

In respect of rights



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Issue 18

July 2013

Contact Us

To make a complaint or get information, contact the office or visit the website. Please note, the office cannot give legal advice.

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GPO Box 197, Hobart, Tasmania 7001

Telephone
Ph: 1300 305 062 (local call)
Ph: (03) 6233 4841
Fax (03) 6233 5333

Web SMS: 0409 401 083

National Relay Service
TTY users: 133 677 then ask for 1300 305 062
Speak and Listen users: 1300 555 727 and ask for 1300 305 062

E-mail
antidiscrimination@justice.tas.gov.au

Website
www.antidiscrimination.tas.gov.au

Please let the office know before an appointment if you need assistance or the services of an interpreter.

Invitation to all readers
Readers who have particular topics they wish to know more about or

From the Anti-Discrimination Commissioner

May and June are always busy times for planning and budgeting and this year has been no exception. The State Budget announcement of an extra \$300,000 per year for my office was very welcome news and ensures that we have the resources to respond effectively to the increased demand that we have faced over the past three years in terms of complaints, and education and training.

Plans for the financial year ahead include continuing improvements to our capacity to deal quickly with

complaints with a strong focus on working with parties to explore ways in which they can be resolved early and some exciting projects in the education and training area. More on those next month.



During the last week of June I provided Parliamentary briefings for Legislative Council members on the amendments to the *Anti-Discrimination Act* to deal with long-standing difficulties with aspects of the complaint process, inconsistencies in coverage and to ensure protection from discrimination on the basis of gender identity and intersex. The Legislative Council debate was adjourned and I hope that early July will see the amendment Bill passed. Future newsletters will provide information on the scope of the gender identity and intersex protections and other changes (once they are passed).

In June my office made submissions to two national reviews related to public transport access for people with disability. The first was on the progress towards achieving accessing public transport in the first ten years of the Disability Standards for Accessible Public Transport 2002 (Cth) and my thanks go to everyone who attended the forums I held earlier in the year on this issue and who contributed in other ways to the submission prepared by my office. The second was a submission to the national Airline Access Working Group's issues paper on the two-wheelchair policy maintained by some airlines. Both submissions noted the particular problems posed for Tasmanians by limited access to airline travel and limited transport modes. Both submissions will soon be available at www.antidiscrimination.tas.gov.au

Finally, just a reminder that nominations for the Tasmanian Human Rights awards will open at the end of July, so now is the time to start thinking about individuals and Organisations who have made a significant contribution to the promotion and protection of human rights in Tasmania.

Robin Banks
Anti-Discrimination Commissioner

From the OADC

Welcoming Hilary and farewell to Jess

items to include in the next issue are encouraged to contact the Editor.

Any comments and feedback about the newsletter to ensure it is a useful resource and information-sharing tool for our readers is welcomed.

Newsletter Editor

Roz Smart

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Welcoming Hilary and farewell to Jess

The OADC has some recent staffing changes, we welcome Hilary Harris who is our Executive Officer for the next twelve months and farewell Jessica Watson who has been on secondment with us since October 2011, we thank Jess for her valued contribution to our team and wish her all the best in her return to the Public Trustee later this month.

OADC Interns

We also say goodbye to two university interns who assisted us during Semester 1. Anthony James undertook an internship with us as part of his Bachelor of Business degree, majoring in Human Resource Management. Anthony assisted the OADC implement a project to improve gender diversity within Tasmanian businesses. His work in identifying options for establishing a network of Tasmanian business leaders willing to champion diversity within the private sector will form the basis for future work in this area.

Georgia Allen joined us from the School of Social Sciences to undertake a public policy internship aimed at assisting the OADC prepare for the implementation of proposed changes to the *Anti-Discrimination Act*. The timing of Georgia's internship enabled her to get a firsthand view of the processes of legislative change and her work in examining the implications of changes to the prohibited conduct provisions of the *Act* will form a strong basis for implementing future changes to the *Act*.

We extend our thanks to Anthony and Georgia and wish them well in their future careers.

We also welcome Jennifer Rowallan, who will undertake an internship with us in Semester 2. Jennifer is studying the final year of the Qualifying Masters of Social Work and will assist the OADC in examining issues related to access to medical services for people with disability.

FAQs - Industrial Activity and Political Belief or Affiliation and Political Activity

Can our business make it compulsory for employees to join a union?

- No, if a person refuses to join an industrial organisation such as a union they should not be treated less favourably.
- The *Anti-Discrimination Act 1998* (the *Act*) protects a person being or not being a member of, or proposing or refusing to join, an industrial organisation: or participating in, not participating in, or proposing or refusing to participate in, a lawful activity organised or promoted by an industrial organisation.
- The *Act* defines Industrial Organisation as; an organisation of employees; or a trade union; or an organisation of employers; or any other organisation established for the purposes of persons who carry on a particular industry, trade, profession or employment.
- It is about choices which should be available to everyone in a workplace.

Political belief or affiliation and political activity

Everyone has the right to hold a particular political belief or have an affiliation with a political party. The attributes of political belief and political activity are included in the *Act* to protect people from being treated less favourably or disadvantaged because of political activity or political beliefs.

With all the changes in government of late there was a big discussion at work who should be prime minister. I refused to be involved in the discussion as I thought it is no-one's business. The next thing I knew I was being excluded from conversations in my workplace and I wasn't told about an important staff meeting. Is this treatment ok in the workplace?

- No, this treatment is not ok in the workplace.

- The *Act* protects people's right to hold or not hold a political belief or view.
- In addition to the protection under the *Act* treating people with the silent treatment and not involving them in meetings linked to their duties could also be a form of bullying behaviour by exclusion.
- Everyone has the right to be treated fairly and respectfully regardless of their political stance. If people aren't afforded that respect then everyone has the right to take some sort of action. This may take the form of internal grievance processes or lodging a complaint with the OADC or other appropriate complaint organisations.
- Workplaces should have clear policies relating to bullying behaviour focusing on a workplace that is respectful, safe and inclusive for all.

A woman puts in an application for a job as a member of staff of a political party. She is refused the job because she does not share the beliefs of the party and is in fact a member of a rival political party. Is this discrimination?

- The *Act* says a person may discriminate against another person on the ground of political belief or activity in the employment of a person as a member of staff of a political party, an advisor to a Minister, a member of the electorate staff of a person or in any other similar position.
- This is one of the exceptions to discrimination contained in the *Act*. The onus is on the person that relies on the exception to prove that it applies.

Two co-workers decide to attend a political rally during their lunch break. When their boss found out, they were told they would lose their jobs if they attend rallies or protests during work hours. Is this against the law?

- It's likely that the two workers engaged in a political activity by attending the rally. The workers attended during their scheduled lunch break - there is nothing unlawful about what they did.
- If they are treated less favourably or dismissed because they attended, or may attend, another similar rally in the future, this is discrimination on the basis of political activity, as long as it was in their lunch break or on leave in their own time.

Legal News

Westpac breached its bullying code

Westpac and two managers are under fire over their handling of a workplace bullying allegation, with one accused of taking part in the bullying and the other of failing to act on a complaint.

Westpac claimed many of the actions complained of were reasonable management action conducted by the complainant's team leader in a reasonable way. The complaint (Holt) claimed she was the victim of "repeated" bullying by three co-workers and her team manager between September 2010 and May 2011. She was appealing a Q-Comp decision rejecting her workers' comp claim for a psychiatric injury arising from the alleged bullying.

Queensland Industrial Relations Commission Deputy President Daniel O'Connor said Westpac's code specifically listed "making fun of someone"; "calling people derogatory names"; and "deliberately excluding or ignoring someone", among bullying examples. It was "clear on the evidence" comments her co-workers including her team manager directed to Holt about her slim appearance and light weight were unwelcome and uninvited, DP O'Connor found.

Westpac argued the co-workers' actions were "frivolous" rather than deliberate, and Holt had failed to lodge a formal complaint with HR. The bank claimed Holt's psychiatric illness was not compensable because it arose out of "reasonable management action taken in a reasonable way".

Westpac said Holt's team manager (Lowson) had had to discipline her after she received two written complaints and one verbal one about Holt's work. However, the bank provided no evidence of these

complaints. Holt had complained about the team manager to head of specialist sales transactional banking Damian Cramer. DP O'Connor found the bank had failed to follow its own Discrimination and Harassment policy in the matter, which placed a positive duty on a manager to investigate such allegations. Instead of investigating Holt's complaints, Cramer had "simply accepted" Lawson's version of events and advised Holt there was "no longer a place" for her in the organisation. Holt said he told her if she had a complaint she had to make it to HR, and to do it within two weeks. "In my view, the conduct of Mr Cramer not to investigate the allegations made by the appellant was a clear failure to perform his management functions and could not be categorised as reasonable management action taken in a reasonable way," DP O'Connor found. While Cramer and Lawson might not have been deliberately targeting Holt, "it was not unreasonable for [Holt] to form the view she was being targeted", DP O'Connor said, finding Holt had sustained a compensable injury.

http://www.qirc.qld.gov.au/resources/pdf/published/2013/june/decision_wc44_2012_030613.pdf

Conciliations

A complainant alleged that after announcing her pregnancy at work she was treated less favourably by the manager, she had her hours reduced, she was spoken to harshly, her job was reclassified to a lower pay, she was reprimanded for taking sick leave and bereavement leave and there was conflict about maternity leave entitlements and whether or not she could return to her job after maternity leave.

The complainant complained to the Board of Directors, who ultimately refused to meet with her and terminated her position by email.

The respondent replied that the complainant was treated fairly, that the business was restructured and the complainant's position was made redundant and that they had created a new position for her.

The complaint resolved on the following terms:

1. The Respondent's confirmed that improvements have been implemented in relation to consultation and communication with employees when changes are being made that affect their work and employment status.
2. The respondents acknowledged the Complainant's experiences and apologised for any perceived miscommunication and/or misunderstanding about the Complainant's employment conditions.
3. The Respondents provided the Complainant with a positive work reference and a statement of service.
4. The Respondents confirmed that they have undertaken improvements in relation to their obligations under the Anti-Discrimination Act 1998 (Tas) by joining the Tasmanian Centre for Industry, reviewing their policies and practices and will be undertaking training in Anti-Discrimination law in the near future.
5. The Respondents will pay the amount of \$5000.00 to the Complainant.

Local News



Nominations for the Tasmanian Human Rights awards will open at the end of July, so now is the time to start thinking about individuals and Organisations who have made a significant contribution to the promotion and protection of human rights in Tasmania.

<https://www.facebook.com/HumanRightsWeekTasmania>

National News

Sex Discrimination Amendment Bill passed by Parliament

The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill, which legislates long-overdue protections for gay, lesbian, bisexual, transgender and intersex people has been passed.

The legislation will establish, for the first time at the Federal level, protections against discrimination in areas such as accommodation and healthcare.

The new protections build upon the Government's reforms to eighty-five Commonwealth Acts which removed discrimination against same-sex couples and their children.

http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=r5026

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Sex change red tape reduced

The Federal Government has introduced new guidelines to make it easier for people to establish or change their sex or gender on official personal records. The guidelines on gender recognition, which come into effect on July 1, standardise the evidence needed to change gender identity and support the introduction of protections for intersex, transgender and gender diverse people in anti-discrimination legislation.

<http://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx>

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Racial abuse caught

Police have located and charged a woman filmed racially abusing an Asian teenager on a bus in Sydney on April 17. ABC reports the police charged her with using abusive language. She was filmed by a smartphone and the video placed on YouTube.

<http://www.abc.net.au/news/2013-06-26/woman-charged-over-racist-attack-against-student-on-bus/4782344>

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Launch of Hip hop video to help young people deal with racism

This clip is part of an innovative anti-racism resource aimed at young people, which is associated with the Human Rights Commission Racism It Stops With Me campaign, as well as the clip, the 'What you say matters' resource includes a series of downloadable fact sheets that address what racism is, why people are racist, who experiences racism, where it happens, why it's a problem, what we can do and the laws that address it. There is also a 'Behind the scenes' page about making the video and the students involved.

The 'What you say matters' resource is available online at:

<http://itstopswithme.humanrights.gov.au/whatyousaymatters>

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National Disability Awards for 2013

For nomination form and more information go to;

<http://www.idpwd.com.au/awards/nominations/>, there is a wide range of awards offered for both those living with disability and those who assist others living with disability.

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New and updated resources on access for people with disability

- **Guideline on the application of the Premises Standards**

The Australian Human Rights Commission has now released the final update of the Guideline on the application of the Premises Standards that can be found at

http://www.humanrights.gov.au/disability_rights/standards/PSguide.html

- **Advisory Notes on streetcane, public outdoor areas, fixtures, fittings**

• **Advisory Notes on streetscape, public outdoor areas, fixtures, fittings and furniture**

New Advisory Notes on streetscape, public outdoor areas, fixtures, fittings and furniture that replace the Advisory Notes on Access to Premises first issued by the Commission in 1997. The Advisory Notes on streetscape, public outdoor areas, fixtures, fittings and furniture focus on providing guidance and references for features in the built environment that are not covered by the Premises Standards. The Advisory Notes can be found at http://www.humanrights.gov.au/disability_rights/buildings/access_to_premises.html under the section 'Other Commission resources'.

• **Accessible events - a guide for organisers**

An update of Accessible events - a guide for organisers. This Guide was first developed in 2006 by Meeting & Events Australia in partnership with the Australian Human Rights Commission and is designed to assist those responsible for organising events such as conferences, festivals, annual meetings, award ceremonies, fundraisers and seminars are accessible to people with disability.

It includes sections on the venue, promotional material, booking systems, information and the overall organisation of an event. The updated Guide can be found on the Meetings & Events Australia website at http://www.meetingsevents.com.au/downloads/Accessible_Events_Guide.pdf

July and August Training Calendar

**We are not all the same but we are equal, GLBTI
anti-discrimination awareness**

*This course will greatly assist tourism businesses wishing to apply for Rainbow Tasmania Tourism Accreditation

Hobart

Tuesday 9 July
9.00 - 11.30 am

Launceston

Wednesday 10 July
12.30 - 3.00 pm

\$165.00

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Workplace Support / Contact Officers

Hobart

Monday 5 August, 1.00 - 5.00 pm
&

Tuesday 6 August, 9.00 am - 12.30 pm

Launceston

Wednesday 14 August, 1.00 - 5.00 pm
&

Thursday 15 August, 9.00 am - 12.30 pm

\$440.00 (pre GST)

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**Bullying - what it is, what it's not and
what to do about it**

Hobart

Tuesday 27 August
9.00am - 12.00 noon

\$165.00 (pre GST)

for more detailed course information, price, registration forms or contact details, follow this link

http://www.antidiscrimination.tas.gov.au/education_and_training

Training News



WorkSafe Month Tasmania

30 September - 1 November 2013

WorkSafe Tasmania Month is approaching and will be bigger than ever. The OADC will again be involved with and delivering free events in Hobart, Launceston and Burnie.

Stay tuned for more information about program events including:

- A workplace bullying conference day packed with information
- Bullying - what it is, what it's not and what to do about it
- Get in on the Act - Information, application and updates about the Anti-Discrimination Act 1998 by the Anti-Discrimination Commissioner
- Managers supporting and making the most of their Workplace Support Contact Officer networks.

http://worksafe.tas.gov.au/events/worksafe_month/worksafe_month_2013

Play by the Rules



To see the latest e-bulletin from Play by the Rules please follow this link <http://www.playbytherules.net.au/news-centre/ebulletins>

Awareness Days in July

NAIDOC Week 2013

7 - 12 July 2013

The theme for NAIDOC Week 2013 is: **We value the vision: Yirrkala Bark Petitions 1963**. To find out more go to:

<http://www.naidoc.org.au/celebrating-naidoc-week/2013-national-naidoc-week-theme/>

<http://www.naidoc.org.au/naidoc-events/calendar/>

Stress Down Day

26 July 2013

<http://www.stressdown.org.au/>

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Tasmanian community and
workplaces.