



# Redfern Legal

Redfern Legal Centre's bi-monthly e-bulletin

August 2012

Welcome to the August 2012 edition of *Redfern Legal*, bringing you legal updates and developments from our six practice areas and news of the work of Redfern Legal Centre (RLC). Please note cases cited in legal updates are not always RLC matters.

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## Legal Updates

### Domestic violence

#### *The partial defence of provocation – blaming the victim?*

The recent case of *R v Singh* [2012] NSWSC 637 has prompted a NSW Parliamentary Inquiry into whether the defence of provocation should be amended or abolished. The inquiry was prompted by a call from Labor MLC, Helen Westwood, who said there were concerns about the law, which could be used by "a perpetrator of murder in circumstances of domestic violence to claim that the victim provoked the attack".

In NSW, s 23 of the *Crimes Act 1900* provides for the partial defence of provocation to a charge of murder, which, if established, can reduce murder to manslaughter. Provocation is established where an act or omission is the result of a loss of self-control by the defendant that was induced by any conduct of the deceased toward or affecting the defendant. Furthermore, the conduct of the deceased must have been such that it could have induced an ordinary person to lose control so far as to form the intent to kill or to commit grievous bodily harm.

In the case of *R v Singh*, Chamanjot Singh was charged with the murder of his wife, Manpreet Kaur. The jury heard of a relationship characterised by

## RLC in the media

### Connecting with the community

RLC is featured on the new online tool, **Community Connection**, created by South Sydney Community Aid. You can watch interviews with RLC's CEO, a credit and debt solicitor and two volunteer legal assistants. This new project aims to centralise grass roots community centres on one website and make it easier for the community to access the array of services in Redfern, Waterloo and Alexandria.

## RLC publications

### The Share Housing Survival Guide online

RLC's Inner Sydney Tenants' Advice and Advocacy Service has launched the latest online edition of the **Share Housing Survival Guide**.

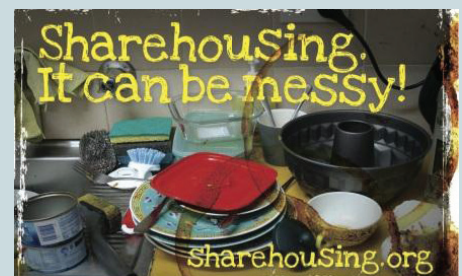


Image by RLC

This fantastic new online resource tells you everything you need to know about living in a share house, from how to find a new flat mate, what to do when experiencing domestic violence, to what to do when you're moving out.

Stay tuned for details of a formal launch of the new publication soon.

domestic violence which culminated in an argument wherein the defendant said that the deceased had told him she had never loved him and was in love with someone else, and also threatened to have him deported. The defendant responded by strangling the deceased and then cutting her throat eight times. The jury acquitted the defendant of murder but convicted him of manslaughter on the basis of the partial defence of provocation. He was sentenced to eight years imprisonment with a non-parole period of six years.

In other Australian jurisdictions where the defence of provocation has been abolished (Tasmania, Victoria and Western Australia), decision makers made the point that provocation can adequately be considered during sentencing.

Click to see the [media release](#).

## Housing and tenancy

### Questions about Housing NSW repair issues asked in Parliament

Earlier this year, RLC's Inner Sydney Tenants' Advice and Advocacy Service, Marrickville Legal Centre, and the Tenants Union of NSW met with Hon Jamie Parker, MP for Balmain, to discuss the serious lack of repairs and maintenance in public housing.



Photo by RLC

As a result of this meeting, Mr Parker asked questions about Housing NSW repairs issues in Parliament. These questions were addressed to Greg Pearce, Minister for Finance and Services. It is Minister Pearce's department that is responsible for repairs and maintenance in Housing NSW.

Mr Parker asked about waiting periods for repairs, how many public tenants applied to the Consumer, Trader & Tenancy Tribunal (CTTT) for orders to have repairs done in the last financial year, and how many times Housing NSW has not complied with CTTT orders. The questions were put on notice, giving the Minister 30 days to reply.

See the Tenants' Union blog, [The Brown Couch](#), for more information.

**RLC Tip:** If you are unsuccessful in getting repairs done, write to your local Member of Parliament or visit their office. Take photos of your repair problem and show them. Also RLC runs a free drop-in service

## RLC community legal education

### Free workshops for community workers

RLC continues its Helping the Helpers: Supporting Community Workers to Help Clients series of workshops.

- The Police Complaints workshop was held in June and focused on where to start getting advice and what your clients can expect from the police complaints system.
- In July, the Sydney Women's Domestic Violence Court Advocacy Service ran a very popular workshop on the A-Z of Apprehended Violence Orders.
- Coming up next is Tenancy and Domestic Violence, focusing on using tenancy laws to assist clients experiencing domestic violence on 13 September.

These workshops are free and filling up fast so email [education@rlc.org.au](mailto:education@rlc.org.au) to reserve your place.

## Community notices

### Women's Legal Services NSW 30th Anniversary

**Wednesday 26 September 2012**

The organisation will acknowledge, celebrate and commemorate the achievements of the many staff and volunteers current and past, who have demonstrated outstanding dedication and commitment to advocating for women's rights and representation in the legal system over the last 30 years.

At the same time the organisation will launch its Foundation whose purpose will be to provide an ongoing independent source of funding for new initiatives and programs.

The evening will feature guest speaker the Hon Justice Virginia Bell AO, MC Julie McCrossin, and smooth jazz music with a backdrop of fabulous views from the rooftop of the Museum of Contemporary Art.

This will be a night to remember!

Click [here](#) for information, and for ticket purchasing, email [contactus@wls.org.au](mailto:contactus@wls.org.au) or contact the event organiser, Chloe Wyatt on: Tel: 0422 996 342 or email: [chloe@theidea-sunit.com.au](mailto:chloe@theidea-sunit.com.au)

(the first Tuesday of every month between 10am and 12 midday) to assist public tenants to apply to the CTTT for repair orders.

### Draft Boarding Houses Bill released

The NSW State government recently released for comment the exposure draft *Boarding Houses Bill 2012*. RLC has been campaigning for legislative protection for boarders and lodgers and other marginal renters for more than 20 years. RLC welcomes this government's initiative to enact long overdue reform of the sector – in particular, the proposed introduction of "occupancy agreements" for residents of



Photo by [LensENVY](#)

boarding houses. However, RLC raised some major concerns in its [submission](#) on the draft Bill.

The draft Bill's occupancy agreements would only apply to boarding houses with five or more residents. This would mean that many residents in terrace houses in Redfern and other parts of RLC's catchment area would not be protected.

There are no proposed minimum periods for giving notice of a termination without grounds. The draft Bill only proposes that a resident is given "reasonable notice". RLC is concerned that most vulnerable people have little power to negotiate what a "reasonable period" should be. A minimum prescribed notice period would create certainty for both landlords and occupants.

There are no provisions relating to security deposits and uncollected goods. Most boarding house residents who contact RLC's Inner Sydney Tenants' Advice and Advocacy Service have problems getting their bond or security deposit returned and many find it difficult to get access to goods left behind.

The draft Bill explicitly excludes the CTTT from hearing

compensation claims from occupants or residents. Currently, boarders may be able to apply to the general division of the CTTT if their landlord runs a business. This exclusion would further restrict occupants' chances of seeking a remedy where there had been a serious breach.

### Employment

#### Expanded circumstances for awarding costs *Dain v Mark Group Australia P/L [2012] FMCA 518 (5 June 2012)*

This is the third in a series of three cases that appear to have expanded the circumstances in which costs can be awarded in general protections matters. Usually, the Federal Magistrate's Court (FMC) is a no costs jurisdiction when dealing with workplace matters. Costs are usually only awarded where the proceedings are either vexatious or without reasonable cause.

#### Background

The applicant applied to Fair Work Australia (FWA) in relation to a general protections dispute. The company, which employed him, was the only respondent to the FWA application, although two directors of the company were listed as "contacts" on the application form. Neither of the directors attended the FWA conciliation conference. Conciliation was not successful, and a certificate of unsuccessful conciliation was issued.

The applicant then commenced proceedings in the FMC. The FMC proceedings named the company as the first respondent, and the two directors as the second and third respondents.

Before the FMC hearing, solicitors acting on behalf of all three respondents wrote to the applicant to say that because the second and third respondents had not been included in the FWA claim, they were not the subjects of the certificate of unsuccessful conciliation. The second and third respondents asserted that the FMC did not have jurisdiction to deal with proceedings against them.

The letter referred the applicant to *CEPU v Active Tree*. In that matter, a similar application was dismissed for want of jurisdiction because the FMC proceedings did not wholly relate to the dispute dealt with by FWA.

#### The judgment

The Magistrate found, consistent with *CEPU v Active Tree*, that where a matter before a court does not wholly relate to the dispute dealt with by FWA, the FMC does not have jurisdiction to handle the general protections complaint.

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The Magistrate also found that, despite the proceedings being neither vexatious nor without reasonable cause, the applicant's conduct in pursuing the claim, after the respondents had raised the problems with jurisdiction, constituted an "unreasonable act" under s 570(2)(b) of the FWA 2009 resulting in the respondents incurring legal costs. The Magistrate awarded costs against the applicant at the schedule rate.

By Nicholas Anderson

## Discrimination and human rights

### Enforcing conciliation agreements in discrimination complaints

#### *Lawson v New South Wales (Housing NSW) [2012] NSWADT 127*

Most complaints of unlawful discrimination are resolved by conciliation and negotiation, often following a conciliation conference. The agreed actions to resolve the complaint are usually put in writing and signed by the parties to the complaint, either in a simple conciliation agreement or in a formally executed deed.

While conciliation agreements often involve a payment to a complainant, they can also include a wide range of other actions such as the provision of an apology, the provision of a reference or a statement of service, conducting training for staff, and changing policies or procedures.

There are no systems to monitor compliance with agreements reached following conciliation. Research conducted by the then Human Rights and Equal Opportunity Commission into complaints conciliated by the Commission in 2001 found 90% of respondents reported full compliance and 7% of respondents reported partial compliance.

In those cases where there has not been compliance with the terms of a conciliation agreement, enforcement options will depend on whether the complaint of unlawful discrimination was made under federal or NSW anti-discrimination laws. Under s 91A(6) of the *Anti-Discrimination Act 1977* NSW, a party to a conciliation agreement can make an application to the Administrative Decisions Tribunal (ADT) to have the conciliation agreement registered and enforced as if it were an order of the Tribunal.

There is no equivalent option available for parties to agreements made following a complaint under federal discrimination laws. In its submission to the Attorney-General on the proposed consolidation of federal anti-discrimination laws, the National Association of Community Legal Centres recommended that a similar registration and enforcement process be included in a consolidated act.

A recent decision of the ADT on an application to register a conciliation agreement reminds us that the provisions for the registration and enforcement of conciliation agreements are very narrow compared to the wide range of possible terms in such agreements.

Ms Lawson is a tenant with multiple chemical sensitivities who made a complaint of disability discrimination against her landlord, Housing NSW. Her complaint was resolved following a conciliation confer-

## RLC events and projects

### NAIDOC Celebration

RLC's Inner Sydney Tenants Advice and Advocacy Service and the Tenants' Union of NSW took part in NAIDOC celebrations at Woolloomooloo on Saturday, 7 July.

The two services combined in running a stall held at the Forbes Street Reserve, Woolloomooloo. The event was coordinated by Walla Mulla Family and Community Support and the theme was "Spirit of the Tent Embassy 40 Years On."



RLC and TU tenancy workers at NAIDOC celebrations

NAIDOC stands for the National Aboriginal and Islanders Day of Observance Committee and the event has its origins in Aboriginal groups in the 1920s seeking to increase awareness in the wider community of the status and treatment of Aboriginal Australians. See its website.

It was a pleasure for RLC to take part in the celebration and connect with the local community.



RLC at NAIDOC celebrations at the Wayside Chapel in Kings Cross



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ence. In the conciliation agreement Housing NSW agreed to do a number of things, including:

- nominate a particular Client Service Officer, and an alternate, to deal with Ms Lawson and be briefed on her medical condition;
- provide Ms Lawson with advance notice of any intended works and material data safety sheet so that she could consult her doctor and ascertain if any of the substances or materials planned to be used posed a risk to her health; and
- consider including multiple chemical sensitivities in relevant Housing NSW training programs.

Section 91A(8) imposes two criteria that have to be satisfied before a conciliation agreement, or part of it, can be registered. The first is that a party has not complied with the terms of the agreement. The second is that the section of the agreement to be registered could have been the subject of an order of the Tribunal if the complaint had gone to a hearing rather than been settled by conciliation.

The Tribunal said that an order of the Tribunal must have the following features:

- it must relate to the respondent;
- it must be sufficiently certain to allow the person to whom it is directed to comply with it;
- an order enjoining or prohibiting a respondent from certain conduct can only relate to conduct that is rendered unlawful by the AD Act; and
- a mandatory order must be for the purpose of redressing any loss or damage suffered by the applicant.

The ADT found that most terms of the agreement could not have been the subject of orders of the Tribunal for a range of reasons. Some parts of the agreement imposed obligations on Ms Lawson herself, and not the respondent. Some parts of the agreement were considered to be too uncertain or imprecise. Some were considered to relate to administrative arrangements only.

The Tribunal rejected Ms Lawson's argument that registering the conciliation agreement as a whole would have the effect of orders enjoining Housing NSW from continuing unlawful conduct, and redressing loss and damage suffered by the applicant.

The ADT found that only part of one term of the agreement could have been the subject of an order by the Tribunal, but there was insufficient evidence that Housing NSW had not complied with this term of the agreement. The ADT therefore declined to register any part of the agreement.

## Government and police accountability

### Bail report released

The NSW Law Reform Commission's (NSWLRC) long-awaited report on bail laws was tabled by the Attorney-General on 13 June 2012. RLC's submission was referred to throughout, highlighting the contribution that community legal centres can make, not only through the provision of case studies, but also in classical legal analysis. RLC is broadly supportive of the NSWLRC's recommendations, in particular the removal of presumptions against bail and the need to limit

## Homeless Connect

Homeless Connect is an annual event designed to provide homeless people with easy access to dozens of government and community service providers in one place on one day.

RLC's tenancy and general legal teams attended the event and provided referrals, made appointments and answered many, many questions on the spot.



Photo by [hanibaal](#)

**Homeless Connect** is a wonderful initiative and receives support from Local and State Government, including free use of the Sydney Town Hall and free public transport for anyone coming to the event.

## New Administrative Law (Housing) Clinic

RLC and the University of New South Wales have this semester started teaching a new subject, the Administrative Law (Housing) Clinic. It is an experiential learning program in which students gain oral and written advocacy skills, learn about tenancy and housing law, and gain practical experience at a community legal centre while reflecting on social justice and human rights issues affecting disadvantaged clients.

For enquiries contact [phoenix@rlc.org.au](mailto:phoenix@rlc.org.au) or [jacqui@rlc.org.au](mailto:jacqui@rlc.org.au).

## Help for Housing NSW tenants to apply to the Tribunal

RLC's Inner Sydney Tenants' Advice and Advocacy Service continues its drop-in service for Housing NSW tenants seeking assistance applying to the CTTT to get repairs done.

The session runs from 10am to 12pm on the first Tuesday of every month. No need to call ahead – just drop in!

police power to arrest for suspected breaches of bail.

However, RLC is concerned by the proposals made in relation to the Supreme Court decision of *Lawson v Dunlevy*. That decision, handed down in February of this year, provided important protection to people who were previously forced to endure frequent curfew checks by police at all hours of the night.

The Supreme Court found that the purpose of bail is to restrict, where necessary, the liberty of an accused. It is not permissible to impose additional bail conditions for the sole purpose of making it easier to obtain evidence of a breach. The NSWLRC's report suggests a way to circumvent the effect of *Lawson v Dunlevy* in circumstances where the Crown has not appealed the decision.

The NSWLRC's recommendations are too quick to accept the current State government's approach of legislating around court decisions that protect the rights of its citizens.

### SDRO Write-Off Guidelines released by RLC application

After years of not being publicly available, the State Debt Recovery Office's (SDRO) *Write-Off Guidelines* have been released to the public after a *Government Information (Public Access) Act 2009* (GIPAA) application by RLC. Unfortunately, the SDRO is yet to comply with its statutory obligations to make the policy document available on its website.

### Police struggle with resist arrest findings

Earlier this year, *Redfern Legal* featured an article about the Local Court case of *Police v Bugmy*. This matter was dismissed after the court viewed video evidence of police tasering the defendant (an unarmed Aboriginal man who was on his knees).



Photo by [hradcanska](#)

The NSW Police Force has now appealed that decision to the Supreme Court. This comes after the Police Force also opposed the release of the TaserCam footage of the incident. The Police Force conducted their own internal review and decided that the taser use was justified.

This is another incident that supports RLC's concerns that

clear taser guidelines will be misinterpreted throughout the Police Force too frequently. Mandatory reviews of taser deployments provide no protection to citizens when these reviews fail to find problems with police taser usage. When senior police fail to condemn inappropriate use of force, we must question the ability of internal police investigations to properly identify other types of police misconduct.

Click [here](#) to read the taser use guidelines.

## Credit, debt and consumer complaints

### Case study: Angela's story

Our client, Angela, migrated from Thailand to Australia with her husband Peter. Angela had limited English skills and Peter had always managed their finances.

Peter became involved in an investment scheme and needed more money to invest further. Peter arranged with a mortgage broker for Angela to re-mortgage the family home and take out a loan in her name only in order to fund his investment scheme.

Angela, whose English and experience of the Australian finance system was limited, knew little about the documents she signed and did not understand the financial arrangement that had taken place. At the age of 62, Angela was granted a 30-year loan for more than \$700,000. Theoretically, Angela would be paying off the loan (in monthly payments of more than \$4,500) until she was 92 years old.

Angela was approved for a loan that she could not afford to pay. From the beginning she had difficulty making the monthly repayments. When interest rates increased, she defaulted on the loan. The bank foreclosed on the loan and the family home was sold. Even so, there was a shortfall of more than \$100,000.

Peter had put all the borrowed money into the investment scheme. The investment scheme was unsuccessful and all the money was lost. Angela did not derive any financial benefit from the loan. Peter subsequently passed away.

When Angela was referred to RLC by her financial counselor, she was a widow in her late sixties with no home, assets or savings. Her only income was the aged pension and she was unable to make any payments towards the shortfall that was being sought by the credit service provider.

Although this would seem like a clear case of mal-administration, the Financial Ombudsman was unable to assist because when Angela first defaulted on the repayments, the credit service provider obtained orders for her to repay the loan.

RLC assisted Angela to write a complaint to the credit service provider and request that the debt be waived. RLC highlighted:

- the circumstances in which the loan was established (which clearly involved mal-administration);



- that the debt should be waived on compassionate grounds, considering the hardship further proceedings would cause Angela; and
- that there was no real prospect of recovering the debt as Angela had already lost her home, had no assets and her only income was the aged pension.

RLC managed to negotiate a successful outcome for Angela and the credit service provider agreed to stop pursuing her for the debt.

**RLC Tip:** If the credit service provider has obtained judgment, generally the consumer can no longer go to the Financial Ombudsman or the Credit Ombudsman with a dispute. If legal proceedings have commenced the consumer needs to lodge an urgent complaint with the relevant External Dispute Resolution scheme.

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