

## **2011 TIM MCCOY AWARD WINNER**

**At the 24<sup>th</sup> Annual Tim McCoy Dinner held at the Richmond Town hall on Friday 4 November 2011 the McCoy Trustees announced the winner of the 2011 Tim McCoy Prize. It was the 20<sup>th</sup> occasion the award has been made. Four other nominees were highly commended**

### **2011 WINNER**

#### **Refugee and Immigration Legal Centre for the M61 and M70 Legal Team**

This team has advocated and acted pro bono in two landmark High Court cases.

In *Plaintiff M61* the team acted pro bono on behalf of two asylum seekers from Sri Lanka who arrived by boat at Christmas Island and sought to claim refugee status. In a unanimous decision, the High Court held that, notwithstanding the status of Christmas Island as an “excised offshore place”, the men were entitled to the full protection of Australian law and to procedural fairness.

In *Plaintiff M70* the team acted pro bono for two asylum seekers, including one 16 year old child, who were scheduled to be deported from Christmas Island to Malaysia for the processing of their refugee claims. In a 6-1 decision, the High Court held that, under the *Migration Act 1958*, the Government cannot send asylum seekers for processing to a third country unless that country satisfies four criteria. First, it must be legally bound to provide asylum seekers with access to effective procedures for assessing their protection claims. Second, it must provide asylum seekers with adequate protection pending determination of their claims. Third, it must actually provide protection to persons granted refugee status. Fourth, the country must meet certain human rights standards in providing protection.

For the asylum seekers involved, it meant that they could not be deported to Malaysia and that their claims for protection must now be assessed in Australia under Australian law. For refugee policy more broadly, it has precipitated a long overdue return to onshore processing and established that any future offshore processing regime will need to afford a far higher level of protection to asylum seekers than has previously been the case.

In both cases, the legal team of RILC, Allens Arthur Robinson, Debbie Mortimer SC and Richard Niall SC acted pro bono in providing essential legal services to profoundly vulnerable clients.

The award was accepted by David Manne of the Refugee and Immigration Legal Centre and Matthew Albert representing the Barristerial team

### **HIGHLY COMMENDED**

#### **Human Rights Law Resource Centre**

Since its establishment in 2006, the Centre has worked to promote and protect human rights in Australia and beyond through principled, strategic, evidence-based research, advocacy, litigation and education. The Centre works in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

Recent examples of the impacts of the Centre's work include:

- In 2007, the Centre secured constitutional recognition and protection of the human right to vote in the landmark High Court case of *Roach v Commonwealth*.
- In 2010, the Centre secured judicial recognition of the fundamental importance of prisoner rights and prisoner access to health care, including sexual and reproductive health care, in the case of *Castles v Secretary to the Department of Justice*.
- In 2010, the Centre restored the right to vote to 100,000 Australians disenfranchised by the early close of the electoral roll through a successful High Court action in *Rowe v Australian Electoral Commission & Commonwealth*.
- In 2011, the Centre obtained a landmark judgment from the UN Human Rights Committee, *Nystrom v Australia*, regarding the rights of non-nationals and the protection of children and families.
- Over the last 5 years, the Centre has coordinated a number of major reports on the state of human rights in Australia to United Nations human rights bodies. The Centre's 2009 report to the Human Rights Committee was endorsed by over 220 NGOs and described by the Vice-Chair as 'a model of professional NGO contribution'. Similarly, the 2009 report to the Committee on Economic, Social and Cultural Rights was cited as 'best practice'.

### **Kairsty Wilson, Association of Employees with a Disability Legal Centre**

Ms Wilson is currently the Legal Manager and Principal Legal Practitioner of the AED Legal Centre. The Legal Centre was set up for the benefit of people with a disability who had issues in employment or education.

Ms Wilson has for more than a decade employed her talents as a human rights lawyer to improve the employment opportunities, working conditions, education and support provided to people with a disability. She provides representation across Victoria to people who have suffered disability discrimination in the areas of work, education or training.

Ms Wilson has been a pioneer of legal advocacy in matters relating to the employment and education of people with a disability in Victoria and nationally. She takes a proactive approach to disability awareness in the community, arranging and leading a number of training initiatives at workplaces and education centres.

Through her direct work, many of the hundreds of clients she has represented over the years have had self-esteem boosted by maintaining their jobs, being properly considered for positions and/or promotions, being supported through education and professional training.

### **The CLC for Goulburn Valley Campaign**

The Goulburn Valley region, encompassing the city of Shepparton and the towns of Seymour, Violet Town, Euroa, Numurkah and Cobram, represents one of the last significant black spots for community legal services in Victoria.

The Bendigo based Loddon Campaspe Community Legal Centre and the Shepparton based UnitingCare – Cutting Edge have partnered to demonstrate the unmet legal need and support the community to campaign for a community legal centre. In October 2009 LCCLC was funded to initiate a pilot service to demonstrate the demand for services and to showcase the type of work that could be undertaken by a CLC.

The campaign for CLC services in the Goulburn Valley gathered significant momentum in 2010, engaging with the community and politicians about the need. While the need and the campaign have been compelling, there is more work to be done in securing a commitment for ongoing services.

The Pilot has shown that there is significant unmet legal need in the region, particularly for new immigrants, older people, Aboriginal people and young people.

## **Mental Health Legal Centre**

For over 20 years, MHLC has worked towards empowerment, equality, and justice for people having or labelled as having a psychiatric disability. MHLC provides free, confidential and independent legal help to anyone whose legal problem relates to their psychiatric disability or label of psychiatric disability. MHLC also undertakes legal education, research, law reform and policy work, and media liaison.

In all of its activities, MHLC aims to promote the human rights of people who have experienced mental illness or had contact with mental health services, with the objective of ensuring that the least restrictive, most humane and appropriate treatment and care is provided in the mental health system.

In 2011, the Mental Health Legal Centre has achieved significant positive outcomes for its clients that reflect its commitment to advancing the interests of its clients and its courage in doing so in the face of sometimes significant opposition.

Most recently, the centre assisted one of its clients, known as “XFJ” to win an important case in the Court of Appeal around the rights of people found not guilty of crimes on the grounds of mental illness not to be subjected to unreasonable prejudice. The case received significant, often hostile media attention. MHLC describes the case as follows:

The Victorian Supreme Court of Appeal affirmed the suitability of our client, a 55-year-old man, known as XFJ, to be accredited as a taxi driver. The Court's unanimous decision vindicates our client's right to drive a taxi. Despite XFJ's past psychiatric history, the Court found there was no risk to passenger safety. Almost 20 years ago XFJ had been acquitted of a charge of murder of his wife because he had a severe mental illness at the time. He has been free of psychiatric symptoms for over 15 years and his mental illness is not expected to recur. The Court noted our client's "emphatically favourable" psychiatric evidence was unchallenged.

The case highlights the importance of considering all the circumstances of a person's case before drawing prejudicial conclusions about risk to members of the public.

Earlier in 2011, MHLC used the Victorian Human Rights Charter in the Victorian Supreme Court to prevent the sale of a client's home by an administrator that had the purpose of moving the client from a psychiatric hospital into supported accommodation, which he opposed. The case was an important decision which set limits on the ability to remove the right of people with mental illness to manage their own financial affairs. MHLC described the case as follows:

The MHLC's client, Patrick, succeeded in an appeal against the Victorian Civil and Administrative Tribunal's appointment of an administrator which would have forcibly sold our client's home. The sale of Patrick's home would have meant he

would have to live in supported accommodation in a hostel, where it would be easier to enforce his psychiatric treatment. The decision of the Victorian Supreme Court, referred to as Patrick's case, emphasises the rights of people with mental illness to have their autonomy respected and to be treated on an equal basis with others.

The case also received media attention and was an important demonstration of the value of the Human Rights Charter.