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### **WHAT IS QPILCH**

The Queensland Public Interest Law Clearing House Incorporated (QPILCH) assists people who cannot obtain legal aid or afford private legal services by providing targeted services or referring them to member firms or barristers in public interest cases. For details of our referral services, criteria and procedures, see the QPILCH website at [www.qpilch.org.au](http://www.qpilch.org.au). QPILCH draws on the resources of the wider legal profession - private firms, government, corporate lawyers, university law schools and the community sector – to assist those who are the most disadvantaged and marginalised.

Welcome to QPILCH's first newsletter for 2005.

### **NEW MEMBERS**

We have pleasure in announcing two new barrister members **Ken Barlow** and **Judy Brien**, whom we thank for their support and look forward to a rewarding involvement.

### **CONTRIBUTE TO OUR STRATEGIC PLANNING**

Given QPILCH's growth over the last three years, the management committee has decided to do a stock-take of a range of matters impacting on QPILCH. We are holding a planning session on Saturday 16 April from 2-5pm, facilitated by John Corker, director of the National Pro Bono Resource Centre. QPILCH members are invited to attend to let the board know its views. We will soon have available for interested members an outline of the issues to be considered. If you can attend, please let Tony Woodyatt know at [contact@qpilch.org.au](mailto:contact@qpilch.org.au) by Friday 15 April.

## **COORDINATION OF REFERRAL SERVICES PROJECT**

This project continues to organise support for QPILCH to coordinate pro bono referrals so, like the PILCH in Victoria, we will be a one-stop-shop for people seeking pro bono or low cost legal assistance.

As part of the project, QPILCH project solicitor Rebekah Leong with input from members and students has prepared a number of publications of use to the profession and public: a guide to costs in public interest litigation; court and tribunal fee waiver guide; and pro bono referral resource manual. These documents are available on our website at [www.qpilch.org.au](http://www.qpilch.org.au), under "Publications & Resources" or on request.

### **Costs in Public Interest Litigation**

On 22 February 2005, QPILCH president Peter Rosengren, David Starkoff (Corrs Chambers Westgarth) and Rebekah Leong met with the Legal, Constitutional and Administrative Review Committee to discuss potential reform of the law in relation to costs orders in public interest litigation. The invitation to meet with the Committee stemmed from a submission QPILCH made to the Attorney-General in February 2002.

As a general rule, costs "follow the event". This can be a significant deterrent to persons who are willing to litigate important public interest issues but are faced with the possibility of having costs ordered against them. While there have been cases where the court has departed from the general rule and not ordered costs against an unsuccessful public interest litigant (for example, in the High Court case of in *Oshlack v Richmond River Council* (1998) 193 CLR 72), the law in this area is far from certain.

The Committee has indicated an interest in pursuing this issue, and it was a great opportunity for exposure of the work QPILCH does.

Many thanks go to QPILCH members Corrs Chambers Westgarth (in particular, Rod Dann, David Starkoff and Catherine McDougall), and barristers Damien O'Brien, Darryl Rangiah and Peter Lyons QC who assisted in writing a detailed research paper on the topic in preparation for the meeting.

### **Resource Manual – Pro Bono Legal Services in Queensland**

The first edition of the Resource Manual was published in January. In it are listed community legal centres and other free legal service providers in Queensland, with handy indexes based on area of law and location. The manual strives to contain detailed and accurate information about each organisation, including eligibility criteria, area of law, the types of legal services available and contact details.

The manual is not currently for public distribution and has only been provided to those organisations which undertake legal referrals. Please contact Rebekah Leong at [referral@qpilch.org.au](mailto:referral@qpilch.org.au) if you would like to have a copy.

### **Fee waiver guide**

The first edition of the Court and Tribunal Fee Waiver and Exemption Guide was also published in January 2005. The guide sets out criteria and procedures for obtaining fee waiver and/or exemption in a number of Commonwealth and Queensland courts and tribunals. Where available, the court or tribunal's website information and application forms have been linked. It is hoped that the guide will be of assistance to other organisations whose clients are under financial hardship or would otherwise be entitled to have court or tribunal fees waived in relation to their matter.

Contact Rebekah Leong – [referral@qpilch.org.au](mailto:referral@qpilch.org.au)

## **REFUGEE AND IMMIGRATION LEGAL SUPPORT (RAILS)**

RAILS continues to enjoy the support of many dedicated volunteers, who have been busy over the last few months preparing legal submissions to the Department of

Immigration and Multicultural and Indigenous Affairs for Afghan TPV holders, undertaking research on the political and human rights situations in Afghanistan and Iraq, and preparing case notes for the *RefLaw Australia* database. To date, all of the RAILS cases heard by the Refugee Review Tribunal have been successful, which is a great tribute to the skills and commitment our volunteers bring to the project.

Post-election, we also confronted a change in approach by the government in relation to application of the “7 day rule” – a legislative provision which seeks to prevent TPV holders from gaining permanent residence if they are considered to have stayed in “safe” countries for more than seven days whilst en route to Australia. What had been a non-issue prior to the election suddenly became THE issue post-election, and TPV holders were being directed by the department to apply to the Minister for a waiver of the rule on a public interest basis. Fortunately, RAILS came to the rescue and our volunteers were quickly trained and put to work drafting Ministerial submissions in this regard.

RAILS also coordinated and supported the first litigation to be brought in Australia which challenged the Refugee Review Tribunal’s interpretation of the “7 day rule”. Mark Plunkett of counsel and South Brisbane Immigration and Community Legal Service acted for two Afghan boys (one of whom arrived in Australia as a minor) who were destined to be granted only further temporary protection. A hearing had been scheduled for April, but we are pleased to report that the Minister intervened last week, waived the rule in both cases, and granted the boys permanent residence.

There have been more terrific results in immigration cases referred out through RAILS. In our last newsletter, we noted a criminal deportation case that was successfully reviewed in the Federal Court. In that case, the Minister had sought to revive a deportation order abandoned years previously. Member Daryl Rangiah of counsel, and Gilshenan & Luton on a pro bono basis, successfully defended an appeal brought by the Minister. The Full Federal Court affirmed that the Minister had impliedly revoked the deportation order - [MIMIA v Craig \[2004\] FCAFC 294](#).

Another case involving similar facts but a different statutory source of power (the cancellation power) was also successful in the Federal Court. Member Hugh Scott-Mackenzie of counsel, and the firm of Andrew Rouyanian & Co, acted for the plaintiff on a pro bono basis. The Minister has filed an appeal - [Watson v MIMIA \[2004\] FCA 1654](#).

A judicial review application was litigated in the Federal Court for an elderly pensioner of Filipino origin (Mr M) who had significant health problems and was trying to sponsor his adult daughter for migration to Australia to care for him on a full-time basis. The case involved an important public policy issue, as the Migration Review Tribunal had rejected the visa application on the basis that Mr M could move into a nursing home, despite his stated desire to remain living independently at home with his wife. Member Dan O’Gorman acted as counsel, as did John Logan SC on a pro bono basis. Unfortunately, Mr M died two weeks after the hearing, and prior to judgement being delivered.

Many thanks to all the firms, barristers, individual lawyers and students who continue to give their time and energy to the project.

Contact Nitra Kidson – [rails@qpilch.org.au](mailto:rails@qpilch.org.au)

### **CONSUMER LAW ADVICE CLINIC**

The second Consumer Law Advice Clinic with students from the University of Queensland Law School commenced on 10 March 2005. As an induction to the clinic and QPILCH, the students were given an overview of the purpose of the clinic and its background, the structure of the course, an overview of QPILCH and its projects and clinics, clinic procedure, and the policies, procedures and systems at QPILCH. Training in consumer law was held at Clayton Utz on 17 March. The students attend the clinic

every Thursday for the next eight weeks of semester. Importantly, the students also survey clients for information that will potentially assist with policy development.

The assessment of the students involves:

- Clinic participation including case notes, advice and research - 50%
- Group project – 10%
- Research paper on a subject arising from the work of the clinic – 40%.

Last semester, the students prepared a brochure on Debtor Harassment and a fact sheet on Part IX Agreements for their group projects. These have been placed on the QPILCH website at [www.qpilch.org.au](http://www.qpilch.org.au).

The clinic has been busy with many requests for assistance from consumers. Since the clinic began in July 2004, there has been a significant increase in the volume of calls received. To date, there have been 76 clinic files opened. The clinic has received numerous requests for advice including bankruptcy, requests for assistance with respect to unsolicited goods, assistance in negotiating with credit providers and advice as to repossessions.

Many of the consumers who telephone the clinic for assistance lack a basic understanding of financial documents. As an example, we are assisting a consumer who did not understand the difference between a line of credit and a personal loan. As a result the consumer agreed to a line of a credit in 1984 and as she had only been paying the minimum payment every month, still owed the original amount that she thought she had borrowed as a personal loan. In effect, she has paid seven times what she originally borrowed and yet still owes the original amount. Whenever possible, the students are encouraged to provide general knowledge information to consumers to assist them with not only their current problems but also any future financial dealings.

From indications so far, the clinic will have another busy semester.

Contact Linda Macpherson – [consumer@qpilch.org.au](mailto:consumer@qpilch.org.au).

## **HOMELESS PERSONS' LEGAL CLINIC**

### **HPLC contributes over \$2 Million to Brisbane's Homeless**

A QPILCH press release prepared by Michael Carey, Homeless policy coordinator reveals some impressive statistics about our clinic. Since it began in 2002 HPLC has provided a very tangible, targeted and meaningful contribution to the community by:

- assisting over 500 Queenslanders experiencing homelessness;
- providing more than \$2 million worth of free legal services to some of Queensland's most vulnerable people; and
- contributing more than 10,000 hours of pro bono legal work via casework, community legal education and law reform activities for and on behalf of people experiencing homelessness.

This fantastic achievement would not have been possible without the ongoing dedication of HPLC's volunteers, the support of participating firms, host agencies and QPILCH. Congratulations to all involved.

The full text of the press release will be available on QPILCH's website shortly at [www.qpilch.org.au](http://www.qpilch.org.au).

We are also looking to open two more clinics in Brisbane and several in regional areas. More news on this in the near future.

### **National Meeting of Homeless Persons' Legal Clinics**

In November 2004 Sara Finch and Michael Carey attended the National Meeting of Homeless Persons' Legal Clinic Team Leaders and National Meeting of Homeless Persons Legal Clinic Coordinators in Melbourne.

The meetings provided a great opportunity to gain insight and understanding into how different projects operate in different states and how the state clinics can work together on a national level to address homelessness issues. The meetings pave the way for a national network of Homeless Persons' Legal Clinics and joint law reform submissions. The network will also provide an important platform for exposing the valuable contribution made by our clinics and volunteers in redressing homelessness.

### **Clinic News**

On a local front the HPLC clinics continue to see a steady flow of clients. Our newly instituted CLE program has been enthusiastically received by our volunteers and work continues towards establishing a volunteer precedent database and online intranet site.

Contact Vanessa O'Donnell – [hplc@qpilch.org.au](mailto:hplc@qpilch.org.au)

### **ADMINISTRATIVE LAW CLINIC**

The Administrative Law Clinic for semester 1 of 2005 is now in its final weeks. The clinic, run by 6 Bond University law students, has provided minor assistance in a range of matters from judicial review to guardianship and administration, social security and a prisoner's appeal. Of note, there seems to be an increasing need for assistance in relation to Guardianship and Administration Tribunal matters. One of the students' group projects this semester is preparation of a plain English guide to the Guardianship and Administration Tribunal which we hope to publish on our website later this year.

Contact Rebekah Leong – [adminlaw@qpilch.org.au](mailto:adminlaw@qpilch.org.au)

### **Did you know?**

There are over 30,000 practising lawyers in Australia in about 10,000 legal practices with a population to lawyer ration of about 600:1.

Small practices (fewer than 20 lawyers) account for 92% of all practices but only 44% of employment and 32% of operating profit in the sector. Firms employing more than 100 persons make up 1% of the sector but account for 30% of legal employment and 45% of operating profits. Australia has six of the world's largest firms (22 from US, nine from UK, one from Canada and three from the Continent).  
David Weisbrot "Taking Skills Seriously" AltLJ Vol 29:6 Dec 2004

### **REFERRALS**

#### **Discrimination referral**

McCullough Robertson Lawyers instructing Dan O'Gorman of Counsel appeared in the Federal Magistrates Court pro bono in a five day hearing assisting Access for All Alliance (Hervey Bay) Inc seeking disability access to community facilities in Hervey Bay.

The applicant organisation alleged indirect disability discrimination in the provision of services and access to community facilities by the respondent Council under ss6 and 23 of the *Disability Discrimination Act 1992* (Cth). The applicant sought an (1) accessible ramp and platform in a grassed area; (2) accessible path to picnic tables and usable tables in a foreshore park and (3) to use toilet facilities where wash basins are concealed from the public view.

The respondent maintained that there was no condition or requirement imposed upon persons that was unreasonable or with which people with disabilities could not comply and that the costs of altering the premises/facilities would impose unjustifiable financial hardship upon the Council.

Baumann FM adopted the approach of Madgwick J in *Clarke v Catholic Education Office* [2004] 202 ALR 340 on the question of 'reasonableness' for the purpose of s6 DDA:

- the test is objective – “less demanding than one of necessity but more demanding than a test of convenience”, and
- treated the Australian Standards and the Building Code of Australia under the DDA as a “minimum requirement which may not be enough, depending on the context of the case, to meet the legislative intent and objects of the DDA.”

Baumann FM noted that the financial circumstances of the respondent must be considered in the context of the DDA's objects – ‘the financial burden maybe justified’ citing *Francey v Hilton Hotels* (1997) EOC 92-903 at 77,453.

Baumann FM found the first two of the requirements or conditions to have been imposed by the respondent as ‘not unreasonable’, having regard to the cost of construction, sporadic use of the area, not all persons with mobility disabilities were excluded, among others.

However, in regard to the third requirement, it was found that justifications for the placement of the basins outside the toilets were ‘offset by the community expectation that persons with a disability should be entitled to complete a toileting regime in private.’

### **Immigration referral**

Mallesons Stephen Jaques' Brisbane office successfully challenged a decision by the Minister for Immigration and Multicultural and Indigenous Affairs to cancel a QPILCH referral client's permanent visa on character grounds. The client was facing deportation if the Minister's decision was valid.

The Minister's decision was challenged on two grounds. The first ground was that in making his decision the Minister failed to give adequate regard to the interests of the client's children. The second ground was that the client was not an alien for the purposes of the Constitution. Whilst the client had been born overseas, his father was an Australian citizen and the client had lived in Australia for over 23 years. Wilcox J of the Federal Court of Australia quashed the Minister's decision on the basis that the Minister failed to give adequate regard to the interests of the client's children. In doing so his Honour found that, despite his Australian parentage, the client was an alien for the purposes of the Constitution. This clarified an important issue regarding the scope of the aliens power left unresolved by the High Court of Australia in its decisions of *Shaw v Minister for Immigration* (2003) and *Singh v Minister for Immigration* (2004). The decision of Wilcox J may be found at [2005] FCA 119.

### **HOMELESSNESS POLICY PROJECT**

In the wave of hysteria that engulfed Brisbane over the issue of violence in the CBD, the *Summary Offences Act 2005* (SOA) was passed by the Queensland parliament on 28 February 2005. With the passage of the SOA it seems the opportunity to work for genuine reform of the regulation of public space has passed Queensland by.

The conflict between civil order and the rights of the public to occupy and use public space represents the very edge of public control in a civilised state. It is for this reason that we as a community must be extra vigilant to ensure that the system for dealing with these issues reflects a compassionate and sensible approach. Such an approach must identify the behaviour that is unacceptable and put in place systems which can prevent that behaviour from occurring. In this regard the SOA does not reflect contemporary community standards.

The SOA repealed the *Vagrants Gaming and Other Offences Act 1931* (VGO), which for 70 years in effect targeted and marginalised Queenslanders experiencing homelessness. The extent of the targeting was revealed last year in research

conducted by Tamara Walsh, then of QUT law school, in association with the HPLC. At the Brisbane Magistrates Court it was found:

- 60% of the people charged with public order offences were homeless or at risk of homelessness.
- 41% were Indigenous
- 39% were between 17 and 25

The passing of the SOA will likely continue these numbers.

The Minister responsible for the SOA has stated that the SOA reflects a change in the way public spaces are regulated in Queensland. Changes in language are not the same as changes in concepts. The underlying ethos of public order regulation in the SOA still reflects the 19<sup>th</sup> Century thinking that underpinned the VGO. Almost all of the offences in the SOA have simply been transferred from the VGO. Included in this list are the offences of 'begging', 'wilful exposure' and 'public nuisance.'

At its core the SOA will only increase the likelihood of the homeless filling the net and do little to prevent the conduct that the SOA seeks to outlaw. It continues to mystify that the penniless and homeless are fined for breach of these laws. The SOA is yet another hurdle before people who are caught in the cycle of homelessness.

Contact Michael Carey – [homelesspolicy@qpilch.org.au](mailto:homelesspolicy@qpilch.org.au)

### **Did you know?**

#### **Review of Corrective Services Legislation**

Community groups and interested individuals have been invited to make submissions on the review of the Corrective Services Act 2000. Thirteen consultation papers were released between September and November 2004. For more information, visit [www.dcs.qld.gov.au/legislation](http://www.dcs.qld.gov.au/legislation).

### **OUR THANKS**

We thank **Jupiters Casino Benefit Fund** for assistance to complete and publish a number of papers, including those outlined above. Several more will be completed in the next few months and reported in the next newsletter.

We thank **Betta Electrical** for donating two computers which we are using for our consumer and administrative law clinics. We also thank **Clayton Utz** for donating six computers to upgrade the older computers it had previously given QPILCH for the student workstations.

**Legal Aid Queensland** has kindly donated two copies of the new edition of the *Duty Lawyer Handbook* to assist the work of the homeless persons' legal clinic.

### **STUDENTS**

A new group of volunteer students has commenced at QPILCH for the two available days in semester 1, 2005. We thank all the students who volunteer for their valued assistance.

The fifth Griffith Law School "Public Interest Lawyering" course, and the second Consumer Law Advice Clinic with the University of Queensland Law School and Bond University's Administrative Law Clinic have commenced. These courses are very successful, providing a valuable service to the community and we thank the students involved.

We are again hosting a student from the QUT Intern program in first semester. We thank student Justin Hine for his enthusiastic contribution.

A student from the Griffith University PLT program commences in April. Student, now solicitor Andrew Rees made an invaluable contribution throughout his placement

late last year and then continued as a volunteer over Christmas until his recent appointment at Blake Dawson Waldron.

## **SECONDMENTS AND STAFF MOVEMENTS**

After McCullough Robertson secondee Michael Carey ended his secondment in June 2004, we have not been successful in filling the general assessment secondment position. This is a critical position that enables QPILCH to assess the growing number of applications for assistance. We invite firms to consider seconding a solicitor for a period of their choice. The position gives junior staff varied and useful experience.

Vanessa O'Donnell replaced Sara Finch as the coordinator of the HPLC, continuing the generous secondment for the position provided by Minter Ellison Lawyers. Vanessa will coordinate the clinics until August 2005.

Linda Macpherson, Clayton Utz senior solicitor has been seconded for another six months to coordinate the Consumer Law Advice Clinic until June 2005. We must find a replacement for Linda in second semester 2005 to continue this vital service and student clinic.

We thank member firms and their staff for this continuing assistance.

### **Did you know?**

#### **Community and Personal Histories Branch, Dept of Aboriginal and Torres Strait Islander Policy**

Established fourteen years ago, this branch helps Aboriginal and Torres Strait Islander Queenslanders reconnect with their past and in some cases contact their families of origin. Staff of the Branch have completed indexing correspondence created by the Home Secretary's Office between 1896 and 1930. This correspondence includes references to thousands of Aboriginal and Torres Strait Islander people and will provide many families with more information about their history.

## **RRR PROJECT**

Rochelle Spedding's term as coordinator of this project finished in January. In the short time allotted for the project, Rochelle commenced a trial project, introducing Atherton firm Suzette Coates and Associates with Brisbane firm Blake Dawson Waldron. The aim of this pilot partnership is to draw the resources from the large city firm to assist a small firm to continue or promote pro bono work in rural areas. We will report on the outcomes from this trial in a later newsletter. Rochelle also made links between city firms and regional community legal services with a view to providing direct assistance from Brisbane to local communities.

Contact Tony Woodyatt – [contact@qpilch.org.au](mailto:contact@qpilch.org.au)

## **2004-05 MANAGEMENT COMMITTEE**

At the annual general meeting on 11 November 2004, the following committee was elected:

Peter Rosengren, President – Partner, Deacons  
 Hugh Scott-Mackenzie, Vice-President – Barrister  
 Simon Cleary, Secretary/Treasurer – Solicitor, Legal Aid Queensland  
 Lucy Bretherton – Special Counsel, Blake Dawson Waldron  
 Andrew Buchanan – Partner, Allens Arthur Robinson  
 Glenn Ferguson – President, Queensland Law Society Incorporated  
 Professor Jeff Giddings – Griffith University Law School  
 Dan O'Connor – Chief Executive, Bar Association of Queensland Inc

Robert Reed – Senior Associate, Minter Ellison  
 Joanne Rennick – Partner, MurphySchmidt  
 John Stannard – Queensland Association of Independent Legal Services Inc  
 Emma Robinson – solicitor, McCullough Robertson and Robyn Wilkinson –  
 solicitor, Legal Aid Queensland were coopted to the committee.

### **Subscription and feedback**

To subscribe (free) or unsubscribe to “In the Public Interest”, the newsletter of the Queensland Public Interest Law Clearing House Incorporated, or for more information about any item in this newsletter, please send an e-mail to [contact@qpilch.org.au](mailto:contact@qpilch.org.au) or contact us by phone or fax (see below).

**Firms** Allens Arthur Robinson, Ash Solicitors, Bain Gasteen, Blake Dawson Waldron, Brian Bartley and Associates, Clayton Utz, Corrs Chambers Westgarth, Deacons, Freehills, Hunt & Hunt, Macrossans Lawyers, Mallesons Stephen Jaques, McCullough Robertson, McInnes Wilson, Minter Ellison, MurphySchmidt, Phillips Fox, Quinn and Scattini, Shine Roche McGowan, Walkers Solicitors (Toowoomba) **Barristers** Nicholas Andreatidis, Franc Asis, Ken Barlow, John Bond SC, Jacoba Brasch, Judy Brien, Gary Coveney, Jean Dalton, Dr Gillian Dempsey, Eric Howell, Stephen Keim, Liam Kelly, Carla Klease, Peter Lyons QC, Ross Mack, Damien O’Brien, Dan O’Gorman, Darryl Rangiah, Hugh Scott-Mackenzie, David Thomae, Michael Wilson **Specified members** Bar Association of Queensland Inc, Legal Aid Queensland, Queensland Association of Independent Legal Services Inc, Queensland Law Society Incorporated **Associate members** BDO Kendalls, Chartered Accountants, Bond University Law School, Griffith University Law School, Queensland University of Technology Law School, TC Beirne School of Law (UQ) **Government legal unit members** Australian Competition and Consumer Commission **Corporate legal unit members** Energex Limited