



Redfern Legal

Redfern Legal Centre's bi-monthly e-bulletin

November 2011

Welcome to the **November** edition of *Redfern Legal*, Redfern Legal Centre's bimonthly e-bulletin. Here you can find legal updates from RLC's six practice areas and news about the work RLC has done over the past two months.

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Dixie Link-Gordon of Mudgin-gal Aboriginal Women's Centre

Employment law

Court clamps down on failure to keep employee records

The Federal Magistrates Court of Australia (FMC) has imposed fines totaling \$28,600 on two companies and their directors (the respondents) for failing to keep proper employee records and failing to pay employees for months on end.

Ms Zhao, Mr Lang and Mr Wang (employees) were sponsored to work in Australia by Orwill Pty Ltd under the subclass 457 business visa scheme. The employees were sponsored to work at the "Jacaranda Deli and Café",

RLC in the media

Jetstar accused of illegal discrimination

Joanna Shulman, RLC Chief Executive Officer, spoke out on the Federal Court case against Jetstar brought by Sheila King, a 75-year-old woman with a disability, after the airline refused to allow her on a flight due to a policy that restricts any one flight to two wheelchairs. See the following links for the full story:

[Lateline interview, ABC](#)

[The Drum Opinion, ABC](#)

[Article from news.com.au](#)

[Article from The Australian](#)

[Article from the eTravel Blackboard blog](#)

Students exploited

(Letter to the Editor, SMH, 8 September 2011)

A downturn in overseas students is not surprising when we treat them like cash cows while offering them limited support services to help navigate our foreign housing, legal, credit and employment sectors ("Downturn in overseas students to cost sector", September 7).

At Redfern Legal Centre we regularly see international students who have fallen victim to credit scams or who are working or living in unlawful conditions, and who are reluctant to do anything about it out of a misapprehension that it will affect their visa status.

Education providers need to take greater responsibility for ensuring the well being of the students they derive significant income from, through both ensuring their arrival into safe and secure housing and through educating them about their rights.

Joanna Shulman, Redfern Legal Centre

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each for a period of approximately two years. Each of them had their employment terminated approximately one year after starting work and the café subsequently went out of business.

The Fair Work Ombudsman, on behalf of the employees, commenced proceedings against the respondents in the FMC. It was shown that the employer's records were woefully inadequate and included only a few timesheets.

The Court found that the respondents were in breach of the *Workplace Relations Regulations Act 1996* by failing to keep proper records showing:

- whether the employees were full time or part time;
- whether the employees' employment was permanent, temporary or casual;
- the date on which the employees commenced work;
- details of the rate of pay paid to the employees;
- the hours worked by the employees;
- details of any payment, loading, rate, allowance or entitlement;
- the gross and net amounts paid to the employees; or
- any tax deductions made from the gross amount paid to the employees

The Court also found that the employer failed to issue pay slips to the employees and did not pay them for significant periods of time, obtaining the benefit of free labour. Federal Magistrate Lucev highlighted that:

"Failure to make and maintain records in relation to employee entitlements undermines the utility and effectiveness of workplace inspectors, and their ability to determine whether or not there has been compliance with minimum standards and industrial instruments, and the provision of effective means for investigation and enforcement of employee entitlements ... There has also been failure to comply with minimum standards for timely payment."

For the decision see: *Fair Work Ombudsman v Orwill Pty Ltd* [2011] FMCA 730

RLC Tip: You are entitled to receive detailed payslips and be paid on a fortnightly basis. If you are not, your employer is in breach of the law.

"Genuine steps" and their application in employment matters

The *Civil Dispute Resolution Act 2011* (Cth) is now in operation. It requires parties to submit a "genuine steps" statement when proceeding to file in the Federal Court or the FMC. The object is to ensure that genuine steps have been taken to resolve disputes before civil proceedings are instituted. A genuine step constitutes a "sincere and genuine attempt to resolve a dispute".

Lawyers are under an obligation to inform and assist their clients of the requirement, and will be held liable for failing to comply with the requirement to inform clients if costs orders are made against their clients in proceedings. The Act applies to certain civil proceedings

The great leap: Social media

RLC is now on [Facebook](#) and [Twitter](#). Following us or liking our page is an easy way to stay connected with RLC.

RLC publications and submissions

International student accommodation

RLC made a submission to the Social Policy Committee of the Legislative Assembly inquiry into international student accommodation in NSW. RLC argued that the introduction of laws to cover people that fall outside the *Residential Tenancy Act 2010* (NSW), while benefiting many residents of NSW, would also be of great benefit to international students.

National Human Rights Action Plan Baseline Study

RLC made a submission to the National Human Rights Action Plan Baseline Study. The overarching recommendation of this submission was that the government reconsider its methodological approach to the baseline study.

The baseline study should outline the full range of Australian's human rights obligations, indicators for meeting those obligations and an assessment of where Australia lies in relation to each of those indicators.

See the RLC [Submissions](#) page for more information.



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in the Federal Courts, excluded matters are listed in Part 4 of the Act. In short, discrimination matters are affected but unfair dismissal matters are excluded.

RLC Tip: Whether required or not, it makes sense to try and resolve matters early without needing to resort to court action.

Tenancy and housing law

Housing NSW repairs issues – compensation or rent reduction?

Until recently, tenants have been able to claim non-economic loss for distress, disappointment and inconvenience arising out of a breach by the landlord. A recent decision in the Supreme Court of NSW, *Insight Vacations v Young* [2010] NSWCA 137, means the Consumer, Trader & Tenancy Tribunal (CTTT) is now applying the *Civil Liability Act 2005* (NSW) to those claims. In a jurisdiction with a limit of \$15,000 this means it is not usually possible to make these claims anymore.

There is still some scope for avoiding the *Civil Liability Act* where it can be argued the breach was intentional or the loss is 'mere physical inconvenience'. In addition, tenants can still claim rent reductions under s 44(1)(b) of the *Residential Tenancies Act 2010* (NSW).

Under the old Act a tenant on a rental subsidy could not make an application for rent reduction. The 2010 Act does not have the same exemption and RLC has recently had awards of up to \$8,000 and 100% rent reduction for social housing tenants in extreme circumstances.

RLC Tip: Tenants can apply for an order for a rent reduction for up to 12 months as long as they are still under a Residential Tenancy Agreement when they make the application.

Government and police accountability

New legislation: Intoxicated people and removal of facial coverings

The NSW Government has passed two new pieces of legislation relating to police powers: to deal with intoxicated people and to require the removal of facial coverings. The old summary offence of "drunk and disorderly" is now updated for the 21st century as "continuation of intoxicated and disorderly behaviour following move on direction". It applies to intoxicated and disorderly behaviour within the six-hour period following the initial move-on direction and carries a maximum penalty of \$660. Of arguably greater power is the ability of the police to detain an intoxicated and disorderly person until such time as they sober up, come down, or someone collects them. The NSW Ombudsman will report on the legislation in 12 months' time: [Summary Offences Act 1988 \(NSW\)](#)

RLC outreach

Family and sexual violence – RLC in Aboriginal Women's Forum

Donna Polletti, RLC Yellow Card Project worker, and student volunteers have recently provided information stalls at local forums for Aboriginal women. The sessions were organised by Warringa Baiya Aboriginal Women's Legal Centre and Mudgin-gal Aboriginal Women's Centre to bring women together to raise awareness of these important issues and provide information about relevant services.



RLC Yellow Card Project Worker and a volunteer at the forum

Training and toolkits for community workers

The Inner Sydney Tenants' Advice and Advocacy Service conducted training sessions during October for community workers, advocates and solicitors on their recently launched toolkits, the *Boarders and Lodgers Legal Information Kit* and the *Housing NSW Repairs Kit*. To view the kits online see: the RLC [Publications](#) page.

For information on organising community legal education on tenancy and housing law, contact Sue at sue@rlc.org.au or 9698 7277.

The Identification *Legislation Amendment Act* (not commenced) will modify NSW legislation to include specific provisions relating to the powers of police officers, correctional officers and court security guards to demand the removal of face coverings. More wide reaching is its amendment of the *Oaths Act* to require authorised witnesses to see the face of the person making the declaration and certify that this section has been complied with. Failure to comply with this section leaves an authorised witness open to conviction in the Local Court and a fine of \$220. Counter-intuitively, failure to comply with the requirement does not affect the validity of the declaration. See [Identification Legislation Amendment Act 2011 \(NSW\)](#) for more information.

RLC Tip: If you are intoxicated and disorderly, police can send you home with friends instead of taking you back to the station. But if you are intoxicated and disorderly, your friends probably won't want you.

Discrimination and human rights

The Federal Attorney-General and the Minister for Finance and Deregulation have recently released a discussion paper on the Consolidation of Commonwealth Anti-discrimination Laws. The release of the discussion paper marks the first step in the government's formal consultation process since the announcement of its intention to consolidate discrimination laws in April 2010. Submissions on the discussion paper are due on 1 February 2011 and will inform the development of exposure draft legislation, which will be released for public consultation in early 2012.

The government has said that any reform will be guided by the following principals:

- a reduction in complexity and inconsistency in regulation to make it easier for individuals and business to understand rights and obligations under the legislation;
- no reduction in existing protections in federal anti-discrimination legislation;
- ensuring simple, cost-effective mechanisms for resolving complaints of discrimination; and
- clarifying and enhancing protections where appropriate.

The government has also committed to introducing new protections against sexual orientation and gender identity discrimination as part of this process.

RLC Tip: For more information see the [Attorney-General's webpage](#). The Government has indicated that although it will accept submissions up until 1 February, it would like to receive submissions earlier if possible.

RLC case work

Housing NSW tenancy saved through negotiated repayment plan

Paul, a Housing NSW tenant, had been visiting family overseas. On his return to Australia, he found that the Consumer, Trader & Tenancy Tribunal (CTTT) had made an order for termination of his tenancy for rent arrears. Paul dropped in to RLC's Inner Sydney Tenants' Advice and Advocacy Service (ISTAAS) two days before he was to give vacant possession.

Paul was confused as he normally paid his rent by direct debit, and did not understand how he could have fallen into arrears. He found out that he had incurred them due to a fault with Housing NSW computers whereby the rent had not been deducted from his account as usual.

The tenant advocate helped Paul to decide how much of his arrears he could pay off every fortnight without falling into hardship. The advocate then rang Housing NSW and made the offer of a repayment plan.

The new *Residential Tenancies Act 2010* says that any termination solely on the ground of non-payment of rent will cease to have effect if the tenant pays all the rent owing, or enters into, and fully complies with, a repayment plan agreed with the landlord.

Housing NSW was not aware of these changes and insisted that Paul would have to lodge a rehearing application as the tenancy had been terminated. After the advocate pointed out the relevant sections of the Act, Housing NSW agreed to the repayment plan. Paul's tenancy was saved.



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Domestic violence

Domestic and family violence resources

The Australian Domestic and Family Violence Clearing House [website](#) has a wealth of information about domestic and family violence, best practices in responding to and preventing violence and how to deal with the impact of it.

Recent publications include:

- “Getting your finances back on track after experiencing domestic violence”. This fact sheet identifies potential problems and includes information and contact details for a range of services and where to go for advice. Women experiencing family violence have a range of financial issues to resolve, from having no income at all (with consequent issues around housing and leaving their situation) to having to deal with debts run up by the perpetrator in joint names, or worse still, in hers.
- A Fast Facts about “The Impact of Domestic violence on Children and Infants” provides a summary of key statistics and information about how domestic violence impacts on children. It looks at the prevalence of children’s exposure and also the links to homelessness and homicide. This is useful information for anyone wanting statistics and sources of information for submissions.

RLC Tip: The trauma, costs of resettling and disruption to work caused by domestic violence can make it hard to keep up payments on credit cards and loans. Under s 72 of the National Credit Code, people who have temporary problem with meeting their consumer credit obligations, but expect to be able to do so in the future, can ask for a variation of the repayments in the meantime. If the credit provider is not reasonable about this, the consumer can make a complaint to the either the Financial Ombudsman Service or the Credit Ombudsman Service Ltd.

Credit, debt and consumer law

Further amendments to national credit law likely

The Federal Treasury is proposing a number of significant reforms to the *National Consumer Credit Protection Act* (the Act), in two Bills recently released for consultation: The *Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011* (the Enhancements Bill), and the *National Consumer Credit Protection Amendment (Enhancements) Bill 2011* (the Credit Protection Bill).

The Explanatory Memorandum states that the Enhancements Bill will improve the regulation of credit by:

- enhancing the capacity of debtors who are in financial hardship to seek a variation of their credit contract;
- introducing a remedy for unfair or dishonest conduct by credit service providers;
- restricting the use of particular words or phrases;
- enhancing the range of remedies available to consumers; and
- increasing the circumstances in which ASIC has standing to apply to the court for an order.

RLC events and projects

New international student advice service launched

In October, RLC launched a new state-wide legal service for international students in NSW. The free, confidential service operates each Wednesday evening from 6:30 pm at 73 Pitt Street, Redfern. Face-to-face and telephone appointments can be booked by calling 9698 7645. Free interpreters can be provided.

The service offers:

- Legal advice on most areas of law. Advice will not be provided in commercial and conveyancing matters, neighbourhood disputes or for male defendants in Apprehended Violence Order matters.
- A migration agent to advise students on migration issues associated with their legal problems. Migration advice will not be provided on permanent residence applications.

Consultation on Aboriginal and Torres Strait Islander Constitutional recognition

In September, RLC participated in a Redfern community consultation about Aboriginal and Torres Strait Islander recognition in the Australian Constitution. RLC organised the consultation in partnership with the Metropolitan Local Aboriginal Land Council, Mudgin-gal Aboriginal Women’s Corporation and Wirringa Baiya Aboriginal Women’s Legal Centre.



Attendees at the forum

Presentations were made by: the Indigenous Law Centre at the University of NSW; the Gilbert + Tobin Centre for Public Law at the University of NSW; and Mudgin-gal Aboriginal Women’s Corporation. Gilbert + Tobin

The Credit Protection Bill proposes to introduce a number of amendments to the regulation of small amount credit contracts, which are found most commonly in the payday-lending sector. These amendments include greater regulation of:

- prohibitions on small amount credit providers charging fees and charges other than those specified as permitted, and other than at the maximum rates set out;
- prohibitions on suggesting re-financing or re-financing small amount credit contracts, including suggesting or financing increases on a credit limit where the credit provider knows or recklessly disregards whether or not the consumer has an existing payday loan;
- greater regulation of the content of small amount contract providers' websites, including requirements for disclosure statements to be made available; and
- the introduction of a national interest cap of 48%.

RLC Tip: RLC strongly supports the majority of the proposed amendments, and considers them an important step in enhancing consumer protections in an area in which consumers are often particularly vulnerable. RLC submissions on both Bills are available at our [Submissions](#) page.

Community

Are you dealing with a dispute?

Community Justice Centres (CJCs) can help you resolve your dispute quickly and for free using mediation. Mediation is a way to help people resolve disputes by talking in a safe and informal environment.

Two trained mediators who don't take sides can assist with the following types of disputes:

- neighbours;
- families;
- communities or associations;
- schools;
- workplace;
- business; and
- money matters.

There are no waiting lists, and mediators come to a place near you. Our mediation services are **free**; voluntary; and confidential.

CJC also has an Aboriginal and Torres Strait Islander mediation program, with Aboriginal mediators available.

Call us on freecall 1800 990 777 to speak to one of our staff, or visit our website at www.cjc.nsw.gov.au.

You can also call Melissa Stubbings, our Senior Aboriginal Programs Officer, on (02) 8688 7450 or 0459 838 251 if you have any questions about our Aboriginal and Torres Strait Islander mediation program.

supported the event, providing catering and assisting RLC to capture and write a submission summarising the discussion.

Attendees (both the non-Aboriginal and Aboriginal and Torres Strait Islanders) were generally unaware of options for constitutional reform (reform) and there was confusion and concern over the possible effects of reform. There was a feeling that opportunities for reform should be seized and that changes should be substantive and not just include a symbolic recognition of Aboriginal and Torres Strait Islander people as the first people of Australia.

The discussion indicated that the Aboriginal and Torres Strait Islander community (at least in Redfern) has not been adequately engaged in the discussion about reform and people felt that they needed more time to develop a proper understanding of the issues. Members of the Aboriginal and Torres Strait Islander community displayed weariness of government intervention based on past experience. Attendees passionately desired to improve living standards within their communities and seek greater respect and recognition from government and the wider Australian public.

To read RLC's submission, go to our [Submissions](#) page.



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