



Queensland Association of Independent Legal Services Inc

27 January 2015

Workplace Relations Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By email: workplace.relations@pc.gov.au

Dear Commissioners,

Issues paper response: scope of inquiry

The Queensland Association of Independent Legal Services Inc (**QAILS**) welcomes the Productivity Commission's inquiry into Australia's workplace relations framework, and we look forward to engaging with the Commission during the course of this inquiry.

QAILS is the peak body representing funded and unfunded community legal centres across Queensland. Community legal centres are independently operating not-for-profit, community-based organisations that provide free legal services to the public, focusing on the needs of people experiencing disadvantage and marginalisation. QAILS is the peak organisation for Queensland's community legal centres, working towards a fair and just Queensland. To achieve this, QAILS supports and develops community legal centres to provide effective, high quality services to their communities, and leads to unite its members and be a leading voice for social justice.

Since the fundamental changes introduced by the *Fair Work Act 2009*, Queensland's community legal centres have experienced a dramatic and unsustainable rise in the demand for employment law advice. We consider that the assistance available to vulnerable workers must be considered as part of your inquiry, and we were disappointed that the Issues Paper defined legal assistance outside the scope of the inquiry.

While the *Fair Work Act* restored workers' rights on a large scale, support services to assist workers to access their rights were not concurrently expanded. This is compounded by a number of issues in Queensland, including relatively high casualisation of the workforce, higher unemployment rates than the national average, and the lack of government or community services providing workers with advice and advocacy to understand and protect their rights.

Queensland currently lacks a stand-alone employment law service to assist the most vulnerable workers to access and enforce their rights and entitlements in the workplace.

The only current service in Queensland is the Queensland Working Women's Service located in Brisbane, funded through the Fair Work Ombudsman, providing limited services to assist vulnerable female employees in specific target areas.

Generalist community legal centres across the State are unable to keep up with both the volume of demand for employment law advice and the increased complexity of the laws which present a greater risk management burden. This results in disadvantaged Queenslanders being turned away by community legal centres at alarming rates.

While the Commission's Access to Justice report found there was strong demand for employment law assistance, it also identified that this an area 'where legal assistance services are particularly thin' and didn't address the particular difficulties people face when they try to get legal help to assert their workplace rights. These issues were considered in our 2013 proposal for a specialist employment law service, which is **attached**.

QAILS strongly encourages the Commission to consider the need for support for aggrieved employees, including advice and representation, and recommends that the scope of the inquiry be expanded to include this important aspect.

Please contact me on (07) 3392 0092 or **director@qails.org.au** if you would like to discuss this issue further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Farrell', with a stylized flourish at the end.

James Farrell OAM

Director

Queensland Association of Independent Legal Services Inc.



Queensland Employment Law Service

Project proposal

February 2013



Queensland Association of Independent Legal Services Inc

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About QAILS

The Queensland Association of Independent Legal Services (**QAILS**) is the state based peak body representing funded and unfunded Community Legal Centres (**CLCs**) operating throughout Queensland. There are 33 independent community legal centres in Queensland and over 200 throughout Australia. QAILS:

- ♦ promotes the development of community legal centres.
- ♦ enhances communication and cooperation between community legal centres.
- ♦ secures and develop funding for community legal centres
- ♦ represents the interests and opinions of members

QAILS does not provide legal advice but may make referrals to member services.

**Donations to QAILS are tax deductible
and gratefully received**

Executive Summary

Since the fundamental changes introduced by the *Fair Work Act 2009*, Queensland's community legal centres have experienced a dramatic and unsustainable rise in the demand for employment law advice.

While the Fair Work Act restored workers' rights on a large scale,¹ support services to assist workers to access their rights were not concurrently expanded. This is compounded by a number of issues in Queensland, including relatively high casualisation of the workforce, higher unemployment rates than the national average, and the lack of government or community services providing workers with advice and advocacy to understand and protect their rights.

Queensland currently lacks a stand-alone employment law service to assist the most vulnerable workers to access and enforce their rights and entitlements in the workplace.

The only current service in Queensland is the Queensland Working Women's Service (**QWWS**) located in Brisbane, funded through the Fair Work Ombudsman, providing limited services to assist vulnerable female employees in specific target areas.

Generalist community legal centres across the State are unable to keep up with both the volume of demand for employment law advice or the increased complexity of the laws which present a greater risk management burden. This results in disadvantaged Queenslanders being turned away by community legal centres at alarming rates.

This proposal provides a business case for the establishment of a specialist Queensland Employment Law Service, which will provide the following statewide services:

- Telephone advisory and referral services
- Face to face advisory services
- Secondary consultation
- Representation
- Community Legal Education
- Systems reform

To provide a base level of services to the Queensland community, the total cost is \$1,054,168 per year (plus indexation). These funds should be directed to the Commonwealth Community Legal Services Program (**CLSP**) in the 2013-14 budget for the express purpose of calling for tenders to provide an Employment Law Service for vulnerable workers in Queensland.

The proposed Queensland Employment Law Service will work collaboratively with other agencies, including the Queensland Working Women's Service, and will not duplicate any of the services provided by employee union organisations operating in Queensland.

¹ For example, an additional 2.8 million workers are now able to seek remedies for unfair dismissal: see Commonwealth, *Parliamentary Debates*, Senate, 22 November 2011, 9125 (Chris Evans, Minister for Tertiary Education, Skills, Jobs and Workplace Relations).

The need for a specialist employment law service in Queensland

While strengthening workplace laws have benefited workers in Queensland, a range of factors contribute to the increased need to Queensland workers for an independent legal assistance service. Some of these factors are discussed below.

Challenges for employees in particular industries

In community legal centres' experience, it is employees in particular industries that are vulnerable to breaches of their workplace rights. This is reiterated in data from the Fair Work Ombudsman: In Queensland last financial year, Fair Work inspectors finalised audits of 1969 businesses as part of the Agency's targeted campaign activity, with campaigns focused on sectors including accommodation, aged care, real estate, food courts and clothing manufacturers. Targeted campaign activity recouped \$2.2 million in outstanding entitlements for underpaid Queensland workers in 2011-12, part of a total of \$8.6 million recovered for 4906 employees statewide.² In addition to these areas, Queensland CLCs assist clients in other sectors, including caretakers, carers, volunteers and fruit pickers. Apprentices and trainees are also particularly vulnerable, as are young workers generally.

Many of the employees who seek assistance work in industries that are highly feminized and usually award reliant, though in some cases they are engaged as contractors or are not covered by Awards.

Each of these groups can have difficulty asserting their rights on conditions, rates of pay, working hours, public holidays, understanding employer expectations, obligations in the workplace, union rights, and what happens when they leave a job. All of these are issues where a specialist employment law service could assist workers.

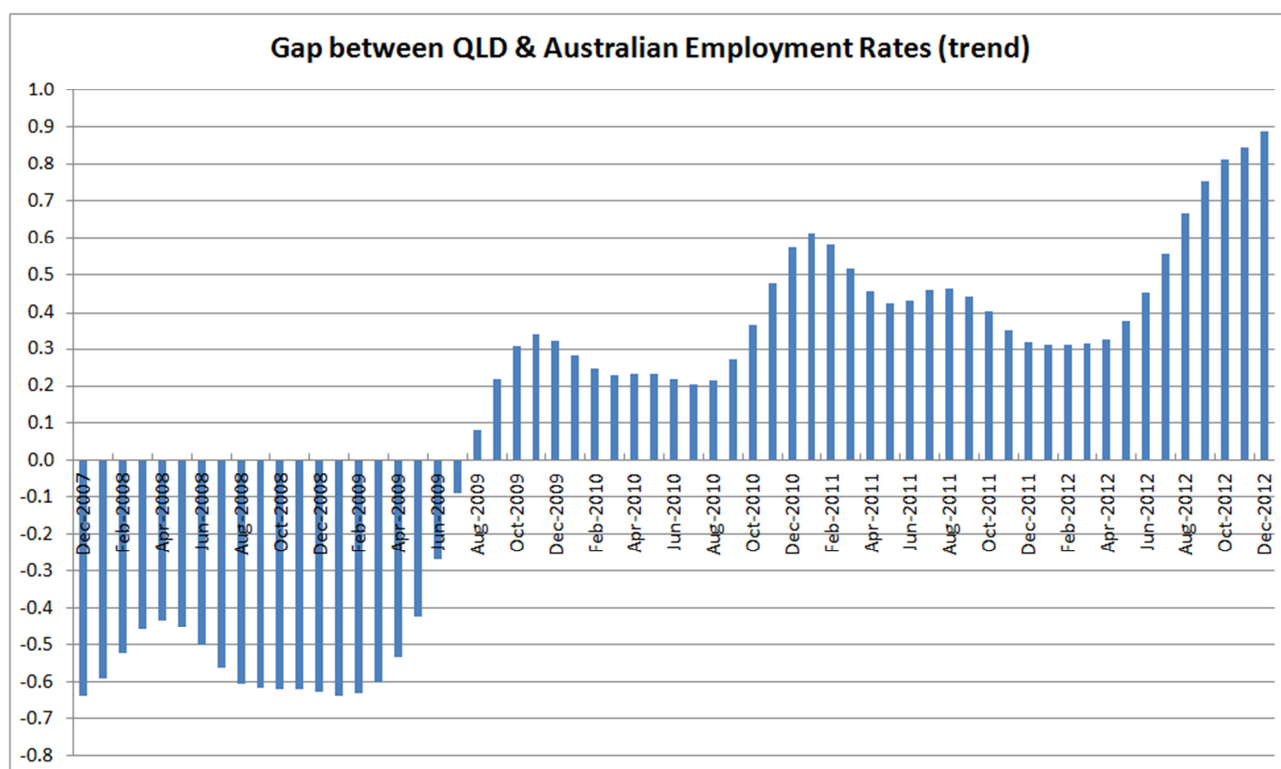
Higher unemployment

In December 2012, the seasonally adjusted unemployment rate in Australia was 5.4%.³ However, Queensland had the second highest unemployment rate in Australia after Tasmania, at 6.6%. And the gap between the national rate and the Queensland rate is growing, as illustrated below:⁴

² See eg Fair Work Ombudsman, *\$58,000 back-pay for Gold Coast workers* (media release, 25 October 2012); Fair Work Ombudsman, *Court imposes penalty over underpayment of employee entitlements on termination* (media release, 20 September 2012); Fair Work Ombudsman, *Brisbane workers back-paid more than \$550,000* (media release, 10 July 2012); Fair Work Ombudsman, *Pest Control and gardening businesses the focus of new Queensland campaign* (media release, 5 November 2012).

³ <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6202.0Main+Features1Dec%202012?OpenDocument>

⁴ Source: <http://groqsgamut.blogspot.com.au/2013/01/australias-unemployment-rate54-hello.html>



According to political commentators, Queensland's unemployment rate can be explained by a number of global economic factors,⁵ or by reference to cuts to the public service.⁶ Regardless of the cause, the fact remains that Queensland's unemployment rate is above the national average, and that gap is widening.

Casualisation of the workforce

According to the Australian Bureau of Statistics, currently 19 per cent of all employed persons are employed on a casual basis.⁷ The proportion of Australian employees engaged in casual work has grown significantly over the past decades: from 15.8% in 1984 to around 27.7% in 2004, before declining slightly and remaining relatively stable at around a quarter of all employees since then.⁸ There is a strong relationship between casual employment, age and gender. Casual employment is most common among young workers, with 20% of all casual workers aged between 15-19 years and just under 60% of all casual workers under 35 years of age.⁹ Women are much more likely to be in casual employment than men: with 25.5% of all female employees are casual compared to 19.7% of male employees. Most workers in Australia who work part-time (54%) work in casual employment. Just over 30% of casual employees work full-time hours.¹⁰

As the recent Independent Inquiry into Insecure Work found:¹¹

Insecure jobs invariably mean lower pay and less rights and entitlements. The fear, vulnerability and powerlessness experienced by workers engaged in insecure work mean they are also less likely to raise health and safety concerns, accept poor conditions and exploitation, and face greater risks of injuries and illness. Training and career development opportunities are much less likely to be available.

However, the impacts on workers, their families and communities go far beyond the workplace itself.

⁵ Hon Tim Nicholls MP, *Employment conditions to improve in Queensland* (media release, 17 January 2013).

⁶ Hon Kate Ellis MHR, *Interview with Steve Austin, 612 ABC Brisbane. Subject: National unemployment figures* (transcript, 18 January 2013)

⁷ Australian Bureau of Statistics (ABS), *Forms of Employment, Australia, November 2011*. Cat 6359.0, 2011.

⁸ J Burgess, I Campbell and R May "Pathways from Casual Employment to Economic Security: the Australian Experience", *Social Indicators Research* (2008), 88, 161, 165, supplemented by ABS, *Forms of Employment, November 2010*, Cat. 6349.0.

⁹ ABS, *Employee Earnings, Benefits and Trade Union Membership*, Cat 6310.0, 2011

¹⁰ ABS, *Forms of Employment, November 2011*, Cat 6359.0

¹¹ Independent Inquiry into Insecure Work, *Lives on hold: Unlocking the potential of Australia's workforce* (2012) 20.

The Inquiry's findings are reflected in many of the reported investigations and compliance activities in Queensland by the Fair Work Ombudsman, which relate to casual employees.¹²

The significant number of casual employees in Queensland, who are 'less likely to raise health and safety concerns, accept poor conditions and exploitation, and face greater risks of injuries and illness', need independent advice and representation. The high levels of women engaged in casual and insecure employment serves to increase the gender gap in pay equity, superannuation equity and in workplace equity and can entrench segregation between men and women.

While protections for casual workers are entrenched in the Fair Work Act many employers continue to use this status of employment to avoid specific entitlements and casual employees are often unaware of their rights to access these provisions. However, workers are likely to need further assistance to assert their rights when recently-announced changes are introduced, to allow workers to challenge roster changes, amongst other protections.¹³

Closure of government services

In Queensland, there are no government services to assist vulnerable applicants with workplace complaints matters that fall under the federal jurisdiction.

The Queensland Workplace Rights Ombudsman (the **Ombudsman**) and the Queensland Workplace Rights Office (**QWRO**) were established in 2007, to provide information and advice to Queensland workers and employers, including private enterprise, about their workplace rights and obligations, and to promote fair and equitable practices in Queensland workplaces.¹⁴ The Ombudsman was also charged with investigating and publicising unlawful, unfair or inappropriate industrial relations and other work related matters in Queensland.

The statutory office of the Ombudsman, and the QWRO, were wound up by the Queensland Government in 2012.¹⁵ While a 2010 review of the Ombudsman and QWRO found 'no compelling reason' to maintain the offices, it did recommend 'preserving some capacity ... to continue information, advice and referral services for vulnerable workers'.¹⁶ However, this recommendation did not result in continued services for Queensland workers.

Terminating the referral of powers to the Commonwealth

In 2009, the Queensland Parliament passed legislation to refer industrial relations matters for the unincorporated private sector to the Commonwealth - the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (Qld). As a result, Queensland's private sector employers and their employees have been regulated by the *Fair Work Act 2009* since 1 January 2010. However, the Queensland Government is currently considering terminating the referral of industrial relations powers to the Commonwealth, citing 'business concerns' about the impact of the Fair Work system on workplace flexibility and productivity.

If the Queensland Government did terminate the referral, businesses likely to be returned to the State industrial relations system would include small sole trader or partnership businesses such as mechanics, hairdressers, small retailers, dental surgeries, contract cleaners, real estate agencies and takeaway stores. As we note above, small business faces particular challenges in understanding and meeting their obligations to employees, and these industries are often the subject of enforcement action by the Fair Work Ombudsman in Queensland.¹⁷

The jurisdictional coverage of the Queensland industrial relations system would increase to between 26.7 per cent and 31.3 per cent of all employees in Queensland (from approximately 15 per cent

¹² See eg Fair Work Ombudsman, *\$58,000 back-pay for Gold Coast workers* (media release, 25 October 2012); Fair Work Ombudsman, *Court imposes penalty over underpayment of employee entitlements on termination* (media release, 20 September 2012); Fair Work Ombudsman, *Brisbane workers back-paid more than \$550,000* (media release, 10 July 2012);

¹³ See Commonwealth, *Parliamentary Debates*, House of Representatives, 14 February 2013, 46 (Julia Gillard, Prime Minister).

¹⁴ *Industrial Relations Act 1999* (Qld) s 339D (repealed)

¹⁵ Daniel Hurst, 'Workplace Rights Office, justice body axed' *Brisbane Times*, 19 May 2012.

¹⁶ Department of Justice and Attorney-General, *Review of the Queensland Workplace Rights Ombudsman and the Queensland Workplace Rights Office* (October 2010) 4.

¹⁷ See eg Fair Work Ombudsman, *\$58,000 back-pay for Gold Coast workers* (media release, 25 October 2012); Fair Work Ombudsman, *Court imposes penalty over underpayment of employee entitlements on termination* (media release, 20 September 2012); Fair Work Ombudsman, *Brisbane workers back-paid more than \$550,000* (media release, 10 July 2012);

currently),¹⁸ who would be subject reduction different form of workplace rights introduced by future state-based legislative reform., adding significantly the complexity of the industrial relations regulatory framework, especially for marginalized or vulnerable workers. While there would continue to be protections from unlawful dismissal under the Commonwealth Fair Work Act for these workers there will be a corresponding and ongoing need for advice and representation for them to be able to understand and uphold relevant protections as well as to sort through the confusing jurisdictional issues that arise when such jurisdictional transfers occur.

Low rates of union membership

Unions provide professional assistance with:

- Wages and entitlements
- Unfair treatment and harassment at work
- Work related injuries or illness
- Collective bargaining for better pay and conditions
- Superannuation

However, just 18 per cent of Australian workers are members of unions in their main job,¹⁹ and non-members generally do not have access to advice, support and representation from union staff or workplace delegates. A Queensland Employment Law Service would provide to all Queensland employees, especially Queenslanders who are not members of unions and unable to obtain unions' assistance.

Increased prevalence of workplace bullying

The Australian Workplace Barometer project²⁰ found that 6.8 per cent of Australian workers had been bullied at work in the six months prior to being surveyed, with 3.5 per cent experiencing bullying for longer than a six month period.

According to a recent Parliamentary report, workplace bullying is a form of psychological violence that can result in significant damage to an individual's health and wellbeing, and in extreme cases, can lead targets of bullying to suicide. Such behaviour can also undercut the productivity of an entire organisation, which incurs financial costs to employers and the national economy. Beyond the enormous personal and organisational costs, the Productivity Commission estimates that workplace bullying costs the Australian economy between \$6 billion and \$36 billion annually.²¹

The Parliamentary report noted the regulatory 'minefield' that both individual workers and employers face when confronted with bullying at work, which 'add layers of complexity to already difficult experiences'.²² The Fair Work Commission will soon have responsibility for resolving complaints about workplace bullying,²³ and the increased prevalence of workplace bullying and the regime for dealing with these complaints provide further reasons for the establishment of a Queensland Employment Law Service. The QWWS has consistently reported that requests for assistance with Workplace Bullying are between 28 and 33% of contacts from clients. New federal workplace health and safety standards also increase the need for information and assistance in this area.

¹⁸ Department of Justice and Attorney-General, *Should Queensland maintain or terminate the referral of industrial relations jurisdiction for the unincorporated private sector to the Commonwealth?* (Brisbane, December 2012).

²⁰ The Australian Workplace Barometer (AWB) survey was developed and conducted by Professor Maureen Dollard of the University of South Australia. Funding for this project has come from a variety of grants and organisations including Safe Work Australia. Prompted by variations in bullying definitions and associated bullying prevalence rate estimates, the AWB was designed to collect nationally representative information on psychosocial risk factors in Australian workplaces. Data was collected between 2009 and 2011 from employed workers over the age of 18. See Safe Work Australia, *Submission to the House Standing Committee on Education and Employment Inquiry into workplace bullying* (29 June 2012) Appendix F.

²¹ House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: We just want it to stop* (Canberra, October 2012).

²² Ibid.

²³ Commonwealth, *Parliamentary Debates*, House of Representatives, 12 February 2013, 25 (Julia Gillard, Prime Minister).

The distinctions and varying legal frameworks between workplace harassment, sexual harassment and unlawful discrimination and now general protections (under the Fair Work Act) also means that access to these laws for workers is complex and confusing and often requires specialist assistance beyond the information that can be provided by government agencies.

Rise in unfair dismissal and general protections claims

According to the Fair Work Commission's quarterly report for the period ending 31 December 2012, unfair dismissal applications surged to their highest level yet under the Fair Work Act, with general protections claims climbing.²⁴

Particular vulnerability of Indigenous workers

Indigenous workers are severely disadvantaged in terms of their access to decent jobs as well as to essential services such as education and health. In 2008, the employment rate of Indigenous men of working age was 59%, compared with 85% for all Australian men. For Indigenous females, the employment rate was 42% compared with 69% for all Australian women.²⁵ The commitment by Federal and State Governments to halve the gap in employment outcomes between Indigenous and other Australians by 2018 must be a priority, and protecting Indigenous employees' rights must be a key part of achieving this outcome.

Sexual harassment still prevalent in workplaces

Despite legal protections, sexual harassment is a persistent workplace issue with considerable costs for individuals and organisations. Yet there remain significant gaps in knowledge about effective prevention and responses to the problem. According to the results of the 2012 national *Sexual Harassment Telephone Survey*, over one in five people (21%) in Australia has been sexually harassed since the age of 15 with the majority (68%) of those people being harassed in the workplace. Sexual harassment continues to affect more women than men.²⁶

A recent study found in Australia an 'inhospitable workplace environment that tolerated harassment' and where sexual harassment was reported by one-quarter of the complainants. It further noted that '[m]aking a formal complaint of sexual harassment is a painful and onerous process'.²⁷

Existing services don't meet community needs

In 2009, a report commissioned by the Prime Minister, the Hon Julia Gillard MP, in her former role as Deputy Prime Minister and Minister for Employment and Workplace Relations, recommended:

*"The services of the women's and youth services in Queensland and the Northern Territory should be supplemented by funding a dedicated employment law specialist in one or more Community Legal Centres."*²⁸

This recommendation has not been implemented. The same report identifies the need for community-based services to provide assistance to individuals who are neither trade union members, able to afford a private lawyer nor confident of making use of information provided by the government such as through the Fair Work Commission's website. *"These are the workers who because of their industry or occupation, employment status or personal characteristics are also more likely to be vulnerable to exploitation at work."* Research and public policy* (ACTU report would be a good reference here) already acknowledge that vulnerable workers are likely to include: young people, women, people with a

²⁴ Fair Work Australia, *Quarterly report: Report to the Minister Oct-Dec 2012* (January 2013).

²⁵ Matthew Gray, Boyd Hunter and Shaun Lohar, *Closing the gap: Increasing Indigenous employment rates* (Australian Institute of Health and Welfare, Canberra, March 2012) 3.

²⁶ See Australian Human Rights Commission, *Working without fear: Results of the Sexual Harassment National Telephone Survey* (2012).

²⁷ Sara Charlesworth et al, *Formal Complaints of Workplace Sexual Harassment Lodged with Australian Human Rights and Equal Opportunity Commissions: 1 July 2009 – 31 December 2009* (Centre for Work + Life, University of South Australia, Adelaide, 2012)

²⁸ Recommendation 3, *Report of a Review of Community Based Employment Advice Services*, Anna Booth, September 2009

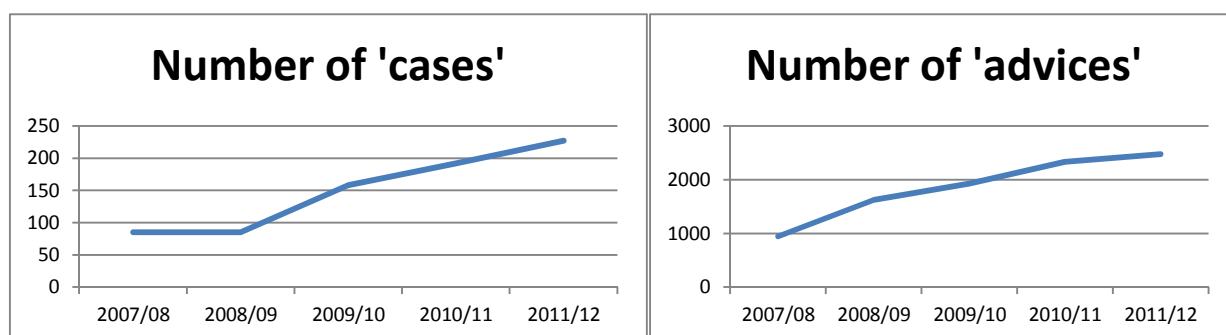
disability or impairment, Australian Aboriginal people and migrants, outworkers, workers with family responsibilities, workers in precarious employment, and older workers to name a few.

Community legal services

Despite the lack of any funded specialist service, Queensland's community legal centres do provide some employment law advice to disadvantaged and vulnerable clients. Legal Aid Queensland, the largest provider of free legal service in the State, does not practice in employment law.

Figures taken from CLSIS, the community legal centres statistical database, show a 161% increase in the number of employment law advices²⁹ provided by Queensland CLCs from 2007/8 – 2011/12 despite no increase in resourcing. A similar increase in the number of employment law cases³⁰ run by CLCs over the same time frame confirms the spike in demand.

The figures below demonstrate the increase:



Limited specialist employment law services are provided by Caxton Legal Centre. In 2010 Caxton established an unfunded, volunteer staffed employment law service, in order to meet increasing demand. In 2011-12 Caxton provided employment law advice 1003 times, or 11% of its total advices for the year, to clients from across Queensland. Caxton also publishes the self-help kit *Have you lost your job?*, a plain-English guide to employment law, which is downloaded on average 151 times per month Caxton's website.³¹

Until 2009, South West Brisbane Community Legal Centre (**SWBCLC**) received funding from the Office of the Employment Advocate (**OEA**) under the OEA's Community Partnerships Program.³² The OEA initiated the Community Partner Program in 1997 to complement its own activities in fulfilling obligations under s83BB(2) of the *Workplace Relations Act 1996*. The objective of the Program was to provide advice and assistance on employment related matters including Australian Workplace Agreements (**AWAs**) to employees in disadvantaged bargaining positions.³³ The program was discontinued in 2006, and SWBCLC ceased providing specialist employment law advice.

The Welfare Rights Centre (**WRC**) Disability Discrimination Advocacy Service provides assistance to clients subject to disability discrimination in the workplace, as need for assistance in discrimination in employment matters has grown. With the tightening of the eligibility criteria for Disability Support Pension, WRC anticipates the need will continue to grow. With minimal funding, WRC is only able to

²⁹ Community legal centres categorise matters into two types on CLSIS. 'Advice' occurs when a service provider helps a client to select between options about the client's own problems. Advice includes assistance with the drafting of simple correspondence, which the client then dispatches, and/or phone calls which are made on the client's behalf during, or as soon as practicable following, the provision of advice. An advice is a discrete activity that occurs on an individual occasion. At the conclusion of an advice there is no follow up action to be undertaken and there is no expectation that the client will have further contact with the service provider about the same problem. See further *CLSIS Data Dictionary version 1.06* (November 2004) 15.

³⁰ A 'case' is an activity where a service provider provides ongoing assistance and/or acts on behalf of a client in respect of a problem. A case has an open date and a close date. See further *CLSIS Data Dictionary version 1.06* (November 2004) 16.

³¹ *Have you lost your job?* is available at http://www.caxton.org.au/pdfs/Have%20You%20Lost%20Your%20Job%202011_WEB.pdf.

³² Nationally, six community legal centres funded under the Commonwealth Community Legal Services Program received funding under the Community Partnership Program: South West Brisbane Community Legal Service (Qld); Macquarie Community Legal Centre (NSW); Welfare Rights and Legal Centre (ACT); Community Legal Centre for Western NSW (Dubbo); Northern Suburbs Community Legal Service (WA); Launceston Community Legal Centre (Tas). Further funding was provided to Working Women's Centres and specialist employment law services in Victoria and Queensland.

³³ Peter McIlwain, *Submission to Senate Employment, Workplace Relations and Education References Committee Inquiry into Workplace Agreements* (Office of the Employment Advocate, August 2005) 41.

provide ongoing casework and representation to a few, very vulnerable clients. QPILCH and pro bono lawyers

The Queensland Public Interest Law Clearing House Incorporated (**QPILCH**) is an independent, not-for-profit legal service which refers individual matters to law firms and barristers, coordinates direct legal services for particular disadvantaged client groups and undertakes law reform, policy work and legal education.

The 2013 National Law Firm Pro Bono Survey notes the significant unmet need for pro bono legal employment law services. The Survey showed that almost 80 per cent of respondent law firms provided pro bono assistance in employment law in 2011-12, making it the third largest area of demand.³⁴ Employment law was also the fourth highest area of practice in which most firms turned down requests for pro bono assistance for reasons other than means or merit.³⁵ The NPBRC has concluded that 'despite the efforts of private law firms and community legal centres, unmet legal need in these areas of practice remains high.'³⁶

The experiences of QPILCH reflect the survey findings in that employment law remains a significant area of need in Queensland, and that people are forced to seek pro bono assistance because there are very few employment law services, and none that will provide representation. In 2011-12, 9% of all applications for pro bono representation received related to employment law disputes. Of these, 27% were assessed as eligible for referral and matched to QPILCH member firms and/or barristers for pro bono assistance.

QPILCH's direct advice programs, including the Homeless Persons' Legal Clinic and Refugee Civil Law Clinic (together **the Clinics**) also see large numbers of people seeking help with employment law disputes. In 2011-12, approximately 10% of the Clinics' new clients received employment law assistance.

Discrete task assistance for self-represented litigants

From July 2011 to October 2012, QPILCH piloted a self-representation service at the Brisbane district of the Federal Court and Federal Magistrates Court on a two day per week basis. In that time, the service received 115 applications for assistance, of which, 38 related to employment law. Employment law was not initially included in the scope of the pilot; however, it quickly became apparent that there was a high demand for advice in employment matters commenced under the *Fair Work Act 2009*. At the request of the Federal Court registry, QPILCH broadened the scope of the pilot.

As part of its response to this emerging need, QPILCH coordinated conciliations through the service for a number of small claims under the *Fair Work Act 2009* and established a panel of mediators who had indicated a willingness to conciliate disputes on a pro bono basis. 20 pro bono conciliations were conducted during the course of the pilot and in eight conciliations, a negotiated outcome was achieved relieving the need for a formal court hearing.

Funding for continuation of the service beyond the pilot period was not available.

Other employment advisory services

As previously noted, funding dedicated to assisting people in need of employment law advice lies solely with the Queensland Working Women's Service (**QWWS**). Since 1994 QWWS has attempted to address women's identified disproportional disadvantage in the workplace through the provision of information and advice services with individual women and by undertaking systemic advocacy in relation to public policy gaps regarding inequities surrounding women in employment, the discrimination of women in the workplace and the gender pay gap.

In June 2012 the QWWS lost \$747,000 in revenue when the Queensland Government ceased funding of the service. This resulted in the closure of the Young Workers Advisory Service (**YWAS**), which was co-located with the QWWS and provided advice to workers under the age of 25, as well as a reduction in QWWS capacity and its long-term viability.

³⁴ National Pro Bono Resource Centre (**NPBRC**), *National Law Firm Pro Bono Survey* (Sydney, January 2013) 20.

³⁵ *Ibid*, 22.

³⁶ NPBRC, *National Law Firm Pro Bono Survey* (Sydney, December 2010) 11.

YVAS provided services to more than 2500 young workers between 2010-12 and its closure meant the loss of services supporting vulnerable younger workers including apprentices.

QWWS funding from the Fair Work Ombudsman to undertake the work is \$270,000, providing only a small capacity since state defunding. Accordingly QWWS has noted an increase in its referrals of clients to services such as Caxton Legal Centre in the past 8 months.

The proposed Queensland Employment Law Service will negotiate with the QWWS to consider how to best work collaboratively to deliver services vulnerable workers of both genders across Queensland.

Proposed model

We propose funding a dedicated employment law advice service to provide a safety net service for the most vulnerable workers in Queensland to empower them to take control of and solve their own workplace issues and to assist and advocate where necessary. The service will provide assistance consistent with the Community Based Employment Advice Services (of which QWWS is already a part) in that they would primarily cover areas where the FWO does not provide primary assistance to affected workers beyond general information, for example unfair dismissal, adverse action and discrimination.

In addition it will provide advice, advocacy and support for vulnerable workers experiencing workplace bullying, and the effects of family violence that cause the person experiencing the violence difficulties in the workplace.³⁷

Other support services that are determined necessary in these circumstances can include access to a counsellor, information about mediation and in limited circumstances provide a mediation service.

QAILS recommends the establishment of a tender process for the provision of the services.

Tenderers should be invited to consider the following elements or features of a specialist employment law service:

- **Telephone advisory and referral service** - Provide a general community referral and advice call centre, appropriately referring workers to existing services, unions and government bodies as well as providing first point of call advice in relation to discrimination in the workplace, dismissals and workplace bullying.
- **Face to face advisory service** – taking over Caxton's existing volunteer run advisory service and targeted at clients who would find accessing advice over the telephone difficult (such as clients from non-English speaking backgrounds).
- **Self-representation service** – to continue the service piloted by QPILCH in 2011-12 to provide discrete task assistance to people representing themselves during appointments staffed by pro bono lawyers at offices at the Brisbane District of the Federal Court and Federal Magistrates Court (appointments via telephone for people living outside of Brisbane).
- **Secondary consultation** to other community legal centres (generalist and specialist) across Queensland, supporting those services to provide advice and representation to vulnerable workers in rural and regional areas
- **Representation** - vulnerable workers at the Fair Work Commission, the Queensland Industrial Relations Commission, the Anti-Discrimination Commission of Queensland, Australian Human Rights Commission and the courts to pursue individual matters either through representation or support.
- **Community Legal Education ('CLE')** – support workers to create awareness of workplace rights, negotiation skills, workplace bullying, rights of young workers and apprentices. Present seminars, workshops, training, publications, provision of resource materials, and professional development for other workers and lawyers in employment law, including community legal centres funded under the CLSP.
- **Systems reform** – based on the direct services provided, inform policy-makers about issues facing the most vulnerable workers in Queensland and respond to emerging trends such as workplace bullying.

³⁷ See further Ludo McFerran, *Domestic violence and the workplace* (Australian Domestic & Family Violence Clearinghouse, Sydney, 2012); Suellen Murray and Anastasia Powell, *Working it out: Domestic violence issues and the workplace* (Australian Domestic & Family Violence Clearinghouse, Sydney, 2008); Suzanne Franzway, Carole Zufferey and Donna Chung, *Domestic violence and women's employment* (2007).

The service will not act in place of a union or fulfill an industrial role by dealing with disputes, acting as a representative in disciplinary matters, pursuing disputes in relation to breaches of collective agreements, or acting as a bargaining agent.

The service will not pursue causes of action already sufficiently catered for by existing services. Subject to full scoping, examples of these excluded services may include:

- wage recovery services, as complaints can be investigated by the Fair Work Ombudsman;
- workers compensation matters, as most meritorious workcover matters and personal injury complaints are handled by 'no win no fee' law firms or the Queensland Council of Unions (for union members).

Funding

The table below outlines the costs for a Queensland Employment Law Service:³⁸

Position	FTE	Salary	On costs	Total salary costs	Operating Expenses ³⁹	Total position costs
Director	1	105,519	14,773	120,292	40,093	160,385
Principal solicitor	1	105,519	14,773	120,292	40,093	160,385
Lawyers	2	135,244	18,934	154,178	51,388	205,566
Community worker/educator	1	57,878	8,103	65,981	21,991	87,972
Volunteer/pro bono coordinator	1	57,878	8,103	65,981	21,991	87,972
Telephone information service employees	3	173,634	24,309	197,943	65,973	263,916
Administrator	1	53,757	7,526	61,283	20,426	81,709
Total						1,047,905

QAILS recommend that the Commonwealth Government appropriate the amount of \$1,054,168 (plus indexation) in the 2013-14 Budget, and direct these funds to the Commonwealth CLSP for the express purpose of establishing a Queensland Employment Law Service.

³⁸ This figure is based upon salaries calculate in the *NACLC Principles for Commonwealth Community Legal Services Program (CCLSP) Funding 2012-2015*. Salaries are 85% of the median of Australian Public Service (APS) salaries for positions at the equivalent levels, as assessed by Mercer (March Mercer Holdings (Australia) Pty Ltd). The Mercer Benchmarking Review of CLC salaries (2011) entailed work value assessments of 6 CLC positions and benchmarking against a number of awards and data sources. Mercer recommended 'alignment with APS salary levels as the broadest and most relevant comparator market for all CLC positions given the comparable range of legal, management and administrative based positions'. Mercer stated that salaries within a +/-15% range of desired market salaries are regarded as competitive.

³⁹ 33.33% of total salary cost which roughly equates to 25% of the total position cost. This reflects our understanding that centres nationally spend an average of 25% of their budget on operating costs.



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