

COMMUNITY NEWSLETTER

October–December 2010

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Kia ora koutou,

Somehow we find ourselves in December. How did we get here? Where are we going? Lucky we have our Community Newsletter to remind us and to keep us on track.

Suitcase Clinics: New time, new place, but the same friendly faces

Our lawyers are still visiting Wellington's southern suburbs every Wednesday. However, we have changed the service hours to 11am-1pm, so that working people can more easily attend in their lunch breaks. We have also changed the Miramar location: we're now operating out of the Miramar Library. See the enclosed flyer for more information.

Well-fed on Law for Lunch

The October 2010 series of Law for Lunch, run hand-in-hand with the Wellington City Library, was our most successful series yet. A total of 280 people attended four sessions, and the ground floor of the library was overrun with people eager to learn about very different topics, from the Mental Health Act to bullying in the workplace, enduring powers of attorney and the role of the Banking Ombudsman (with Ombudsman Deborah Battell). We extend our heartfelt thanks to the team at the Wellington City Library, who do such a wonderful job publicising and event-managing the series, and who make us feel so welcome. We also want to thank Case Consulting and the crew at Like Minds Like Ours, who put in a huge effort building the session on the Mental Health Act, which was delivered by John Edwards, one of Wellington's District Inspectors for Mental Health. Another popular seminar was the exploration of workplace bullying: over 100 people attended, and judging by subsequent enquiries we have received, it seems that the issue concerns a significant number of Wellington's workers. Read Colin Ross's article on page 3 for further information.

Friday Lock-Downs: Are you ready?

The Wellington Community Law Centre has initiated a major law reform project in the area of prisons. We are concerned about New Zealand's growing rate of incarceration and want to see less crime, fewer victims of crime and fewer people in prison. To this end, we have established a "Friday Lockdown", 3-6pm each Friday, to enable interested people to spend some quality time working towards these goals, unhindered by other, daily pressures. For the low-down on the lockdown (or if you would like to weekly updates on this work), email us: alex@wclc.org.nz.

Enjoy the Christmas break, be safe, and don't break the law (unless it's one that should be broken...). See you all in 2011, hopefully at our Community Planning Day. See the details for this event just over the page.



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Dates to Diary

Christmas Shut Down

Free Legal Advice Sessions

Last session 22 December, 5.30-7pm
First session 17 January, 12.30-1.30pm

Refugee and Immigration

Legal Advice Service (RILAS)

Last session 21 December, 5.30-7pm
First session 18 January, 5.30-7pm

Legal Suitcase Clinics

Last session 22 December
(Kilbirnie, 11am-1pm)
First session 19 January
(Miramar, 11am-1pm)

Outreach at The Clubhouse

Last session 30 November, 12-1pm
First session 25 January, 12-1pm

Parents Legal Information Line (PLINFO)

Closes 22 December
Opens 17 January

Friday Lock-Down

Last session 17 December
First session 21 January

Community Planning Day

Tuesday 22 February 2011

10am-1pm

Delicious lunch provided!

We invite all members, community groups and interested individuals to attend.

We will be reporting back on progress made since our February 2010 Community Planning Day.

In 2010, our strategic focus was on Legal Information Resources. In 2011, our strategic focus will be Community Legal Education.

Come along and have your say!

Please RSVP to alex@wclc.org.nz

A policeman spots a woman driving and knitting at the same time. Driving up beside her, he shouts out the window... "Pull over!"

"No," she shouts back, "a pair of socks!"

Charitable Status: A New Form of Social Control?

Nicola M Drayton-Glesti, Community Lawyer

We at the Wellington Community Law Centre (WCLC) recently held a legal seminar on "Getting and Keeping Charitable Status". Among other practical and legal tips for community groups, the seminar explained the process for applying for charitable status, and the significant benefits of achieving charitable status. The seminar also examined the definition of charitable purpose, which, according to section 5(1) of the Charities Act 2005, "includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community."

The Charities Commission website lists key statistics on the subject: in March 2010, the total number of registered charities in New Zealand was 24,814; since July 2007, the Commission has declined approximately 94 applications for registration; and since August 2009, 20 charities have been deregistered. Six of those charities appealed the deregistration to the High Court. All appeals to date have failed.

At the seminar, Trevor Garrett, CEO of the Charities Commission, commented on two of the Commission's recent deregistration decisions. The Disabled Children's Trust was deregistered in June 2010 because: "The Trust and its Trustee have failed to keep true, fair and proper accounts as required by common law" and "this amounts to serious wrongdoing". The trust was deregistered, and the sole trustee (by law a registered charity must have at least two trustees), was disqualified from being an officer of a charitable entity for three years.

The National Council of Women (NCW) was deregistered by the Charities Commission in July 2010. Trevor indicated that the stated purposes of the NCW were charitable, including serving women, researching their needs, engaging in education for women and redistributing information. However, after researching the NCW website and considering submissions from the NCW, he concluded that the main purpose of the NCW was to change the law and influence policy and decisions made by central government. Examples of such activity included NCW submissions on the banning of tobacco displays; the Misuse of Drugs Act; victims of crime; and retirement income policy. Trevor suggested that political advocacy to further a charitable purpose is within the definition, but not if political advocacy is the main purpose of the group. In the case of the NCW, the Commission's conclusion was that although some of the group's activities were charitable, their main purpose was changing law and policy, and therefore they no longer had an exclusively charitable purpose.

All participants at the seminar could understand that the Disabled Children's Trust was deregistered due to extreme financial irregularities. However, many participants struggled to understand the NCW decision. Trevor was pushed to unpack the definition of advocacy and political purpose, to give further guidance to community groups. The guidance Trevor was able to give did not go beyond what is already available on the Commission's website. This means that it is still difficult for community groups to understand the extent of political activity allowed before drawing the Commission's attention. The Commission's website confirms that advocacy for an individual (for example, to assist them to access entitlements) is within the definition of charitable purpose. At the other end of the scale, excessive lobbying for law and policy changes is outside the charitable definition. The question is: where does the Commission draw the line? How much is too much?

Charitable status is important for most community groups. It allows groups exemptions from income tax, and makes funding applications easier and greatly increases their chances of success. Losing charitable status is very serious and can in some circumstances mean the end of the community group. Traditionally, community groups have been direct and outspoken in representing the concerns of their communities. Increasingly, they are reconsidering their time-honoured advocacy roles, fearing that their charitable status will be removed.

In this regard, the Charities Commission may be exerting informal social control over community groups: if a group undertakes too much law reform or political advocacy, their charitable status could be removed. This makes community groups' existence extremely fragile, and is very concerning: the very important "grassroots" voices in our communities may slowly be silenced. We do not know how many times a group can write submissions on proposed law

changes, appear in front of a Select Committee of Parliament, participate in protest meetings or write letters to the newspaper before their charitable status becomes endangered.

Many are now calling for a review of the Charities Act to establish a more modern definition of the word “charitable.” A review had been set for 2012, but has now been deferred until 2015. International comparisons may be useful here. In 2006, the Australian Tax Office (ATO) removed the charitable status of a small organisation called Aid/Watch, which was set up to monitor, research and report on the Australian Government’s overseas aid programme. Aid/Watch had specifically criticised the government’s spending of the Tsunami Aid Fund. They lost charitable status because of their “political activities”. Very recently, in December 2010, the High Court of Australia confirmed that Aid/Watch is in fact entitled to charitable status, because:

1. The distinction between politics and charity work is no longer clear. Modern charities are expected to “have a view” on government policy and write submissions etc.
2. Agitation for legislative and political change has a long history in Australian democracy and is reflected in the Australian constitution. Ignoring this could restrict the “freedom of speech” of charitable organisations.

The High Court concluded that “public debate by lawful means is beneficial to the community”. This decision lends weight to the early review here of the term “charitable purpose”, and gives clear guidance of what “charity” could mean in modern New Zealand society. How many groups will still be freely advocating for their communities in 2015, without the fear of losing their charitable status? Are we in danger of losing a vital piece of our democracy?

Boss a Bully? An Update on Workplace Bullying

Colin Ross, Community Lawyer

How serious is workplace bullying and why is it such a hot topic? A recent survey found that one in five New Zealand workers had at some stage been the victim of workplace bullying. Significantly, the survey identified that 25 per cent of victims and 20 per cent of witnesses of bullying left the organisation rather than confront the problem.

As many attendees at our recent Law for Lunch seminar commented, workplace bullying can be extremely subtle, insidious and persistent. It results in humiliation and distress for victims, and may interfere with their work performance. It includes a staggering range of behaviour, such as the phenomenon of ‘mobbing’, when workers gang up on managers or fellow employees. Perpetrators attempt to gain power over co-workers who threaten their dominance. Bullies create a dysfunctional work environment: to survive, co-workers are drawn into a vortex of collusion and manipulation. Bullies need cohorts. Cohorts cooperate with the knowledge that they are one step away from becoming a victim themselves. In many cases, bullying-type behaviours remain hidden, and victims would rather resign than confront the perpetrator.

There is currently no legislative definition of workplace bullying. Under Section 6 of the Health and Safety in Employment Act 1992, an employer is required to take all practicable steps to ensure the safety of employees while at work, including protection from both physical and psychological harm.

Recent cases before the Employment Relations Authority (ERA) have supported the decisions of employers who have dismissed bullying employees. However, the ERA has also determined that strict or hard management does not constitute bullying. For example, an employee who is undergoing performance management that is being conducted in a fair and reasonable manner, would not be able to make a claim of bullying. In some cases, the employee has been found to be overly sensitive to behaviour that falls well within the range of what

could be expected in a normal workplace.

In a widely publicised case, a manager at The Warehouse complained about her dismissal after her employer found that she had been bullying co-workers. Four staff members had complained that they had been subject to or had witnessed bullying behaviour by the manager, including talking down to people, intimidating and publicly humiliating them. Significantly, none of the complainants was willing to confront her directly and only reported the behaviour to senior management while the manager was on leave. All four staff members eventually resigned. The ERA concluded that the manager’s behaviour was a risk to the health and safety of other employees. Additionally, the employer had followed a fair and proper procedure and was justified in its decision to dismiss her.

Does New Zealand need a legislative definition of workplace bullying? Obviously, bullying behaviour is not restricted to the workplace, but is a major issue throughout society, including in families, schools, educational institutions and resthomes (from the cradle to the grave). Bullies are finding new ways to perpetrate their behaviour by using new technology (text bullying is a clear example). Any legislative definition of workplace bullying would have to take a relatively narrow view of a behaviour that features through all levels of society. We would suggest that, as more and more cases come before the courts and the ERA, judicial interpretation of bullying will become clearer, and may prove to be more flexible than any legislative definition.

Regardless, eliminating a bullying culture within an organisation involves a strong commitment at all levels. Organisations need good policy, an effective complaints procedure, leadership role modelling, support for victims of workplace bullying, and workplace education. In the meantime, websites such as www.bullyonline.org/workbully provide valuable information and include steps that employees can take to ensure they don’t become victims of this scourge.

The Law Reform Pipeline

Government inquiries or Law Commission research. Legislation which is proposed, in the process of being passed, or has recently been passed by Parliament. WCLC submissions marked *. Contact us if you would like help preparing a submission of your own. A complete list of Bills, Select Committee reports and submission deadlines is at www.parliament.nz

Inquiry / Legislation	Stage and Progress	Impact
Compulsory Treatment for Substance Dependence: A Review of the Alcoholism and Drug Addiction Act 1966	Law Commission Report. Released 27 October.	Proposes replacing the Alcoholism and Drug Addiction Act 1966 with a more user-friendly act which would also provide greater safeguards for people undergoing compulsory treatment.
Civil List Act: Members of Parliament and Ministers	Law Commission Report. Released 7 December.	Recommends that remuneration for the travel and other expenses of Ministers should be determined by an independent body.
Constitutional Review	Three-year government review, including public consultation.	Will consider matters such as the size of Parliament, electoral term lengths, Maori representation and the role of the Treaty of Waitangi.
Alcohol Reform Bill	Government Bill. Submissions due 18 February.	Would implement the government's decisions in response to the Law Commission's report on alcohol.
Courts and Criminal Matters Bill	Government Bill. Passed second reading.	Aims to enhance the courts' powers to collect fines and other civil debt.
* Criminal Procedure (Reform and Modernisation) Bill	Government Bill. Submissions due 18 February.	Aims to simplify criminal procedure and provide a legislative framework that is flexible and reduces delay.
* Electoral (Disqualification of Sentenced Prisoners) Amendment Bill	Member's Bill. Passed second reading.	Aims to remove the right of a person serving a prison term of less than three years to register to vote.
Electoral (Finance Reform and Advance Voting) Amendment Bill	Government Bill. Reported back.	Aims to provide greater certainty and transparency in the conduct of the electoral process, primarily by regulating campaign advertising and donations.
Electoral Referendum Bill	Government Bill. Reported back.	Provides for a referendum on a preferred voting system to be held with the next general election.
* Employment Relations Amendment Bill (No 2)	Government Bill. Passed.	Changes collective bargaining, union access to workplaces and the personal grievance system.
* Gambling (Gambling Harm Reduction) Amendment Bill	Member's Bill. Introduced 9 September.	Would provide local communities with more power to determine where pokie machines are sited and how the proceeds can be distributed.
* Legal Services Bill	Government Bill. Report due 21 December.	Aims to replace the Legal Services Act 2000 and reform the current legal aid system.
Marine and Coastal Area (Takutai Moana) Bill	Government Bill. Report due 25 February.	Would repeal the Foreshore and Seabed Act 2004 and establish a new model.
Misuse of Drugs Amendment Bill	Government Bill. Reported back.	Aims to make changes to the classification of drugs and extend control over drug paraphernalia.
Search and Surveillance Bill	Government Bill. Reported back.	Aims to bring search and surveillance powers together into one coherent statute.
Smoke-free Environments (Removing Tobacco Displays) Amendment Bill	Member's Bill. Introduced 9 September.	Would ban the display of tobacco products and accessories at points of sale.
Student Loan Scheme Bill	Government Bill. Report due 14 April.	Aims to reform the way student loans are repaid.

Free Legal Advice:

Monday to Thursday 5.30-7pm
Wednesday and Friday 12-2pm

Free Specialist Legal Advice:

Refugee / Immigration: Tuesday 5.30-7pm
Women: Monday 12.30-1.30pm
Employment: Wednesday 5.30-7pm
Family: Wednesday 12-2pm

We also provide outreach legal advice in the community



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