play a de facto role in policy making under the guise of judicial decision-making,” he said.

Ms Pennicuik agreed the Charter could benefit from a review to make it more effective.

Mr Stevens said there was no evidence backing the Coalition’s criticisms and warned removing the Charter would represent “a backward step” for the community.

“I can see no individual rights set out in the Charter that are objectionable,” Mr Stevens said.

// It's easy for politicians to jump on the 'tough-on-crime' bandwagon but we need to maintain the discretion of the judiciary in deciding matters as well as protecting individual rights. // LIV PRESIDENT STEVEN STEVENS

"Making global judgments is not the right way to go and – unless any objections can be pointed out – then it should be supported."

He said that as long as it was used properly, the legislation gave relief to people who would otherwise have no rights.

"There is nothing to be gained by it [the Charter] if it is ignored in practice," he said.

"It is not something to be placed on a mantel-piece; it is something to be handled with care."

In its push for reforms to tort law, the LIV wants the *Wrongs Act* 1958 (Vic) to be amended.

Unlike the WorkCover and TAC schemes, there is presently no "narrative test" in the *Wrongs Act* to allow for common law rights for pain and suffering damages. The LIV's position is the Act should include such a test of "significant injury" which, if satisfied, would allow the recovery of pain and suffering damages.

The LIV is also in favour of lowering the thresholds from greater than 5 per cent whole person impairment (WPI) for a physical injury and greater than 10 per cent WPI for a psychiatric injury to 5 per cent and 10 per cent respectively.

While the Brumby government has no current plans to amend the *Wrongs Act*, the Coalition believes it is timely to see whether any proposed amendments would help the legislation operate more fairly.

However, it also believes that limits on the ability to recover pain and suffering damages for relatively minor injuries curtail "unmeritorious and vexatious claims".

The Greens support any measures that would ensure all injured people are fairly compensated, including use of the narrative test of significant injury.

How justice services in regional, rural and remote (RRR) areas are treated post-election will depend on which party wins.

The LIV has called for improved access to justice and steps to increase the recruitment and retention of lawyers. It seeks relocation allowances, more clinical placements and scholarships for law students and graduates, collaboration with VLA on traineeships, additional money once a country stint has been served, and tax breaks.

The Brumby government plans to keep its focus on boosting justice services through an expansion of the Victorian Civil and Administrative Tribunal into RRR areas and opening new offices in Berwick and the City of Hume, as well as employing additional staff at courthouses in Geelong, Ballarat, Bendigo, Shepparton, Morwell, Mildura, Warrnambool and Wangaratta.

The Coalition has run-down court buildings in its sights as it commits to boosting RRR infrastructure with a \$1 billion Regional Growth Fund to revitalise regional cities and country communities.

Mr Stevens welcomed the commitments from both parties but called for a greater focus on assisting country practitioners.

"It's about having lawyers in areas to build local communities," he said.

"They play a significant role and make significant contribution to pro-bono and legal aid work in rural areas."

At the time of writing, none of the parties had released costings on how their respective election promises would be funded. ●



LIV LEADS WAY ON LAW REFORM LOBBYING

The LIV has led the way in lobbying key political leaders for legal reform in the lead-up to this year's federal and state elections.

Lobbying is nothing new for the LIV; its Legal Policy and Practice Section regularly prepares submissions to government and other bodies and the LIV itself lobbies on behalf of members. But this year for the first time the LIV launched a comprehensive campaign on a number of key justice issues simultaneously.

Its submissions became the basis for a series of advocacy publications that became the key planks in a concerted lobbying and advocacy campaign in the lead-up to the federal and state elections.

The LIV identified major issues affecting the provision of legal services and the legal profession. The result was the landmark *Advocating Justice For All*, the overarching publication on access to justice.

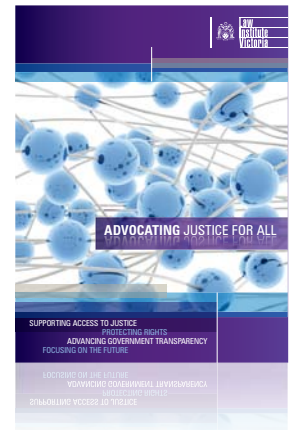
Advocating Justice For All focuses on the following key areas identified by the LIV:

- reforming civil justice;
- funding legal aid;
- advocating restorative justice;
- promoting appropriate dispute resolution;
- reforming tort law;
- accessing interpreters in civil matters;
- reducing the risk of adverse costs orders;
- improving disbursement assistance in pro bono matters;
- streamlining and simplification of court fee waiver forms;
- improving access to justice in rural, regional and remote (RRR) areas; and
- resourcing courts and tribunals.

When the federal election was called at short notice, the LIV tailored *Advocating Justice For All* to focus on federal issues and lobbied the government, Opposition and minor parties for action. Part of that lobbying included the production of *Call To The Parties*, a report drawn from *Advocating Justice For All*, and working with the Law Council of Australia (see <http://bit.ly/aEffKj>).

Then the LIV turned its attention to the state election, which, unlike the federal election, has a fixed date for the poll.

Major reform initiatives were distilled from *Advocating Justice For All* into a state *Call To The Parties* in the lead-up to the 27 November election.



The LIV's efforts to lobby political parties in this election year have been built around its landmark publications *Advocating Justice For All* and the state and federal *Call To The Parties*.

The state government, Opposition and the Greens provided written responses on how they would address each issue if they won. The LIV analysed the answers and pursued further clarification from all three parties in a series of meetings.

Their responses appear in this edition of the *LIV*, and on the LIV website.

LIV legal policy and practice general manager Joy Acquaro said it was the first time the LIV had undertaken such a comprehensive and coordinated approach with so many issues at the one time.

She said the *Call To The Parties* reports had allowed for greater and more sustained engagement with decision-makers and stakeholders and helped to provide members with "a more holistic advocacy platform".

"This is the first time the LIV has done this process," Ms Acquaro said. "It shows we are leading the agenda for change."

LIV president Steven Stevens said the Institute was looking for strong and just legal policy that supported access to justice and individual rights.

He said the LIV looked forward to working constructively with whichever party won the election.

"The focus then will be on making sure our issues are on the agenda and we hold them to account," Mr Stevens said.

The LIV's *Advocating Justice For All* campaign will not end with the election result. The LIV will endeavour to ensure the new government keeps its campaign promises and will continue to lobby on other key issues.

The LIV launched its *Advocating Justice For All* campaign on 2 September. Those who attended the launch included County Court Chief Judge Michael Rozenes AO, Victorian Civil and Administrative Tribunal president Justice Iain Ross AO, the Victorian Law Reform Commission's Professor Neil Rees, Mark Moshinsky SC from the Victorian Bar, Federation of Community Legal Centres executive director Hugh De Kretser representing the Smart Justice coalition, and Stan Winford representing state Attorney-General Rob Hulls.

To access *Advocating Justice For All* see <http://bit.ly/cr9uy7>. To access the state *Call To The Parties* see <http://bit.ly/9bEiuX>. To access the federal *Call To The Parties* see <http://bit.ly/b9Ac6g>.



Attorney-General Rob Hulls says the choice is clear: maintain the momentum of legal reform by re-electing Labor or risk the alternative, where rhetoric rather than results is the rule.

For more information on the Victorian Labor Party and its policies, see www.alpvictoria.gov.au.

STATEMENT FROM ATTORNEY-GENERAL ROB HULLS

At this coming state election, those who recognise the role of justice in building a stronger, safer and fairer community will have a very clear choice to make.

It's the choice between a government with a record of smart reform that gets results and an Opposition offering a tired, simplistic agenda; between a government tough on crime and its causes – delivering safer communities in the process – and an alternative that would only mean more prisons; between those who believe that judges must exercise sentencing powers independently, and those ready to interfere.

On offer will be a government that has made sweeping changes to court procedure; that has prioritised victims of crime, including victims of family violence and sexual assault; that has injected record funds into the courts and Victoria Legal Aid; that has brought appropriate dispute resolution into the mainstream; and that has recognised the value of land justice, human rights and equal opportunity.

Alternatively, Victorians can opt for a Coalition that has constantly argued against change – making clear that it would repeal the Victorian Charter of Human Rights and Responsibilities, and labelling the Neighbourhood Justice Centre, which helped reduce crime rates in the City of Yarra by 18 per cent in only three years, as “apartheid justice”.

Put simply, the choice will be between a government prepared to do the work, to

listen and collaborate, to invest, and establish a long-term vision – and a Coalition which, when last in office, slashed services and undermined independent authorities.

Records are important, of course, but this does not mean that the Brumby government stands on its record alone. We will continue with our vision for the justice system outlined in *Justice Statement 2*. This includes further modernisation of criminal law; additional civil procedural change; reform to the judicial appointments process and courts governance; and the development of unified courts legislation.

We will simplify property, guardianship and administration, and wills and succession laws, and continue to support a national legal profession. We will complete the legal services masterplan for court and justice services around the state and make courts more accessible and less beholden to tradition.

We will continue to take services to the regions, including expanding the Victorian Civil and Administrative Tribunal. We will build on lessons learned from successful problem-solving initiatives – such as the Koori Courts, Family Violence Courts and Mental Health List – that tackle the causes of crime. We will complete the review of the Victorian Charter of Human Rights and Responsibilities.

Make no mistake, reform of this kind – whether in place or on the horizon – is not easy. Rather, the easy option, preferred by the Coalition, is to cry “lock ‘em up and throw away the key”. It may grab the headlines, but

it does nothing to break the cycle of crime, to reduce its commission or get people contributing to society again.

While we will always take a hard line on dangerous criminals, it's vital that those capable of contributing don't get drawn further into this cycle – a “revolving door” in and out of prison – with the causes of offending unaddressed. Instead, we should use the justice system as a checkpoint to change offending patterns and steer people towards opportunity and participation.

We should also fiercely resist any calls for mandatory or minimum sentencing – not just because it undermines independent sentencing processes – but because it does not work. It does nothing to deter offenders, increasing not guilty pleas and therefore the trauma to victims, and does nothing to break the cycle of crime.

Make no mistake, smart justice is tough on crime and its causes. Smart justice supports people's rights and promotes responsibility; it makes dispute settlement easier; it helps build a stronger, safer, fairer community.

The next election, then, offers a clear choice between a government that is delivering smart justice and a Coalition that opts for rhetoric at the expense of results; that does not support equal opportunity or the Charter; that will turn its back on legal aid.

We must keep the momentum of reform going. We must look to the future and, to do so, the choice ahead is palpably clear. ●

ROB HULLS is state Attorney-General.

While the Attorney-General has pursued his ideological agenda – including courts modelled on Soviet-era farming – the Victorian legal system has gone backwards, according to shadow Attorney-General Robert Clark.

For more information on the Victorian Liberal Party and its policies, see www.vic.liberal.org.au.



STATEMENT FROM SHADOW ATTORNEY- GENERAL ROBERT CLARK

After 11 years of a law “reform” agenda driven by zealotry and attacks on independent institutions, it’s time to restore respect and to focus on reforms that will achieve practical and timely results.

Over the past decade, Victoria has suffered from an Attorney-General who has denigrated the judiciary and the profession, attacked freedom of association, axed the independent chair of the Equal Opportunity Commission and sought to scrap the independent board of the Victoria Law Foundation.

While Mr Hulls has been preoccupied with his ideological agenda, our legal system has gone backwards. Poorly-drafted legislation, intrusive bureaucracy and bungled IT projects have made the work of our courts harder rather than easier.

Victoria has become a state where justice delayed is justice denied.

Our state’s criminal case waiting lists have grown by 36 per cent since 2003. Victoria now has Australia’s longest waiting lists: for Supreme Court appeals, for County Court trials, in the Magistrates’ Court and in the Children’s Court. As at 30 June last year, there were more than 42,500 criminal cases awaiting trial in Victoria’s courts, compared with 26,085 cases in NSW.

The Attorney-General boasts of his experimental new courts, but he has treated them as Soviet-era model farms, to distract attention from failures, rather than as mainstream institutions to be made available to all.

Important legislation that would make a real difference, such as jury direction

reforms based on the Victorian Law Reform Commission’s recommendations, has stalled while the Attorney-General has spent his time tinkering with jury eligibility rules for legal staff and retired lawyers.

When legislation such as the Civil Procedure Bill has finally reached Parliament after lengthy delays, the government has brushed aside the concerns of the LIV and others that the legislation will in many cases make it harder to obtain justice.

Victoria needs an Attorney-General able to work cooperatively and constructively with all persons of goodwill, and to deal with points of disagreement on their merits rather than through abuse of those holding different views.

Priority needs to be given to practical measures such as additional court staffing to help reduce sentence appeal delays, and enabling more experienced prosecution and defence practitioners to be involved at earlier stages of proceedings, instead of spending scarce resources on increasing numbers of Attorney-General’s policy advisers.

Reducing waiting lists also requires not bungling crucial court IT projects such as the Criminal Justice Enhancement Program and Integrated Courts Management System, and adopting a measured and modular approach to the deployment of new IT. Increased spending is pointless if it goes on increased waste.

The Victorian Coalition is committed to effective sentencing that will prevent and deter crime, especially violent crime, and reduce recidivism. This includes not only reform to custodial sentences, such

as abolishing suspended sentences for all crimes, but also reforms to community-based sentences and fines.

If first-time and younger offenders experience sanctions with real teeth – being banned from licensed premises or having to perform properly enforced restitution obligations – then they are far less likely to reoffend in future.

Where offenders have genuine drug or alcohol problems, mental illness or other difficulties, we support court-related programs that seek to assist offenders to re-establish their lives on a stable basis, develop responsibility for their conduct and avoid reoffending.

A Coalition government will also introduce a range of measured criminal law reforms, including amending double jeopardy laws to allow the Court of Appeal to grant retrials where there is new and compelling evidence, legislating to allow criminal bikie and other gangs to be declared illegal where the Supreme Court is satisfied of serious criminal activity, and reforming bail laws.

As at the early October deadline for this article, there are many elements of the Coalition’s law and justice policy still to be announced. However, each of our initiatives will be directed towards restoring Victoria’s legal system to make Victorians safer, improve access, reduce costs and waiting times, uphold rights and support the independent, impartial and efficient operation of our courts and tribunals. ●

ROBERT CLARK is Shadow Attorney-General.



Human rights and political transparency must be at the forefront of political debate in the next Parliament says the Greens' justice and corrections spokesperson Sue Pennicui.

For more information on the Victorian Greens and their policies, see <http://vic.greens.org.au>.

STATEMENT FROM GREENS JUSTICE SPOKESPERSON SUE PENNICUIK

Throughout this parliamentary term, the Greens have raised a number of themes related to democracy and the justice and corrections systems in Parliament. We have been concerned by what we see as a trend for legislation to encroach on established human rights.

The government has introduced several pieces of legislation, that it has admitted are “incompatible” with the Victorian Charter of Human Rights and Responsibilities, most particularly in terms of the increased police “stop and search” and “move on” powers.

These have included the ability to conduct strip searches of children and people with impaired intellectual functioning in certain circumstances without the presence of an independent third person. This legislation also removed safeguards and reporting requirements, making the new scheme impossible to properly evaluate.

During this parliamentary term, I have put forward several motions in the Legislative Council including two calling for reform of political donations. In Victoria, both the ALP and the Opposition receive donations from large corporations, including property developers. This is a clear conflict of interest and is now illegal in NSW. This issue is fundamental to democracy and good governance and

is one that the Greens will continue to pursue vigorously.

In July, I also put forward a motion calling on the government to establish an independent body to investigate all police shootings and deaths in custody and complaints against police that involve allegations of human rights abuses.

In Victoria, any investigation of the matter is undertaken by the Ethical Standards Department, an internal police unit. This has been found in international human rights jurisprudence to be incompatible with the right to life, which is enshrined in s9 of the *Charter of Human Rights and Responsibilities Act*.

We have also been concerned about instances where democratic process has not been followed. In the last week of Parliament, the *Sentencing Amendment Bill* was rushed through in two days with no opportunity for MPs to scrutinise the Bill or to consult with the community about it. Notwithstanding the merits of the Bill or the new sentencing regime it puts in place, this was appalling process with regard to such significant public policy.

It passed without a report from the Scrutiny of Acts and Regulations Committee (SARC) on its human rights implications. Many other Bills have passed through Parliament without the SARC reports being

available. This undermines the purpose of the Charter. The Greens will push to ensure that, in future, no Bills are debated before the SARC process is complete.

In the final sitting week this year, I moved to establish an independent prison inspectorate to provide external and open scrutiny of Victoria's custodial services. This was in the same week that the Ombudsman's report on very serious problems in the youth justice system, and the Parliamentary Drugs and Crime Prevention Committee report on the impact of drug-related offending on female prison numbers, were released.

In Victoria, oversight of prisons and custodial services is undertaken by the Office of Correctional Services Review, a small unit within the Department of Justice that does not publish the results of its work. In Western Australia, the Office of the Inspector of Custodial Services is an independent statutory body that oversees prisons and custodial services. All reports and reviews by the Inspector are available on its website.

If re-elected, the Greens will continue to pursue these and other issues of transparency, democracy and human rights in the next Parliament. ●

SUE PENNICUIK is the Greens' spokesperson on justice and corrections.

CALL TO THE PARTIES RESPONSES

In the lead up to the state election, the LIV identified 11 key justice issues as part of its *Advocating Justice For All* platform. It then called on the government, Opposition and the Greens to present their policies on these areas. The LIV's assessment of their responses appears below.

LIV CALLS FOR:	ALP	Coalition	Victorian Greens
1. FUNDING LEGAL AID <ul style="list-style-type: none"> The legal profession to be involved in the negotiation of national partnership agreements Minimum levels of guaranteed state funding, which is maintained regardless of variations in public purpose funds Funding levels to be maintained regardless of any increase in commonwealth funds 	<ul style="list-style-type: none"> Support sustainable funding base Continue working with federal government to improve allocations and develop future funding models Reject call for LIV to be involved in negotiations for national partnership agreements <p>B</p>	<ul style="list-style-type: none"> Commit to increasing legal aid funding over time, including the Budget-sourced funding proportion, independent of any increases in commonwealth funding Pledge to retain the Appeals Costs Fund Promise not to use the Public Purpose Fund for core government programs Funding commitment qualified "as funds permit" No response on negotiation of national partnership agreements <p>B+</p>	<ul style="list-style-type: none"> Support adequate funding for legal aid services, community legal services, tribunals and courts (including specialist tribunals), victim compensation and rehabilitation services, and offender rehabilitation and reintegration support services No response on negotiation of national partnership agreements <p>B+</p>
2. PROTECTING RIGHTS <ul style="list-style-type: none"> Less restrictive means for protecting the community from high-risk offenders, and transfer of resources from post-sentence detention to programs that aim to rehabilitate offenders rather than to further stigmatise them. The protection of judicial discretion and the abolition of mandatory penalties The retention of suspended sentences and the protection of judicial discretion Appropriate limitation and oversight of police powers, in accordance with human rights protected in the Charter of Human Rights and Responsibilities 	<ul style="list-style-type: none"> Oppose mandatory sentences and will remove mandatory element from driving offences Commit to protect judicial discretion and create more sentencing options Proust Victorian Integrity and Anti-Corruption model to oversee police powers Will abolish suspended sentences for serious offences Believe that current police powers strike an appropriate balance between community safety and human rights No comment on post-sentence detention <p>B+</p>	<ul style="list-style-type: none"> Oppose mandatory custodial sentences An independent, broad-based anti-corruption commission to oversee police powers Support expansion of post-sentence constraints to serious offences where a court is satisfied that an offender would pose an unacceptable risk to the community Will legislate to abolish suspended sentences for all offences in their first term <p>C+</p>	<ul style="list-style-type: none"> Ensure independence and integrity of tribunals and courts, including judicial discretion in sentencing Establish wide range of non-custodial sentencing options aimed at rehabilitation and social reintegration of offenders Provide for customary law and other cultural or personal factors to be taken more fully into account by judges in sentencing Ensure Victoria has the highest standard of policing, including a high standard of regulation, accountability and public oversight of policing services Create a properly resourced, independent body to investigate complaints against police <p>A+</p>

LIV CALLS FOR:

ALP

Coalition

Victorian Greens

3. REVIEWING THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES

- An independent panel to be appointed to conduct the Charter review, with a broad mandate and sufficient resources
- The Charter to be amended to include:
 - improved access to remedies;
 - an independent cause of action; and
 - inclusion of economic, social and cultural rights

- 👍 Will review the Charter in accordance with the requirements of the Act
- 👎 No commitment to specific outcomes while it awaits the outcome of the review

B

- 👍 Support scrutiny of proposed laws against a broader range of international human rights instruments
- 👎 Believe Charter has imposed new and complex administrative requirements and human rights included in the legislation are poorly defined
- 👎 Believes compliance issues under the Charter are not matters for judicial determination
- 👎 Will replace Charter remedies with statements of government service delivery standards, internal redress and an independent ombudsman

D

- 👍 Support need for review of the Charter
- 👍 Review must be open and transparent and include public consultations
- 👍 Review must include the role of Scrutiny of Acts and Regulations Committee and how the Charter has affected the parliamentary legislative process
- 👎 No commitment to specific outcomes

B+

4. IMPROVING ACCESS TO JUSTICE IN RURAL, REGIONAL AND REMOTE (RRR) AREAS

- Consider initiatives to improve attraction and retention of lawyers to RRR areas, such as:
 - monetary allowances or bonuses for relocation;
 - increased opportunities for clinical placements for law students and graduates;
 - collaboration with Victoria Legal Aid on traineeships;
 - a scholarship scheme for law students;
 - cash incentive payments upon completion of a specific time period in RRR areas; and
 - state tax incentives such as payroll tax exemptions or holidays

- 👍 Commit to ensuring all Victorians, no matter where they live, have access to justice
- 👍 Happy to explore further options to increase the availability of legal services in RRR areas

B+

- 👍 Upgrade rural and regional court houses as one of the highest priorities for court facilities funding
- 👍 Regional Growth Fund to generally boost health, community services, transport and other infrastructure
- 👎 No specific commitment to support legal services initiatives

B

- 👍 Support effective measures to address lack of legal (and other) resources in RRR areas

B

5. REFORMING SUBSTITUTE DECISION-MAKING

- The Victorian government to enact a single, comprehensive law to provide a principled framework for substitute decision-making and a single test for assessment of capacity

- 👍 Recognise importance of issues covered by guardianship laws, including the human rights of people with impaired decision-making capacity
- 👎 Will consider LIV recommendation in response to the Parliamentary Law Reform Committee report on powers of attorney and the Victorian Law Reform Commission's (VLRC) Report on guardianship laws, due in June 2011

B-

- 👍 Generally support Parliamentary Law Reform Committee report on powers of attorney
- 👎 Await VLRC's report on guardianship laws

B

- 👍 Support measures to better address the complex issues involved in determining a person's decision-making capacity and subsequent provision of appropriate advocacy

B

LIV CALLS FOR:

ALP

Coalition

Victorian Greens

6. PROVIDING ACCESS TO INTERPRETERS IN CIVIL MATTERS

- Stage One: 12-month pilot program to provide interpreters at the legal advice stage of civil proceedings targeting Community Legal Centres and practitioners who provide pro bono services
- Stage Two: 12-month pilot program to provide interpreters at the court stage of civil proceedings, particularly in the Magistrates' Court – Stages One and Two could occur in parallel
- Stage Three: Building on Stages One and Two, establishment of a grants program to provide civil justice interpreting services in a more specific way

👍 Will consider LIV recommendations in close consultation with the courts and legal profession in context of ongoing reform to the civil justice system

👎 No specific commitments

B

👍 Recognise interpreter services in Victoria need improvement in their availability for civil matters

👍 Will announce further policy initiatives on interpretation and translation services before the election

B+

👍 Support provision of interpreter services in civil and criminal proceedings to assist people to understand their rights and obligations

👎 No specific commitments

B

7. REFORMING TORT LAW

- Amendment of the *Wrongs Act 1958* (Vic), so that:
 - the threshold of 5 per cent whole person impairment (WPI) applies to all injuries, other than psychiatric, and is not limited to musculoskeletal injuries under Chapter 3 of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (4th Edition);
 - if the threshold for injuries, other than psychiatric, is lowered to 5 per cent (WPI), the effect of the decision in *Mountain Pine Furniture v Taylor* [2007] VSCA 146 is overturned;
 - the impairment threshold for a primary psychiatric injury is 10 per cent WPI; and
 - in addition to prescribed injuries under s28LF, a narrative test of "significant injury" is included as an alternative means of assessing common law damages for pain and suffering

👎 No current plans to amend the *Wrongs Act*

D

👍 Timely to re-examine the *Wrongs Act* amendments to determine whether the legislation can be amended to operate more equitably

👎 Believe limitations on the ability to recover pain and suffering damages for relatively minor injuries curtail unmeritorious and vexatious claims

B

👍 Concerned about application of the *American Medical Association Guides to the Evaluation of Permanent Impairment*

👍 Support measures which ensure that all injured people are fairly compensated, including a narrative test of "significant injury" as an alternative means of assessing common law damages for pain and suffering

A

8. ENSURING BETTER INTEGRITY & ANTI-CORRUPTION SYSTEMS

- The following safeguards to be part of a new Victorian integrity and anti-corruption commission to ensure accountability, transparency and independence, consistent with the Charter:
 - clear and transparent processes for investigations;
 - exercise of coercive investigatory powers only by warrant application to the Supreme Court; and
 - special attention to safeguarding the rights of witnesses, including privileges and immunities, presumption of private hearings and a guaranteed right to legal representation

👍 Issues raised by the LIV will be taken into account as proposal is further developed and legislation is prepared

B+

👍 Legislation establishing the anti-corruption commission should contain appropriate protections for those subject to investigation and for witnesses

👍 Will be announcing further details on policy for an independent, broad-based, anti-corruption commission with jurisdiction to investigate all allegations of corruption or serious misconduct against any person holding public office

B

👍 Support call for clear and transparent processes for investigations, appropriate legal representation for witnesses and judicial oversight and review of the use of coercive powers

A-

LIV CALLS FOR:

ALP

Coalition

Victorian Greens

9. REFORMING STAMP DUTIES

- Amendment to the *Duties Act 2000* (Vic) to ensure that leases, other than long-term leases granting rights akin to freehold ownership, are not dutiable under the Act.

- Do not intend to amend the provision
- Believe that any definition of what time period constitutes "long-term" would lead to contracts being structured specifically to avoid that definition

D

- Believe it is unacceptable that parties to transactions need to rely on rulings by the State Revenue Office rather than have their legal rights and liabilities clearly specified in legislation
- Duties Act* requires further amendment to ensure that it operates as an anti-avoidance mechanism rather than imposing land transfer duty on bona fide lease transactions

B+

- Has similar concerns to the LIV, that the wording of the *Duties Amendment Act 2009* has resulted in most leases potentially attracting duty where there is consideration other than "rent reserved"

B

10. IMPROVING PRIVACY PROTECTIONS

- Government to consider privacy impacts when implementing any new policy initiative and to ensure that matters relating to privacy are easy to use and understand, inexpensive and flexible
- A statutory cause for invasions of privacy
- Reform of Victorian laws, such as *Surveillance Devices Act 1999* (Vic), to provide more comprehensive regulation of surveillance practices
- An independent body to oversee and monitor the implementation of those laws

- Will await federal government's response on statutory cause of action
- No response yet to the Victorian Law Reform Commission report into the *Surveillance Devices Act 1999* (Vic)

C

- Will strengthen protection of citizens' private information from inappropriate collection and misuse by government
- Commit to implement the Auditor-General's recommendations in the *Maintaining the Integrity and Confidentiality of Personal Information Report* (Nov 2009)

- No response on statutory cause of action

B+

- Support improved privacy protections
- Raised privacy issues with respect to a number of government Bills

B

11. MOVING TO A UNIFIED NATIONAL LEGAL PROFESSION

- Continued representation for the legal profession and the ability to contribute to the legislative consultation process
- Implementation of reforms during 2011

- Commit to continue to push for constructive progress
- Promise to continue to consult with the Victorian legal profession
- Legislation likely to be introduced in 2011

A

- Support simplified national registration and regulation of the legal profession
- National scheme must protect the independence of the legal profession from executive government, keep regulatory costs to a minimum and provide fair, speedy and effective redress for practitioner-client disputes

A

- Support move to a national legal profession

A

KEY TO SCORING:

- A+** Response exceeds LIV expectations
- A** Response meets LIV expectations
- B** Response meets some LIV expectations, but falls short of full commitment
- C** Response addresses some LIV issues but does not adequately respond
- D** Response rejects LIV call in full

NOTE:

Scoring is limited to commitments contained in party responses and is not related to comments relating to a party's prior record.

Responses were received from all parties in late September 2010 and were not accompanied by costings.

To see the full responses provided by each party, go to <http://bit.ly/b8viQh>