Redfern Legal

Redfern Legal Centre's bi-monthly e-bulletin

April 2013

Welcome to the April 2013 edition of *Redfern Legal*, bringing you legal updates and developments from our key practice areas and news of the work of Redfern Legal Centre (RLC). Please note that cases cited in legal updates are not always RLC matters.

In this edition:

LEGAL UPDATES

Domestic violence

Telstra waives silent number fees for victims of domestic violence

Telstra has announced the waiver of fees for silent or unlisted numbers for victims of domestic violence. The fee waiver will be available to victims with a valid Apprehended Domestic Violence Order (ADVO). Telstra has previously charged a monthly fee to anyone seeking to keep their phone number out of the White Pages directories.

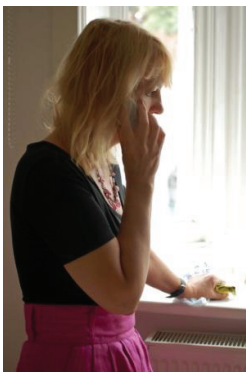

Photo by **duncnh1**

The initiative comes after recommendations by the Australian Law Reform Commission, which noted that victims of domestic and family violence had a particular need for free access to silent lines.

The **Telstra initiative** should go some way to addressing the increased use of communications devices to threaten, harass and intimidate victims of domestic violence.

Telstra also provides free calls from mobiles and landlines to 1800RESPECT, the national hotline for domestic, family and sexual violence counselling and support.

Police-Issued Apprehended Domestic Violence Orders

In response to a recommendation of the Legislative Council's Domestic Violence Trends and Issues Inquiry, **Attorney-General Greg Smith has announced** that police will soon be able to issue provisional ADVOs. Currently only court registrars or other authorised officers can issue ADVOs.

Under the new arrangements, provisional ADVOs will be able to be issued by senior police officers of the rank of sergeant or above. After the ADVO is issued by an authorised police officer, the case will be listed before a court within 28 days. Interim and final ADVOs will still only be issued by the court.

Police say the new arrangements will save police time travelling between the location where the domestic violence incident occurred and the police station to seek the order, and will mean the victim is not left alone with the defendant before police can issue the AVO.

New Family Violence Immigration Provisions

Changes to the **evidentiary requirements** of the Migration Regulations 1994 (Cth) mean that if a visa applicant does not have "judicially determined" evidence of family violence, they can submit "non-judicially determined" evidence. The acceptable forms of "non-judicially determined" evidence have changed to include reports from two "recognised professionals" from a list that includes police officers, school counsellors and school principals, as well as registered medical practitioners, nurses, refuge workers, psychologists, social workers, child welfare authority officers, and women's refuge or crisis centre workers. For social workers to make a statutory declaration, they must have "provided counselling or assistance to the alleged victim". For registered psychologists to make a statutory declaration they must have "treated the alleged victim".

Police reports, records of assault, witness statements or statutory declarations can also be submitted as evidence.

Other evidence that may strengthen the visa applicant's evidence can also be provided (for example, photos or supporting letters from community workers) in addition to the recognised "judicial" or "non-judicial" evidence.

RLC Tip: Clients can be referred to Legal Aid's Government Law section for immigration advice (02) 9219 5790.

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RLC events and projects

Federal Attorney-General contributes funding to RLC

The Federal Attorney-General the Hon Mark Dreyfus QC MP and the Hon Tanya Plibersek MP visited RLC this month to announce a one-off funding boost of $60,000.

"The Redfern Legal Centre plays an invaluable role in the delivery of legal and financial counselling services to disadvantaged members of the community," Mr Dreyfus said.

"This funding boost recognises the important work the Centre does to help vulnerable families," Ms Plibersek said.

Two of RLC's clients, Ms Catherine Smith and Mr Giovanni di Marco, spoke of their stories and the services they had received from RLC over the years. See the media releases of **RLC** and from the **Federal Attorney-General and the Hon Tanya Plibersek**.

From left: the Hon Tanya Plibersek MP, the Hon Mark Dreyfus QC MP, Margaret Jones, Amy Munro, Joanna Shulman, Giovanni di Marco and Peter Stapleton. Photo by Tim Nelmes.

Legal Assistance with Armidale Project

RLC launched its Legal Assistance with Armidale Project (LeAp) in February this year. The project is a collaboration between RLC and the University of New England (UNE), Armidale, where International students at the University of New England can get free, confidential legal advice from solicitors at RLC. The service is part of RLC's state wide international student service.

Jacqui Swinburne, Chief Operations Officer at RLC and Robert Samuel, Executive Director at Consult Point visit the University of New England

How does it work?

Solicitors at RLC connect with international students either from their own homes or from the library at UNE using a video conferencing program. The student can see their advisor, send important documents through the program and share their computer screen to quickly give their solicitor the information they need to provide comprehensive legal advice.

The UNE library room is connected to the National Broadband Network (NBN), which enhances the quality and speed of the internet connection available for the service. The NBN, as it rolls out through New South Wales, makes it possible to connect people in need in rural and regional areas to much needed legal services.

RLC is excited about the potential of the project to allow us to trial new technologies and new ways of connecting with people across the state. One participant in the project told us that if the service wasn't available he would have had to drive to Sydney to get legal assistance.

Appointments for international students can be booked by calling (02) 9698 7645.

Police and government accountability

Police misconduct

The Police Integrity Commission's charter deals with serious misconduct, as well as corruption. Recent Commission investigations have led to public hearings regarding the behaviour of officers from the Ballina police station. The allegations relate to assault of a young Aboriginal man, destruction of evidence, collusion, false evidence and malicious prosecutions. Collusion, fabrication of evidence and other serious misconduct have been described in **testimony before the Commission** in the Operation Barmouth investigation.

RLC attempts to draw attention to police misconduct in circumstances where it might otherwise go unnoticed or un-

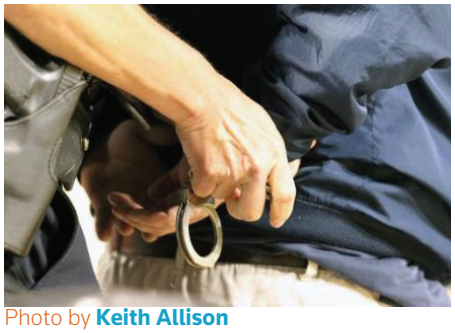

Photo by **Keith Allison**

remarked. RLC recently represented the family of Adam Le Marseny in relation to Coronial death-in-custody inquests.

Adam's death raised serious questions about his treatment in police custody. Despite a number of police officers making statements that Adam appeared drowsy and drug-affected, no-one sought medical attention for Adam.

Instead, he was interviewed and police obtained admissions relating to alleged credit card fraud involving the purchase of food and cigarettes – a relatively minor, non-violent offence. Adam was then held at the local police station for several more hours, resulting in him missing the opportunity to be seen by the on-duty nurse at the Corrective Services holding facility. This service stops at 10pm, despite the high level of alcohol and drug-related crime occurring late on Friday and Saturday nights.

As a result of RLC's involvement, the State Coroner has recommended that Corrective Services consider a trial of 24-hour medical staff at the Surry Hills holding cells, at least on Friday and Saturday nights. The government's mandatory sobering up centre trial will start in July, with onsite medical staff at all times.

Housing and tenancy

Navazi v New South Wales Land and Housing Corporation

The recent NSW Supreme Court decision in ***Navazi v New South Wales Land and Housing Corporation*** has determined that property ownership, of itself, does not disqualify a tenant from eligibility for a rent rebate. The case involved the cancellation of Mr Navazi's (a Housing NSW tenant) rent rebate on the basis of fraud, and a claim for the payment of $90,000. Housing NSW decided that due to Mr Navazi's joint ownership of a property, he was not eligible to receive a rent rebate.

The Housing Act 2001 (NSW) gives Housing NSW the power to cancel a tenant's rent rebate, following an investigation into the tenant's income. An investigation into weekly income is a crucial step if the cancellation of a rent rebate is to be valid.

The Court found that "income", in the context of the Housing Act, means "the resources available to a tenant in order to live. In the case of the rental of property, it is the profit arising from the conduct of the undertaking and must exclude interest on the loan required in order to purchase the asset".

In Mr Navazi's case, there was an investigation into his ownership of property but no investigation into his weekly income. Mr Navazi derived no income or benefit from the property. Housing NSW's failure to conduct this investigation was the basis upon which the Supreme Court found that there was no power to cancel the rent rebate. Further, the view that Mr Navazi's ownership of property was of itself a basis upon which to conclude that he was not entitled rent rebate, was an error of law.

This decision has the potential to affect other Housing NSW tenants in similar circumstances who are at risk of their rental subsidy being cancelled.

Succession of tenancy policy changes

Housing NSW only allows for one person to be named on a lease, despite the fact that a tenancy may be intended for more than one person at inception. In the case of a couple (with or without children), only one member of the couple is generally named on the lease. The spouse of the named tenant is instead categorised as an "authorised occupant".

Under the previous Succession of Tenancy policy, various household members were eligible for succession of tenancy if the named tenant died or left the property due to circumstances beyond their control. These included: spouses, de-

facto partners, adult household members over 18 years of age, legal guardian/custodian of children in the household, young (16-18 year old) persons and carers.

As of 25 March 2013, the Succession of Tenancy policy underwent major changes. Most significantly, clients must now apply under the new Recognition as a Tenant policy. Clients who will be recognised as a tenant and who are able to apply under the previous policy include: spouses or partners aged 55 years or older; guardians of children of the household whose parents are unable to care for them; and Aboriginal household members.

This **policy change** significantly narrows the scope of eligibility for people to remain in Housing, if the named tenant dies or leaves the property. Spouses and partners under the age of 55 years or other household members will no longer be eligible to apply for succession of tenancy.

This change in policy has real potential to expose vulnerable occupants of public housing to homelessness.

Employment

Narrowed protections for workplace complainants

Harrison v In Control Pty Ltd [2013] FMCA 149

A recent **decision** by the Federal Magistrates Court has narrowed the reach of s 341(1)(c) of the Fair Work Act to only protect the employee's right to make complaints or inquiries "in relation" to their employment.

Mr Harrison, who was sacked, argued it was because he was exercising a workplace right by making complaints about how the workplace was managed by his boss, Mr Woodward. The court held, however, that Harrison's complaints did not comprise a "workplace right" and that the complaints concerned issues to do with management and Woodward's style of management. None of the complaints directly concerned Harrison's employment and his termination was justified as it was done to maintain a harmonious workplace environment. While the decision may make us wary as to what we complain about at work, it is likely that this decision will be challenged in the future and that a higher court will need to consider this decision.

Discrimination and human rights

Casenote

Innes v Rail Corporation of NSW (No 2) [2013] FMCA 36

The Disability Discrimination Commissioner, Graeme Innes, has a vision impairment. Mr Innes was inconvenienced by the poor quality of on-train next station announcements on RailCorp services. He documented his rail trips when there were no clear, audible on-train announcements, and made 36 complaints to the Australian Human Rights Commission. None of Mr Innes' complaints were resolved by conciliation. Mr Innes commenced **proceedings in the Federal Magistrates Court** (FMC), alleging RailCorp had discriminated against him in the provision of its railway transport services and had breached the Disability Standards.

The court found that RailCorp's failure to make clear, audible announcements on a significant proportion of rail journeys taken by Mr Innes amounted to indirect disability discrimination. Mr Innes claimed that between 28 March 2011 and 9 September 2011 no clear, audible announcements were made in respect of all stops on 18-20% of his rail journeys.

The court found that Railcorp imposed a condition on Mr Innes in his use of rail services that he know his where-

RLC publications

RLC has recently published **"Do you need legal help?"** a multi-lingual brochure in Arabic, Farsi, Chinese, Filipino, Hindi, Indonesian, Korean, Malay, Russian, Thai and Vietnamese. This brochure was produced with the assistance of a grant from the City of Sydney Council and will help RLC reach out to culturally and linguistically diverse community members and help them access the justice system.

RLC community legal education

Healthy City Living Information Expo

RLC will be contributing information about finding healthy solutions to money matters at an expo on healthy city living being held by the Sydney Chinese Services Interagency on 31 May 2013. The expo will be held in the Redfern Town Hall. There will be information on a range of healthy matters including food, family relationships, exercise and sustainable living. There will be presentations in Mandarin and Cantonese. To register, contact Bill Yan on 9319 4073 for your free ticket.

RLC media

Read RLC CEO Joanna Shulman's opinion piece in the Alternative Law Journal **"A Fair Go for All"** on why Australia needs a robust anti-discrimination regime to protect the most vulnerable members of our society.

abouts from the information provided by Railcorp: "The way in which RailCorp assists people to comply with the condition that applies to all is by the provision of signage. Because of Mr Innes' disability he will only be able to comply with the requirement that he know his whereabouts if RailCorp made reasonable adjustments. Those reasonable adjustments are said to be the provision of clear audible next stop announcements ... the evidence shows that ways of improving the reliability of regular next-stop and station announcements were possible".

Mr Innes also claimed that RailCorp breached the Disability Standards for the entire period between March and September 2011. The Disability Standards apply to operators and providers of public transport services, and set out detailed requirements for ensuring that the premises, vehicles and infrastructure that are used to provide those services are accessible to people with disabilities. The Disability Standards also set out an extended timetable for public transport operators to achieve full compliance.

Photo by **bigdan2006**

Part 27.4 of the Disability Standards states that "All passengers must be given the same level of access to information on their whereabouts during a public transport journey". Federal Magistrate Raphael was of the view that "one should look at the Standards in the context of Mr Innes' own experience. In other words Mr Innes should not be required to make a general survey of the whole of the rail network to prove that the Standard has not been complied with". The Court found that RailCorp did breach the Disability Standard 27.4 and that the breach occurred over the whole period of the complaints.

Mr Innes was awarded $10,000 for the stress and anxiety caused by the failure of RailCorp to make or keep him aware of his whereabouts on those individual train journeys.

Federal Magistrate Raphael's concluding comments in this case were:

> "It would appear startlingly obvious to the lay observer that passengers travelling upon trains need to know where to get off. It would be equally obvious that this information should be provided in a way that was effective for all passengers. ..... Yet this is what this case has been about. A lengthy series of arguments over the meaning of words and interpretation of a statute that proudly proclaims its "beneficial nature". ..... If my reasoning in this decision is found to be wrong, as well it might, the lay observer may be startled. It is hoped, that being so, she will take the matter up with those who write such laws and seek a less complex way of determining when actionable discrimination occurs, one that is less expensive, less profligate of legal and judicial time, less stressful for the parties."

RLC agrees with Raphael FM that Australia's discrimination laws urgently need to be simplified and made easier to use. RLC is extremely disappointed that the Federal Government has put its project to consolidate and simplify federal anti-discrimination laws on hold. RLC urges the government not to abandon all the work that has been done so far to achieve a fairer and more accessible system to protect Australians from discrimination.

Credit, debt and consumer complaints

New changes to the credit law

As of 1 March this year the National Consumer Credit Protection Act 2009, has seen some **important changes**.

The new changes mainly affect provisions relating to hardship variations and payday loans, but there have also been changes in relation to reverse mortgages and consumer leases.

Previously, when applying for a variation to a credit contract due to hardship, consumers had to show the hardship was due to illness, unemployment or other reasonable causes. As a result of the changes, this is no longer required and it is enough that the consumers believe they will not meet their obligations.

In addition, there are no longer restrictions placed on the way in which the contract can be varied. Under the old legislation, consumers could only have their contract varied in one of the three ways. Now it appears that it will be possible to negotiate variations to contracts with greater flexibility. Also of significance is that where the contract is entered into after 1 March 2013 there are no longer any limits on the value of a loan on which a person can claim hardship.

The new changes place new obligations on providers of "small amount credit contracts" or Payday lenders. From 1 July lenders will need to consider the consumer's financial statements for the last three months preceding the loan application, as well as display warnings on their websites and in their stores which state, "Do You Really Need a Loan Today" and include a reference to the Credit and Debt Hotline 1800 007 007 and financial counselling services. It will be harder for payday lenders to roll over the loans or give further payday loans, with further obligations regarding loans to people on Centrelink benefits.

Other changes to the consumer credit legislation include:

(1) changes to Consumer Leases, mirroring the requirements already in place for credit generally; and

(2) changes to Reverse Mortgages. Reverse mortgages are usually marketed to older asset-rich but low-income Australians as a way of "accessing the equity" in their homes, by providing a loan secured against the borrower's home. Over time, the borrower's equity in their home is eaten away by repayments, interest and fees. Reverse mortgage loan providers will now need to give projections of the effect of a reverse loan on the applicants home equity. They will also need to provide a reverse mortgage information statement. There must now be a "no negative equity" guarantee.

RLC Tip: Be alert for interesting ways payday lenders may seek to get around the new laws, particularly the new presumptions against further loans. Remember that complaints against lenders' conduct can be made to the Australian Securities and Investments Commission.

Door-to-door sales

Change is coming to the way that energy is marketed to consumers.

For a long time now, door-to-door sales have been the source of much frustration for consumers and consumer groups. Consumer group Consumer Action launched its **"Do Not Knock"** campaign last year to ask energy retailers to voluntarily stop door-to-door selling. The practice is so unpopular that even the energy companies themselves have begun to acknowledge the problems caused by door-to-door marketing.

In fact, a survey conducted by AGL found that only 6% of consumers reported having a positive experience the last time a salesperson made contact. Consumer Action published research that found only 3% of people had a positive experience of door-to-door energy salespeople.

In a move that surprised many, on 25 February 2013, Energy Australia **announced** that it would cease door-to-door sales and marketing by the end of March 2013. AGL followed, declaring that it too would cease all door-to-door sales.

In an interesting development, on 8 March 2013, the **Australian Competition and Consumer Commission** (ACCC) announced that it had filed proceedings in the Federal Court of Australia against Energy Australia and four other marketing and sales companies engaged by Energy Australia to conduct door-to-door sales.

The ACCC alleges that Energy Australia and the marketing companies made false, misleading or deceptive representations in the course of conducting door-to-door sales activities across Victoria, New South Wales and Queensland between July 2011 and August 2012.

ACCC Chairman Rod Sims said: "These are the third proceedings that the ACCC has instituted against an energy retail company in the past 12 months for similar conduct, highlighting significant concerns regarding door-to-door selling practices in Australia."

RLC will be monitoring these developments with interest, as many of our clients experience problems with door-to-door salespeople on a regular basis.

Case study: John's experience of door-to-door sales

John (not his real name) was a client of RLC who had many bad experiences with door-to-door sales agents. In his interview with RLC, John made the following statements regarding his experiences:

- Door-to-door sales agents are very sneaky;
- Their selling methods always made him change his mind;
- He felt he couldn't say no to them and had no choice but to agree with them;
- Sales agents would "say what they want to say" it did not matter what he said or asked;
- Sales agents would look at John's old bills and point out all sorts of things, which he did not understand; and
- Sales agents made sure that John understood they would give a better deal than what his present energy provider was giving him.

RLC Tip: There are rules governing how door-to-door sales must be conducted, which are available on the Fair Trading NSW website. If you believe that you have been contacted or treated in an inappropriate manner by a door-to-door salesperson, seek advice from your local Community Legal Centre or contact Fair Trading NSW. Remember – you have a 10-day cooling off period for contracts entered into as the result of door-to-door sales or marketing.

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