

CLSD e-update January 2013

Welcome back everyone! It's only February and it already feels like June. The CLSD meetings commence this week – and we're looking forward to working in collaboration with our partners, and supporting new projects in regional NSW.

There is a lot going on in the sector at the moment, with many Parliamentary inquiries to respond to. See below for more details. Your perspectives from regional NSW always add value, scope and interest to the issues. The CLSD Program Unit is happy to hear from you if you'd like to put in your two-bob's worth. And please come to the CLSD meetings in your region and take part in the discussions, projects and initiatives of our regional partners.

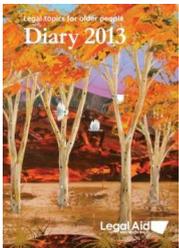
You can contact the CLSD Program Unit on (02) 9219 5102, or jenny.lovric@legalaid.nsw.gov.au.

CLSD PROJECTS

Current workshops running through CLSD

- Taree/Forster CLSD Planning Day (March 2013)
- Family Law training in Taree (March 2013)
- Social Security and Child Protection training on the South Coast (March 2013)
- Utilities and financial hardship workshops in Taree and Kempsey (Feb 2013)
- Bourke and Brewarrina Law Week joint-service outreach (May 2013)

Older Person's Legal Diary 2013 – out the door!



The Older Person's Legal Diary 2013 has been released and distributed. You can contact your local CLSD Regional Coordinator to see if they have any left. Please note that Legal Aid NSW does not have any copies remaining.

Thank you to the Office for the Ageing and the Aged Care Rights Service and Legal Aid NSW for their financial support. And of course huge thanks to Lauren Finestone from the Older Person's Legal & Education Unit at Legal Aid NSW for making this possible at all.

LEGAL AID PUBLICATIONS & WORKSHOPS

Bushfires, Insurance and you: a guide to getting your insurance claim paid

New updated factsheet on fires and insurance at

<http://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/bushfires,-insurance-and-you>

Changes to Fair Work Act – New Factsheet



Significant changes to the Fair Work Act took effect from 1 January 2013; in particular, changes to the limitation period for legal proceedings commenced in relation to dismissals. The Fair Work Act applies to the employment of all private sector workers in NSW. The changes include:

- renaming Fair Work Australia as the Fair Work Commission,
- increasing the time limit for filing an **unfair dismissal claim from 14 days to 21 days** from the time of dismissal;
- reducing the time limit for filing a **'General Protections' dismissal claim from 60 days to 21 days** from the time of dismissal. ('General Protections' covers discrimination, absence on sick leave, sham contracting, other workplace and industrial rights);

- new costs provisions (although the legislation maintains the usual rule that each party pays their own costs);
- new additional powers for the Fair Work Commission to dismiss unfair dismissal proceedings where an employee applicant fails to attend, comply with directions, or discontinue after a settlement agreement has concluded;
- requiring terms in Modern Awards as part of the introduction of the "My Super" reforms. The new terms will require employers to contribute superannuation for employees and use low fee default super funds where an employee has not chosen a fund. The changes in relation to super will not commence before 1 January 2014.

An updated employment law factsheet outlining these changes is available at

<http://laxextra.legalaid.nsw.gov.au/PublicationsResourcesService/PublicationImprints/Files/523.pdf>

Aboriginal people and family law



This brochure outlines how Legal aid NSW can help Aboriginal people work out their family law problems through early intervention.

This brochure has been developed by the Early Intervention Unit (EIU), a statewide specialist service of Legal Aid NSW. EIU provides free family law services in courts and community organisations in a number of locations around NSW. The service assists people to resolve their family law issues as early as possible without the need to go through lengthy litigation. The brochure also provides contact details for Aboriginal Field Officers employed by Legal Aid NSW. See the brochure at

<http://laxextra.legalaid.nsw.gov.au/PublicationsResourcesService/PublicationImprints/Files/511.pdf>

New workshops for community workers

Legal Aid NSW runs free workshops for community sector workers across NSW. A number of new workshops are being offered in the February to June 2013 calendar. New workshops include:

- *Family law: What is Best for Kids* - This workshop covers how to reach agreements after separation about children and what happens in the family law courts in children's matters.
- *What is civil law?* - This workshop provides an overview of different types of civil law problems in everyday life and referral pathways.

A full list of workshop topics with dates, locations and registration details is available on the Legal Aid NSW website at <http://www.legalaid.nsw.gov.au/what-we-do/workshops/law-for-community-workers>

SECTOR NEWS

Make a submission to the Centrepay Review

As noted in the last CLSD e-update, the Federal Minister for Human Services, Senator Kim Carr, has announced an independent review into Centrepay. This follows the release of a Report by Financial Counselling Australia (FCA) titled "Centrepay: A good idea that has lost its way". The report called for a review of Centrepay to identify its core purpose and to assess the criteria and assessment processes for granting business access to the system.

The Centrepay review will:

- examine the controls, risk management and administrative processes in place to ensure the Centrepay service is used in a way that protects people's entitlements
- examine the approaches taken to ensure Centrepay is used to distribute money to legitimate organisations providing services to people on a fair and reasonable basis, and the associated contract management approaches used
- provide suggestions about which businesses and services should have access to the Centrepay service, and services that might be excluded
- look at ways in which Centrepay can be used to build the financial capability of its customers and to assist them to manage their money in the best way possible
- examine the complaints and feedback mechanisms associated with Centrepay to ensure that issues are resolved in a fair way
- examine how Centrepay relates to other financial products and services available to the Department's customers, and

- suggest future opportunities and directions for the Centrepay service.

The review will be conducted with appropriate reference to existing and related reviews conducted by other parties. The reviewer will deliver a report to the Secretary of the Department of Human Services, outlining key findings and related recommendations for improvement.

The FCA report outlines some serious concerns about the operation of Centrepay, including:

- Access to Centrepay by rental and lease companies. These contracts end up costing consumers at least two to three times the retail cost of the goods. Many consumers would have been better off accessing a community-based No Interest Loan;
- Unconscionable selling practices by some companies, including targeting vulnerable Indigenous consumers, selling door-to-door (in breach of Centrepay contracts that prohibit this form of sale). There are cases where goods sold in this way would cost consumers more than eight times the retail price;
- Consumers continuing to pay for goods after the contract term has ended;
- Limited checks and balances about the affordability of Centrepay deductions, with individuals able to allocate up to 100% of benefits to Centrepay;
- The ability of Centrepay to adequately monitor and enforce compliance of businesses using the system.

See <http://www.financialcounsellingaustralia.org.au/Corporate/Home> for the FCA Report.

Input into the Review is being sought from relevant government agencies, welfare and financial peak bodies, and community agencies as appropriate. Specifically the review should consult people who have used Centrepay. The input of companies, service providers and third party organisations will also be important. It will be necessary to consult across geographically remote locations.

Anyone can make a submission by 15 February 2012 (note that this date will be extended by contacting the review team). It would be great if CLSD partners could make a submission to the Review – even a brief one. We are aware that in many cases, regional communities are disproportionately affected by some of the unscrupulous practices of traders in remote communities, where there is no visible competition or available source of assistance.

Submissions can be emailed to centrepay.review@humanservices.gov.au or posted to:

Centrepay Review Team
PO Box 7788
Canberra BC ACT 2610

Alternatively, you can call me with any case studies or issues which Legal Aid NSW/CLSD Program Unit may add to a submission. Please contact Jenny at the CLSD Program Unit on jenny.lovric@legalaid.nsw.gov.au or (02) 9219 5102 if you are interested in having your say.

ASIC takes action against ZAAM rentals, cancelling its licence and banning its directors

ASIC has cancelled the credit licence of Zaam Rentals, a Victoria-based household goods rental company which targeted poorer areas in Mildura and surrounding areas in NSW, including Indigenous communities.

ASIC has also taken action against its directors, banning them from credit activities for 6 years and 4 years respectively. An ASIC investigation found between 4 December 2010 and 14 September 2011 Zaam Rentals did not comply with responsible lending obligations set out in the *National Consumer Credit Protection Act 2009* (National Credit Act). Specifically, ASIC found Zaam Rentals:

- did not make reasonable inquiries about the requirements and objectives of those entering into the contracts
- did not make reasonable inquiries about their financial situation
- did not take reasonable steps to verify their financial situation
- did not give consumers a credit guide, and
- did not make the necessary disclosures in the rental contract

'In deliberately targeting vulnerable people who had limited understanding of the contracts they were signing, and little capacity to meet repayments, Zaaam Rentals and its directors have acted unconscionably,' ASIC Commissioner Peter Kell said.

'I encourage consumers who have complaints about their dealings with Zaaam Rentals to contact the Financial Ombudsman Service on 1300 780 808. Consumers should be aware that any complaint must be lodged while Zaaam Rentals is a member of this service. ASIC has required Zaaam Rentals to maintain its membership of an external dispute resolution service for the next 12 months.'

BACKGROUND

The National Credit Act requires credit licensees to meet responsible lending conduct obligations. The key responsible lending obligation is that credit licensees must not suggest, assist with or provide a credit product that is unsuitable for a consumer. Before a credit licensee suggests, assists with, or provides a new credit contract or lease to a consumer, the credit licensee must:

- make reasonable inquiries of the consumer about their requirements and objectives in relation to the credit contract
- take reasonable steps to verify the consumer's financial situation
- based upon these inquiries, assess whether the credit product is unsuitable for the consumer and only proceed if the credit product is not unsuitable, and
- give the consumer a copy of the assessment if requested

A contract will be unsuitable if the consumer would be unable to repay it without substantial hardship or it will not meet the consumer's requirements or objectives. The requirements also apply where the credit limit on an existing contract is being increased.

Zaaam Rentals' credit licence is cancelled, however they must maintain an internal dispute resolution procedure, and remain a member of an approved external dispute resolution scheme. They also need to have adequate compensation arrangements in accordance with the National Credit Act until 15 January 2014.

"Lo-Doc" Loans warning - Banking and Finance Consumers Support Association

Speaking of matters in relation to debt, the Financial Counsellors Association of Australia reports that recently, many financial counsellors have been contacted by an organisation called the Banking and Finance Consumers Support Association (BFCSA). According to the FCA:

"BFCSA has been encouraging financial counsellors to refer clients to them who have a "lo doc" or "no doc" loan and where there is an allegation that there may have been some fraud involved in that loan.

Financial counsellors must always act in the best interests of their client, including in making referrals. When considering making a referral, it is important to be clear about the services offered by the other organisation.

When faced with a client with a mortgage dispute, the usual practice would be for the financial counsellor to continue to assist the client where the financial counsellor is able to, given the complexity of the matter. For example, it may be appropriate to lodge many of these cases with the relevant EDR scheme (either FOS or COSL). If the individual requires legal assistance, you should contact specialist consumer credit lawyers (at a community legal centre, legal aid etc). This is particularly important where fraud is being alleged (for example if the client signed a false loan application form or there are allegations those documents were subsequently altered).

If there is evidence of fraud by a broker or lender, it may also be appropriate to lodge a complaint with ASIC. ASIC has the power to investigate this type of conduct. If the client is feeling aggrieved by the conduct of the lender or broker, a client may wish to talk to the media or get involved in some other type of campaign action, such as with the BFCSA. We'd encourage you to discuss this with your financial counselling and legal centre colleagues.

We are aware that some mortgage brokers have acted very badly, and that some lenders appear to have "closed their eyes" to dodgy loan forms. However, we are not convinced there is a widespread conspiracy involving the banks and regulators. When dealing with a client with a mortgage dispute, financial counsellors should continue to assist their clients consistent with their training and with the Financial Counselling Code of Ethical Practice".

NSW Domestic Violence Justice Strategy

The NSW Domestic Violence Justice Strategy (the Strategy) is an operational framework that outlines the approaches and standards justice agencies in NSW will adopt to improve the criminal justice system's response to domestic violence. Its fundamental objectives are to make victims safer, hold perpetrators accountable and prevent domestic violence from reoccurring.

The strategy commits all justice agencies and victims support services to work together to provide an effective and integrated response. It sets out six justice outcomes agencies will aspire to achieve to ensure victims and perpetrators experience high standards of service across the NSW justice system.

The Strategy also identifies areas where reform is needed to ensure effective implementation of the Strategy. Throughout its term, these key areas will be addressed through research, and policy and legislative reform.

Read the full version of the Domestic Violence Justice Strategy at

http://www.domesticviolence.lawlink.nsw.gov.au/domesticviolence/dvjustice_strategy.html

Inquiry into Fetal Alcohol Spectrum Disorders (FASD) - Report released

The House of Representatives Standing Committee on Social Policy and Legal Affairs were asked to inquire into and report on developing a national approach to the prevention, intervention and management of FASD in Australia, with particular reference to:

1. Prevention strategies—including education campaigns and consideration of options such as product warnings and other mechanisms to raise awareness of the harmful nature of alcohol consumption during pregnancy,
2. Intervention needs—including FASD diagnostic tools for health and other professionals, and the early intervention therapies aimed at minimising the impact of FASD on affected individuals, and
3. Management issues—including access to appropriate community care and support services across education, health, community services, employment and criminal justice sectors for the communities, families and individuals impacted by FASD.

The CLSD Program Unit and the Children's Legal Service at Legal Aid NSW and Aboriginal Legal Service (ACT/NSW) Ltd. made a joint submission to the Inquiry. We made this on the basis of evidence and experience that our services have working with young people who are often caught up in the criminal justice system on the basis of behavioural issues rather than criminal culpability. It is our experience, especially in regional areas, that the lack of diagnosis, and shortage of appropriate support services for diversions from the criminal justice system is a contributor to the high numbers of young people in detention.

The Committee found, amongst other things, that Australia is lagging behind when it comes to standardised FASD diagnostic criteria and prevalence data. The Committee heard that the roll-out of a nationally approved diagnostic tool must be expedited so that in cases where FASD has not been prevented, it can be diagnosed early and accurately. As early intervention is critical in minimising the impact of FASD in later life, Australia needs diagnostic tools and services as well as the health sector capacity to provide them.

It also recommended that the Commonwealth Government include Fetal Alcohol Spectrum Disorders in the List of Recognised Disabilities and the Better Start for Children with a Disability Initiative (Rec 18); and that the Commonwealth Government recognise that people with Fetal Alcohol Spectrum Disorders have, amongst other disabilities, a cognitive impairment and therefore amend the eligibility criteria to enable access to support services and diversionary laws (Rec 19).

One of the tasks for us in the justice system is to raise awareness in police, solicitors, support workers and the judiciary of the existence of FASD and, with FASD identified as a disability, the need to use diversionary rather than incarceration options when charging and sentencing. A pressing and related issue, especially in remote areas, is the lack of diversionary/treatment options.

To view the Report, go to

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/fasd/report.htm

Care and Protection discussion paper

The Minister for Community Services has released a discussion paper on the Care and Protection system. The Report notes that as at 31 June 2011, 17,896 children and young persons were in out of home care in NSW. The changes proposed in the Report are far reaching and will have an extraordinary impact on our services' client base. The discussion paper can be found at the attached link:

http://www.community.nsw.gov.au/docswr/assets/main/lib100047/cp_reforms_discussion_paper.pdf

Responses to the discussion paper are due by **8 March 2013**.

Law and Justice Foundation of NSW - General Grants 2013 – Round 1



LAW AND JUSTICE
FOUNDATION
OF NEW
SOUTH WALES

Applications are now open for the Law and Justice Foundation of NSW Grants Program, which supports community projects that improve access to justice, particularly for socially and economically disadvantaged people. This year the Foundation is looking for applications for projects from which lessons will be learned that contribute to identifying effective reforms, initiatives and programs to address legal need.

The next round of applications for general grants for up to \$50,000 will close on 31 March 2013.

The Foundation has developed a Grant Applicants Kit which can be downloaded here:

<http://www.lawfoundation.net.au/grants/apply>. The Kit contains all the information intending applicants need to know, including information on how to apply, a list of what the Foundation doesn't fund and the grants criteria. Intending applicants do need to discuss their idea for a project with Jane Kenny, the Grants and Legal Information Manager, ideally as soon as possible and at least six weeks before applications close. Jane can be contacted on (02) 8227 3210 or by email at grants@lawfoundation.net.au.

To find out more about previously awarded grants, and to see examples of grant funded projects, visit www.lawfoundation.net.au/grants.

INFORMATION & RESOURCES

Indigenous Community Links

Indigenous Community Links (formerly Community Support Service) has operated since July 2009. It is designed to support Indigenous community members and their families, by providing links and referrals to a range of mainstream and Indigenous services, such as welfare and social support, employment, family violence, health (including drug and alcohol services), legal, child care and housing. Services also encourage the development and fostering of relationships with other service providers by promoting access and pathways to their services, including through the provision of Internet access.

Indigenous Community Links operates through a network of 65 not-for-profit organisations, in 88 locations/clusters, representing more than 140 Indigenous communities across Australia.

According to FAHCSIA, the aim of Indigenous Community Links is to provide better linkages between Indigenous people and community services. It helps in closing the gap between Indigenous and non-Indigenous Australians by facilitating access to community services and information. Indigenous Community Links delivers:

- outcomes through supported referrals and advocacy for Indigenous clients;
- Information and referrals for Indigenous clients to service programs across a range of mainstream and Indigenous specific services, e.g. legal, funeral, health, family violence, safe houses, drug and alcohol;
- Individual capacity and skills to access services and their related outcomes, e.g. employment or training; and
- Greater use of the Internet to access information.

Who is delivering the service and where?

65 organisations are being funded to deliver Indigenous Community Links across 88 locations/clusters.

Contacts/providers in NSW can be found at <http://www.fahcsia.gov.au/our-responsibilities/indigenous-australians/programs-services/communities-regions/indigenous-community-links-icl/indigenous-community-links-icl-provider-contact-details#nsw>

Resolving small business and Retail Tenancy disputes - Office of Small Business Commissioner



Services often get asked to assist people in small business. Often, this is outside the guidelines or capacity of NGO and other services. We've heard that people can get low-cost assistance resolving disputes from the Office of Small Business Commissioner. See below from their website:

"When entering into a business deal or leasing retail or commercial property, problems may arise. Commercial disputes are not only frustrating and time consuming, but they can quickly become very expensive. The costs aren't only legal. Diverting your efforts away from running your business and adding stress to your life also take their toll.

Many disputes can be resolved by talking to the other side about the problem and agreeing to make some changes. Unfortunately, there are times when agreeing to solve a problem is just not possible.

The Office of Small Business Commissioner is your first stop if you have a commercial dispute. Our role is to help you find a solution, ideally through the use of negotiation, information and/or mediation, rather than litigation. No matter how serious you believe the dispute is, there are some steps you must go through before you end up in court. This helps you find a solution as early as possible in the process, while helping to keep your costs and stress levels down".

Contact details: Tel: 1300 795 534; (02) 8222 4800; Email: we.assist@smallbusiness.nsw.gov.au. For more information, see the website at: <http://www.smallbusiness.nsw.gov.au/dispute-resolution>

WDO scheme in NSW correctional centres

Correctional centres in NSW are now implementing the Work and Development Order (WDO) scheme. The primary aim of the WDO scheme is to provide a non-monetary way for people to reduce their fine debt. As well, the WDO scheme will strengthen engagement with existing services and support completion of relevant programs.

Inmates who can participate in the WDO scheme must have a fine debt registered with the NSW State Debt Recovery Office and be able to prove they have at least one of the following criteria:

- A mental illness
- An intellectual disability or cognitive impairment
- A serious addiction to drugs, alcohol or volatile substances

For those inmates who meet this criterion, NSW correctional centres are authorised to count satisfactorily participation in drug and alcohol treatments; financial or other counselling; and educational/vocational or life skills courses towards meeting their WDO activities requirements.

Further information will be sent in the next e-update.