



# newsletterofthelaw

The articles in this newsletter do not constitute legal advice. The information in this newsletter is merely a guide and is not a full explanation of the law. The Centre cannot take responsibility for any action readers take based on this information. When making decisions that could affect your legal rights, seek professional advice.

Issue 25

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## Close of Another Reporting Year

As the 2008/2009 year has drawn to a close, it is a pleasure to share with you the Centre's achievements over that time.

During 2008/2009 the Centre continued to operate its:

- Core (Generalist) Service;
- Specialist Disability Discrimination Legal Service (DDLS); and
- Seniors Legal and Support Service (SLASS) Pilot.



### Core (Generalist) Service

#### *Advice and Assistance*

Demand for client service delivery within the Core Service continued to be high, with the Centre being booked up to 2 weeks in advance.

The Core Service has continued to undertake a broad range of work across the areas of family, civil and criminal law.

This year has however seen an increase in clients attending the Core Service for employment related matters, with records showing more than double the number of employment related activities this year than previous years. Debt, credit and other consumer matters have also formed a large share of the Core Service work, with records showing consumer matters comprising approximately a third of Core Service work (up from approximately a quarter in previous years). These trends are thought to be a consequence of the economic downturn which has affected many people.

Additional one off Commonwealth funding during 2008/2009 also put the Centre in a position to engage a new lawyer this year within its Core Service, mainly in relation to family law matters - another area of enquiry which remains high in demand. This additional funding has assisted with work undertaken in this area.

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### Thanks!

Thanks to volunteers

Volunteer solicitors have also continued to provide an enormous amount of support in the provision of legal advice at the following locations:

- a) Cairns (evening) Service - every Thursday evening.
- b) Mareeba - once a month.
- c) Atherton - once a month.
- d) Innisfail - twice a month.

Such outreach locations provide yet another avenue for access and equity in the provision of the Centre's services. We thank the volunteers involved in the provision of these services - without their help the services would not operate.

#### *Community Education / Awareness Raising Activities*

The Core Service also provided community education in relation to a broad range of legal topics and a variety of audiences including: schools; community organisations; and others. The forums in which community education / awareness raising took place was also varied and included education in the form of: talks; information stalls; publications; and distributions. Through such a variety of forums, as many people as possible were reached targeting their various needs.

The thanks received from recipients of community legal education, as well as the number of invitations for the Centre to return in the future to provide more community education programs is regarded by the Centre as a positive indicator regarding the success of community education programs delivered by the Centre.

Additionally, this year, the Centre received a one off grant of funds from the Legal Practitioner's Interest on Trust Account Fund (LPITAF), enabling the Centre to prepare community education materials in relation to various legal areas. Once finalised it is hoped that delivery of these presentations will assist the community understand the legal environment together with their rights and responsibilities. We also hope that our staff will find these new resources 'user friendly' as they go out to educate our local community.

Part of the LPITAF grant also involves updating the Centre's Referral Manual. This manual aims to assist

the Centre in making referrals so that clients can be connected to the right place for more help. This manual is presently over a hundred pages and progress is continuing to update the Centre's existing data base of referral points.

#### *Law Reform and Social Policy Work*

The Core Service was also engaged in a number of law reform projects during 2008/2009. They are as follows:

- Submissions (written) - Review of Neighbourly Relations: Trees.
- Submissions (written and oral) - Inquiry into Certain Contemporary Electoral Matters.
- Submissions (oral) - Queensland's Guardianship Legislation Principals & Capacity.
- Submissions (oral) - Crime and Misconduct Commission: Enquiry into Rights in Public Space (Nuisance Offences and Police Move on Powers).
- Submissions (written) - Consultation: A Better Framework for Federal (Family Law) Courts.
- Submissions (written) - Amendments to Anti Discrimination Act (Queensland).
- Submissions (written) - National Human Rights Consultation.

These too reflect the range of work undertaken by the Core Service which continues to be undertaken.

#### **Disability Discrimination Legal Service (DDLS)**

The DDLS too has continued to be extremely busy with some of its work being outlined below.

#### *Advice and Assistance*

The DDLS has continued to assist clients with legal advice and representation in the conciliation process through the Anti-Discrimination Commission Queensland (ADCQ) and the Australian Human Rights Commission (AHRC) over a wide geographic area. It has helped clients in a wide range of disability

discrimination issues including in the areas of employment; education; access to goods and services; and access to premises.

Results obtained have broad reaching benefits for other people with disabilities in general as well as the individual complainant involved and the community at large.

#### *Community Education / Awareness Raising Activities*

DDLS has also undertaken a number of community education programs aimed at raising awareness of both the DDLS and the services it provides, as well as providing information about disability discrimination issues.

Additionally the DDLS is currently undertaking community education in Cape communities. This is made possible due to a one off grant of funds provided by the Legal Practitioner's Interest on Trust Account Fund (LPITAF). Communities visited have included Cooktown, Wugal Wugal and Hopevale.

#### *Law Reform and Social Policy Work*

The DDLS also carried out law reform and social policy work relating to disability discrimination matters including:

- Submissions (written and oral) - Guide (Hearing and Assistance) Dogs Bill.
- Submissions (written) - National Disability Strategy.
- Submissions (written and oral) - Inquiry into Certain Contemporary Electoral Matters.
- Letter - To correct error with parking signs.
- Submissions (written and oral including provision of evidence to House of Representatives Standing Committee on Legal and Constitutional Affairs) - Access to Premises (Review of Building Standards).
- Submissions (written) - Amendments to Anti Discrimination Act (Queensland).
- Submissions (written) - Harmonisation of Disability Parking Permits (work ongoing)

- Submissions (written) - National Human Rights Consultation.
- Guest speaker - Access to Premises Forum.

#### **Seniors Legal and Support Service (SLASS)**

The SLASS which is staffed by solicitor and social worker, performed legal and social support work in the areas of elder abuse and financial exploitation.

#### *Advice and Assistance*

Most complaints were in the area of financial exploitation and/or have included:

- Matters ranging from consumer complaints to family members exploiting their parents or grandparents.
- Advice given to clients on making their Enduring Powers of Attorney, wills and advance health directives.
- Neighbourhood disputes.
- Matters relating to the Public Trustee.
- Complaints regarding retirement villages.
- Advice given on body corporate.
- Domestic Violence Orders and Peace and Good Behaviour Orders.

#### *Community Education / Awareness Raising Activities*

Community education and awareness raising activities were also carried out by the SLASS. Such work was undertaken to promote the service as well as to raise awareness in the community about elder abuse, financial exploitation and prevention. Community education was provided to potential client groups and to other service providers.

As with the Core Centre and the DDLS, the forums in which the community education took place were varied and included education in the form of talks, information stalls and brochure and poster displays.

Other awareness raising activities undertaken also took the form of various advertisements. These appeared in other service provider's newsletters, in the Cairns Post, in the Sun, on community television and on various radio stations.

Promotional work remains an important aspect of the SLASS's work particularly given the relative newness of the Service. This is reflected in the number and range of promotional activities undertaken by the SLASS.

#### *Law Reform Work*

Unfortunately the SLASS is not funded to undertake law reform work, although this may change in the event the Service receives recurrent funding in the future.

### **John Ehm - Minister's Community Service Award.**



The Community Service Award is presented by the Minister for Ageing to individuals who provide outstanding service to older Australians, or to older Australians who provide outstanding community service. They may be community members, volunteers, carers, aged-care workers or administrators.

John Ehm, who is a member of the Centre's Seniors Legal and Support Service Reference Group, was the proud recipient of this Award earlier this year.

Minister for Ageing, Mrs Justine Elliot presented John with his Community Service Award for his outstanding contributions to the community.

The Centre is very proud of John and we congratulate John on his achievement !

### **Funding News**

#### **One off Commonwealth Funding**

The Centre is pleased to announce that it has received for the 2009 / 2010 financial year a further grant of one off funds from the Commonwealth Government. This funding will enable the Centre to fund a legal position approximately 2 days a week.

We are grateful for this acknowledgement of the important work that the Centre performs and remain hopeful that the funding will ultimately become recurrent.

#### **Consumer Law Service**

The Centre is also pleased to announce that it has been successful in securing 12 months funding for a Consumer Law Service. This Service has been funded by the Legal Practitioner's Interest on Trust Accounts Grant Fund. The Service is to commence operation soon, concentrating on debt, credit, consumer product and consumer services complaints, bankruptcy and other consumer matters.

For further information about the Consumer Law Service please phone 4031 7179.

#### **Seniors Legal and Support Service Pilot**

The Centre's Seniors Legal and Support Service has been operating out of the Cairns Community Legal Centre since 1 July 2007. Initially funded by the Department of Communities as a pilot project through until 30 June 2010, the Seniors Service has recently received notice that it is to receive 3 years recurrent funding commencing 1 July 2010.

In receiving this funding the Service will have the opportunity to continue providing assistance to a group that is often extremely vulnerable and who often have nowhere else to turn.

We take this opportunity to thank everyone for their support in helping the Service and look forward to working with you in the future.



The Seniors Service provides free legal advice and social support to seniors who are at risk of or are experiencing elder abuse or financial exploitation. The Service focuses on empowering clients to make their own decisions by providing them with the necessary information and support. The type of assistance that can be received includes legal information and advice, limited court support, individual advocacy and short-term counselling.

For further information about the Seniors Service or to make an appointment or referral, please phone 4031 7179 or 1800 650 931.

## Premises Available for Rent at Orchid Plaza

The Cairns Community Legal Centre Inc is currently looking for a tenant to lease its premises at Orchid Plaza. Details of premises available for assignment / rent:

**Address:** Office 3B, Level 2 Orchid Plaza, 79 - 87 Abbott Street Cairns Q 4870.

**Area:** Approximately 114 m2.

**Cost:** Currently approximately \$216.88 m2 (plus GST). Approx \$24 725.33 pa (plus GST).

For further information please call the Centre on 4031 7688.

## 10<sup>th</sup> Edition of Queensland Law Handbook for Sale

Looking for up to date legal information in language you can understand ?

The Queensland Law Handbook 10<sup>th</sup> Edition is a plain English guide to the laws affecting all Queenslanders. The handbook explains key legal concepts and provides details of legislation, major cases and where to get further help. Thirty-six chapters on a huge range of topics including employment, neighbours and family law. \$77 or \$55 concession with proceeds going to Caxton Legal Centre and help to provide free legal services to people in need. Order online at [www.caxton.org.au](http://www.caxton.org.au) or call 3254 1811.



## New mortgagee obligations under the Property Law Act

The Queensland Government has introduced a new law with the aim of “protecting homeowners from mortgagee fire sales”. The *Property Law (Mortgagor*

*Protection) Amendment Act 2008* amends the *Property Law Act 1974* and introduces the following changes:

- the mortgagee’s duty under the *Property Law Act* to take reasonable care to sell mortgaged property at market value will now expressly apply to receivers and to mortgagees selling under power of attorney, and
- there are specific steps which must be taken by a mortgagee or receiver when selling property under a “prescribed mortgage” and failure to take such steps may be punishable by fines of up to \$20,000. The explanatory notes accompanying the Act provide that the type of mortgages intended to be captured are mortgages over land of a consumer credit nature.

Parliament has also passed the Residential Tenancies and Rooming Accommodation Bill 2008. Among other changes, this law will increase the notice period that must be given by a mortgagee to terminate a residential tenancy granted without the mortgagee’s consent from one to two months.

## Beware of clicking your rights away

Bond University is urging people to be vigilant when using the internet.

Associate Professor Dan Svantesson of Bond University said that people often “agree” to terms and conditions without understanding the implications.

“When using the internet, we are often asked to click ‘I agree’ to lengthy statements of terms and conditions,” Dr Svantesson said. “In doing so, we may be agreeing to things we did not expect. “For example, to view downloadable TV programs from one of Australia’s TV channels, you have to install a special player. And in installing that player you have to agree that the law of Israel applies to any dispute that may arise. You also agree that you cannot take legal action in Australia, but only in Israel.

“The people who draft these contracts are aware that people in general do not read them.



“They are also aware that if a person was to read them, that person is unlikely to understand the legal implications.”

And in the end, even if a person understands the legal implications, they cannot negotiate the terms anyhow.

“Terms and conditions in these so-called click-wrap agreements are presented on a take it or leave it basis,” Dr Svantesson said. “That is one reason why people do not read them. People choose to take a calculated risk in clicking ‘I agree’ rather than reading the contract.”

## Helping hand for teen sisters

A “helping hand” from the Federal Workplace Ombudsman has ensured two teenage sisters weren’t ripped off by a fish-and-chip shop which underpaid them.

Their former boss belatedly agreed to reimburse the sisters \$2000, after initially refusing to do so.

The Workplace Ombudsman assisted the girls to take their case to the Small Claims Tribunal in Victoria to try to recover underpayments totalling \$2600.

When they were just 14 and 15, the pair worked for a fish and chip shop in Melbourne and were paid just \$5 an hour for the first month and \$7.50 an hour thereafter.

They should have received up to \$12.51.

But when a workplace inspector identified the issue, the former employer said she couldn’t afford to rectify the problem.

Workplace Ombudsman Nicholas Wilson said his agency helped the sisters prepare a case to take to the Small Claims Tribunal.

After rejecting the former employer’s offer of a \$20 per month repayment plan, the Melbourne Magistrates Court asked the Workplace Ombudsman to mediate an outcome.

The court told the employer her financial position was no defence for underpaying the girls and did not absolve her from her legal responsibilities.

Mr Wilson says that after more negotiations, the two sisters accepted an offer of \$2000.

## First prosecution over sham contracting

The national workplace watchdog has launched its first prosecution for alleged sham contracting.

The federal Workplace Ombudsman alleges that the company in question breached the sham contracting provisions in the *Workplace Relations Act* when it “converted” eight employees to contractors, but continued to have them perform the same duties under the employer’s direction.

The workers were told to get their own Australian business number (ABN), sign a “sales consultant agreement” and to invoice the company when they made sales. They were also told that they would no longer receive annual leave, sick leave or superannuation.

If you have concerns about your workplace rights, contact your local solicitor.

## New laws on bikie groups



Bond University’s Professor of Criminology, Paul Wilson, has warned the Queensland Government against imposing tough new laws on biker groups.

The warning follows the Queensland Cabinet’s decision to approve the preparation of new laws based on South Australia’s and New South Wales’ anti-biker legislation,

which came as a result of bikie gang-related violence in Sydney in March.

Among the possible new laws, police would be given the power to apply to the Queensland Supreme Court for an order that would ban members identified in outlawed motorcycle gangs from associating with each other.

As in South Australia and New South Wales, these laws might also lower the criminal burden of proof on bikie gang-related crimes from 'beyond a reasonable doubt' to 'on the balance of probabilities'.

"The introduction of draconian laws governing demographic groups is a breach of civil liberties and an infringement on the right of all Queenslanders to live in a democratic society," said Professor Wilson.

"The Queensland Government's proposal to impose tough legislation on bikies sets a dangerous precedent. It opens up the potential for government to arbitrarily apply these criminal 'association' laws to any political opponents or religious groups to whom it takes a dislike."

Professor Andreas Schloenhardt of the University of Queensland has also noted that similar laws in Japan have led to groups reforming under different guises. Premier Anna Bligh has said the new laws "would need to strike a balance between protecting the public from organised crime and upholding the civil liberties of citizens".

## Hoons defy police blitz

Melbourne's worst car hoons have vowed to continue illegal street races as police admit they are battling to control a huge spike in the madness.

The Herald Sun newspaper was given a back seat with police as they made an unprecedented blitz on hoons on a recent weekend.

More than 100 officers from three regions focused on drivers in the worst-affected suburbs including

Campbellfield, Somerton, Thomastown and Tullamarine.

The most extreme cases police have seen included more than 600 people watching burnouts and stunts; culprits pouring 20 litres of oil on a road for a display; hoon clubs with members who wear identical hoodies with emblems; and an L-plate driver doing burnouts with his father in the passenger seat.

It takes just one text message and about 10 minutes to set up an illegal street race.



The crackdown follows the death of a 22-year-old driver in Adelaide on May 14, when his car was hit by two allegedly drag-racing drivers.

## New laws for consumer credit providers

The National Consumer Credit Protection Bill 2009 aims to simplify and standardise the regulation of consumer credit, which until now has been regulated under a myriad of different state and territory laws to the detriment of consumers, according to banking and financial services specialist Jim Bulling.

"The proposed national licencing scheme will ensure consumers benefit through the introduction of a number of measures designed to improve and regulate the conduct of lenders and brokers throughout the industry," Mr Bulling said. "Both lending and broking institutions, including the banks, generally recognise that this new regime is designed to stop predatory lending practices by unscrupulous operators and will be of benefit to the industry and their customers."

The suggested registration and licencing requirements under the Bill will extend to any person who engages in credit activity. In order to become registered, a person will have to apply to ASIC for registration by December 31. Once registered, any person engaging in a credit activity will have to apply to ASIC for a licence by June 30, 2010.

For details on the new laws, visit [www.treasury.gov.au/consumercredit/content/legislation.asp](http://www.treasury.gov.au/consumercredit/content/legislation.asp).

## Workplace cowboy fined for treating workers with contempt

A food processing company has been fined \$80,000 and labelled a “workplace cowboy” for treating its employees with “contempt”.



The Federal Workplace Ombudsman initiated legal action against the company for underpaying the workers, some of whom had disabilities.

In Brisbane’s Federal Magistrates Court, the company was fined a total of \$80,200 and ordered to back-pay 11 vegetable peelers \$13,500.

The court found that the company had unlawfully changed their classification from “employees” to “independent contractors” and deliberately breached the law.

Federal Magistrate Keith Wilson said the company and its director, had “treated workers with contempt” and were “entirely unrepentant and lacking any contrition”.

In his 19-page judgment, Magistrate Wilson said the director had “thumbed his nose” at the Workplace Ombudsman and the court.

In response to the company’s claim that a significant penalty should not be imposed because it would force the business to close and put the workers out of a job, Magistrate Wilson said: “The court cannot condone such industrial relations blackmail.”

If you have concerns about your employment conditions, please contact your local solicitor.

## Man without key has drink-drive conviction quashed

A Beenleigh man found guilty of drink-driving after trying to help his sister start a brokendown car had his conviction quashed on appeal.

Both a magistrate and a District Court judge had held that the man intended to use a vehicle parked in a vacant lot alongside the Pacific Motorway south of Brisbane, in September 2005.

However, a new ground was raised in the Court of Appeal which showed the man had a defence under a section of the *Transport Operations (Road Use Management) Act*, that was not argued before either original hearings.

A summary trial in the Magistrate’s Court heard that the man’s sister got a lift home as a passenger in the car which stopped and rolled into a vacant lot.

Believing the car had run out of petrol, she rang the man who was her brother but when she returned, the driver of the vehicle had left.

Meanwhile, the man walked a short distance to the vehicle, put fuel into the car and worked on the disconnected battery. He then went to the driver’s side to lean into it to see if it would start. He found there were no keys in the ignition and returned to the front of the car where the bonnet was still up.



Police arrived and breathalysed the man, who returned a blood-alcohol reading of 0.15 per cent.

The man pleaded not guilty on the basis he had not intended to drive the car and did not even have a key to it.

However, the magistrate convicted him, fined him \$720 and disqualified him from driving for nine months.

The man appealed to a District Court judge who threw out the appeal and ordered he pay \$900. He then went to the Court of Appeal and, in a unanimous judgment, his appeal was granted.

The Court of Appeal set aside the conviction, fine and disqualification imposed in the Magistrate’s Court and also set aside the order that he pay \$900 in District

Court costs. A verdict of not guilty was substituted for the Magistrate's Court verdict.

Court of Appeal president Margaret McMurdo said the man had established on oath that he had no intention to drive the vehicle and the car was not a traffic hazard.

## THANKS

Our thanks goes out to our dedicated and committed volunteers who kindly give their time to the Centre to assist with the running of our activities. Without them, the Centre wouldn't be able to provide many of the services that it does.