

# In respect of rights



## TABLE OF CONTENTS

- From the Anti-Discrimination Commissioner
- FAQ's - I have been accused of bullying
- Legal News
- Complaint outcomes
- August and September Training Calendar
- Training News
- National News
- Local News
- Play By The Rules
- Awareness Days in August

## Issue 19

### August 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.

Office of the Anti-Discrimination Commissioner  
Level 1, 54 Victoria Street, Hobart, Tasmania 7000  
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

## From the Anti-Discrimination Commissioner



It's great to be back after a mid-winter holiday. The year ahead is shaping up to be an even busier one with a several exciting new projects coming off the drawing board and getting started in the coming months.

2012-13 turned out to be a bumper year for complaints, with 161 complaints lodged in the year (up from 133 in 2011-12) and July was keeping up the trend with a record number of complaints for the month. This is keeping all of the complaints team

more than busy, so it is great to see that the use of early resolution meetings as an opportunity to get the parties to complaints together early is resulting in many complaint getting resolved quickly. Some of the work over the next year will be to look for and put into place further improvements to the complaints process in my office.

It was also a bumper year for the education and training work, with almost 7,500 people attending training or education delivered by OADC staff.

**Robin Banks**  
**Anti-Discrimination Commissioner**

## FAQ's - I have been accused of bullying

**I have just been told there is an allegation against me of bullying. I can't believe it!**

- Regardless of whether you think you have behaved in an inappropriate way or not, the person who made the complaint has the right to do so as all employees in a workplace have the right to complain if they feel they are not being treated fairly or respectfully.
- Remember that everyone is different and what you feel is perfectly appropriate behaviour may be offensive to another person or cause them distress.
- Your workplace should have a 'bullying prevention policy' with a definition of what constitutes bullying behaviour. Check this to make sure your behaviour hasn't fallen within this definition.

1300 305 062

Speak and Listen users: 1300 555 727 and ask for 1300 305 062

E-mail

[antidiscrimination@justice.tas.gov.au](mailto:antidiscrimination@justice.tas.gov.au)

Website

[www.antidiscrimination.tas.gov.au](http://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 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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### **I thought Barbara was my friend. Why didn't she speak to me about this herself?**

- Bullying behaviour can be difficult to define and manage, so sometimes a person may let inappropriate behaviours 'build up' rather than dealing with them on the spot.
- Barbara may not have known how to or felt comfortable enough to approach you directly.

### **I am feeling really angry/upset/confused about being accused of bullying. How should I deal with this?**

- Respect the right of the person to voice their complaint through the proper process.
- Try not to take offense to the complaint, listen objectively to what the person has to say.
- If your behaviour fits the definition of bullying then you need to acknowledge this, apologise and ensure you don't behave the same way in the future.
- If you don't believe your behaviour fits the definition and believe you behaved in a respectful manner then you have the right to tell your side of the story and for that to be taken into account.

### **I think this accusation is just a way to force me out of the organisation!**

- You have a right of reply to any alleged allegations of inappropriate behaviour in the workplace. No complaint should be made against a person without them having a right to respond to the allegations.
- Your workplace must comply with the principles of natural justice, which includes the right to be heard and be dealt with by a person who is able to deal with the situation impartially.
- Your workplace's grievance policy should explain the process to be followed.
- When a complaint is received and dealt with in a way that provides fairness to all parties, the workplace and workplace relationships can recover with no lasting harm to anyone.

### **I feel isolated. Am I entitled to support?**

- You have the same rights as any other person involved in a dispute.
- You have the right to get support from a workplace support / contact officer (if your workplace has them), from a manager, from Human Resources and/or from your employee assistance provider (EAP).
- You are also protected from victimisation, you should not be treated badly or threatened because an allegation has been made against you.

### **One of my staff made a complaint about me bullying them. The organisation investigated the complaint and it was proven that I had not bullied. Now everything is supposed to carry on as normal, but I am afraid it will happen again.**

- The role of a manager is to manage your staff. As long as you are doing this **appropriately, respectfully and fairly** you should have confidence that you are not bullying.
- If you do not adopt a zero-tolerance approach to inappropriate behaviours in your workplace, or you have inconsistent or

unbalanced expectations, you will lose credibility as a manager.

- Self assess your management style, and make any changes you need to (if you need to), and get outside help with this if needed.
- Ask other appropriate managers, eg, Human Resources, to assist you in relation to any matters you are unsure of.
- Think before you act! Ensure that your management actions are **appropriate, respectful and fair.**

## Legal News

### Disability discrimination

*Smith v Department of Education and Communities* [2013] NSWADT 162

An employee alleged his employer unlawfully discriminated against him on the ground of disability by not permitting him to return to work and earn his income because mutually agreed return-to-work arrangements were not in place

In September 2008, the complainant was diagnosed with 'adjustment disorder with anxiety' as a result of a workplace injury and was subsequently awarded worker's compensation for the psychological injury.

In June 2009, the complainant's doctor determined that he was fit for a phased return to work. At this point, the employer decided that it would not allow him to return to his previous work location, but would move him to another office. The complainant refused to work at the new location as it would place him in close proximity to the two managers who had contributed to his psychological injury. Workplace adjustments for a pre-existing back condition, which had been put in place in the original location, were also not in place at the proposed location.

Following another year off work, and copious amounts of correspondence between the complainant, his doctor and his employer, the employer determined that he would allow the complainant to return to work in the original location in August 2010. However, he would not be allowed to return to work unless he signed the return-to-work plan prepared by the employer. This plan differed from a previous return-to-work plan, and was viewed with concern by the complainant's doctor because it failed to distinguish between the psychological injury and the pre-existing back condition that had already been accommodated in his employment arrangements.

The complainant refused to sign the return-to-work plan, and was told he would be placed on unpaid sick leave until such time as he signed the document. He eventually returned to work in July 2011.

The NSW Administrative Decisions Tribunal found that the employer unlawfully discriminated against the complainant by refusing to allow him to perform his duties and earn an income from 9 August 2010 because he refused to sign the proposed return-to-work plan. It also found that the employer would not have taken this step with another person in the same circumstances but with a disability other than the complainant's back condition. The NSW Tribunal found that the employer would, after negotiation, not have required a signed return-to-work plan that included the pre-existing condition or would have

negotiated another acceptable outcome with that person. If no suitable agreement could be reached after proper negotiation, the employer might have required the person to take unpaid leave at that point.

The NSWADT awarded \$38,000 compensation for loss of income and benefits, and \$2,500 for emotional distress.

<http://www.austlii.edu.au/au/cases/nsw/NSWADT/2013/162.html>

## **Complaint outcomes**

### **Alleged discrimination on the basis of age, marital status and parental status.**

During an interview for a position, a selection panel member commented that he knew the complainant was married, asked her date of birth and if she had children. The complainant felt that if she didn't answer the questions, she would be at a disadvantage compared to the other applicants. She felt these comments and questions of the panel member were inappropriate and made her feel uncomfortable. The complainant was unsuccessful with her application.

The complaint was resolved at an early resolution meeting run by the OADC, with a verbal and written apology and acknowledgement of discriminatory practices by the respondent as well as an agreement for the respondent organisation to review its policies and undertake anti-discrimination training.

## **August and September Training Calendar**

### **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  
9.00 am - 12.00 noon

#### **Launceston**

Tuesday 10 September  
1.00 - 4.00 pm

\$165.00 (pre GST)

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### **Managers Supporting Workplace Support / Contact Officers**

#### **Hobart**

Tuesday 17 September  
12.30 - 1.30 pm

#### **Launceston**

Thursday 19 September  
12.00 - 1.00 pm

FREE

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

[http://www.antidiscrimination.tas.gov.au/education\\_\\_and\\_\\_training](http://www.antidiscrimination.tas.gov.au/education__and__training)

## **Training News**

**Bullying** seems to be the hot topic of conversation in many training sessions, whether from the point of view of the target, the accused or those with responsibility for managing the situations. There are so many discussions being had and yet still needing to be had, there are so many processes that need to be improved and so many tools and strategies that need to be developed and implemented.

Over the next three months, ***In respect of rights*** will be using the FAQ section to answer some of the more common workplace bullying questions. We hope you find these useful.

If you have any questions about discrimination or prohibited conduct and you think the answers may be beneficial to others, please e-mail them to [Roz.smart@justice.tas.gov.au](mailto:Roz.smart@justice.tas.gov.au) and we will include them with responses in future newsletters.

## **National News**



**AHRC appoints new Race Discrimination Commissioner**

Dr Tim Soutphommasane is the new Australian Race Discrimination Commissioner. He replaces Dr Helen Szoke who left the Australian Human Rights Commission (AHRC) earlier this year to become chief executive of Oxfam.

AHRC President Professor Gillian Triggs said Dr Soutphommasane would play a critical role at the AHRC.

'Dr Soutphommasane is an influential thinker, writer and broadcaster who has substantially contributed to national discussions about diversity and national identity', said Professor Triggs.

### **Human Rights Awards 2013**

Nominations are now open for the 2013 Australian Human Rights Awards.

The aim of the national awards is to recognise people who are working to achieve better human rights outcomes in their work or community.

To find out more and nominate people and organisations who have contributed to human rights in Australia go to:

<https://hrawards.humanrights.gov.au/>

### **Your Rights at Retirement**

The Australian Human Rights Commission has released a new guide, *Your Rights at Retirement*, a one-stop-shop reference manual that will help people carefully navigate the complex decisions, services and supports that are part of planning and managing retirement.

*Your Rights at Retirement* is available online at

[www.humanrights.gov.au/publications/your-rights-retirement](http://www.humanrights.gov.au/publications/your-rights-retirement)

## **Local News**



### **WorkSafe Month Tasmania**

**30 September - 1 November 2013**

**Over 160 FREE events across the State**

Registrations for Work Safe month events are now open. You can register for events in Hobart, Launceston and Burnie.

The OADC will again be involved with and delivering information at 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.**

Register online at

[http://www.worksafe.tas.gov.au/events/worksafe\\_month/worksafe\\_month\\_2013](http://www.worksafe.tas.gov.au/events/worksafe_month/worksafe_month_2013)

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### **Migrant Communities Employment Fund**

Migrant community organisations, local government, other community organisations, employment service providers and employers can apply for funding through the Migrant Communities Employment Fund.

Applications for the new Migrant Communities Employment Fund are open. It supports innovative projects that help unemployed and underemployed migrant and refugee job seekers prepare for and gain sustainable employment and progress their careers.

The Migrant Communities Employment Fund is designed to complement and enhance existing government programs that help migrants and refugees, including Humanitarian Settlement Services and the Adult English Migrant Program.

The Australian Government has committed \$6 million to the fund over two years, with each project to be funded up to \$200,000.

Migrant community organisations, other community organisations, employment service providers and employers are encouraged to apply.

<http://deewr.gov.au/news/applications-now-open-migrant-communities-employment-fund>

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### **Rainbow Awards 2013**

The Rainbow Awards are an acknowledgement of those people in the community who take outstanding action to create an inclusive society that reflects the important role that lesbian, gay, bi-sexual, transgender and intersex (LGBTI) people can play in the community when diversity is respected and valued

The Awards recognise both individuals and organisations that have demonstrated both courage, tenacity and passion in acting for change.

This year, Rainbow Communities Inc will present three awards at the Rainbow Dinner on 30 November at Wrest Point. The Dinner is part of the Tasmanian Human Rights Week Events and associated with World Aids Day. The following Awards will be presented:

- LGBTI Youth 'Coming Out' Award for courageous action respecting inclusion or rejecting discrimination at this important time starting out in life.
- Adult LGBTI Award for advocacy that supports and encourages legal change or cultural awareness of respecting, acknowledging or celebrating LGBTI communities
- LGBTI Award to an Organisation that has achieved systemic change to reflect best HR practice & support for LGBTI clients or staff

For more information and nomination forms go to: [www.rainbowtas.org](http://www.rainbowtas.org).

### **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 August



1 - 7 August 2013

### **World Breastfeeding Week**

<http://worldbreastfeedingweek.org/>

9 August

### **International Day of the World's Indigenous People**

<http://www.timeanddate.com/holidays/un/international-day-indigenous-people>

5 - 11 August

### **Homeless Persons Week**

<http://www.homelessnessaustralia.org.au/index.php/events/hpw/hpw-2013>

12 August

### **International Youth Day**

<http://www.timeanddate.com/holidays/un/international-youth-day>

19 August

### **World Humanitarian Day**

<http://www.timeanddate.com/holidays/un/world-humanitarian-day>

25 - 31 August

### **Hearing Awareness Week**

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

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