

# In respect of rights



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## Edition 22

## November 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 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

## From the Anti-Discrimination Commissioner

In memory of Lucy Henry 1973 - 2013, mental health rights advocate and much, much more

### For Lucy who left us

wanting more.

Trailblazer.  
Firestarter.  
Named for light  
but she could be dark.

But she could be light.  
Dark and light,  
humour and despair.  
Excoriating Lucy,  
focusing a light on the damp, dark recesses  
of mouldering bureaucrazy.

Battle scarred Lucy,  
determined, impulsive, headstrong, driven, opinionated.  
Loyal.  
Gentle.  
Exposed: a focus and a target.

She trod lightly on this place,  
halfway in some other space.

But her footprints remain.

### Elida Meadows

## From the OADC

This month we said farewell to our second semester interns from the University of Tasmania. We wish both **Jennifer Rowallan** and **Emilie McDonnell** all the best in their future endeavours.

Jennifer completed a full time placement with us assisting the Commissioner's Own Motion investigation into the provision of medical services to people with disability in supported accommodation. Jenn's insight into the challenges faced by those with mobility or communication restrictions has been invaluable in establishing a framework and research strategy for the investigation. Thank you Jenn.

Emilie undertook research into issues relating to access to the criminal justice system for people with disability in Tasmania. Her work provided a detailed overview of the legislative and policy framework experienced by those with intellectual impairment and mental health issues. Her work will form the basis for our submission to the Australian Law Reform Commission's Inquiry into Legal Barriers for People with Disabilities. Thank you Emilie.

## FAQ's - Changes to the Anti-Discrimination Act

**What kind of changes have been made to the Act?**



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  
Ph: (03) 6233 7832  
E-mail [rozsmart@justice.tas.gov.au](mailto:rozsmart@justice.tas.gov.au)

What kind of changes have been made to the Act?

- There are changes to the Act that clarify and extend the protection against discrimination and related conduct. These are changes that we all need to know about because we are all required to obey the law by avoiding doing things that would be unlawful discrimination or prohibited conduct under the Act.
- There are also changes that will only affect people who are involved in a complaint of discrimination or related conduct, either as the person who made the complaint or the person (or organisation) against whom the complaint has been made. More about these next month.
- There is also a change that will permit discrimination by faith-based schools in relation to school admissions in limited circumstances. More about these next month.

#### **How do the changes clarify and extend the protection against discrimination and related conduct?**

- There is a new 'ground' upon which discrimination is unlawful: **intersex**. This means it will be unlawful to treat a person less favourably because they are intersex or to do things that disadvantage people who are intersex.
- People who are transgender will be protected under the ground '**gender identity**': This means it will be unlawful to treat a person less favourably because they are transgender or to do things that disadvantage people who are transgender.
- The protection for people who are transsexual will be clearer as it is included in the new definition of 'gender identity'. This protection currently exists under the protection against discrimination on the basis of sexual orientation.
- The protection against discrimination and prohibited conduct in the area of the administration of State laws and programs is extended to all of the listed 'grounds' or characteristics.
- The protection against discrimination and prohibited conduct in the area of awards, enterprise agreements and industrial agreements is extended to all of the listed 'grounds' or characteristics.
- The protection against conduct that offends, humiliates, intimidates, insults or ridicules will be extended to cover age, race, disability, sexual orientation, gender identity, intersex and lawful sexual conduct.
- There will be a defence to conduct that offends, humiliates, intimidates, insults or ridicules: it will be a defence to such conduct if the conduct is '(a) a fair report of a public act; (b) a communication or dissemination of a matter that is subject to a defence of absolute privilege in proceedings for defamation; (c) a public act done in good faith for – (i) academic, artistic, scientific or research purposes; or (ii) any purpose in the public interest.
- The protection in the area of the membership and activities of clubs will apply to the membership and activities of all incorporated or unincorporated associations that have 30 or more 'members'.

#### **What is intersex?**

- 'Intersex' is a term used for a variety of conditions that mean a person is born with a reproductive or sexual anatomy that don't fit the typical definitions of female or male. Gender has generally been understood to mean 'male' or 'female'. However, gender is a spectrum and each of us is somewhere on that spectrum. Most people are closer to one end of the spectrum or the other and so understand themselves to be and are understood by others to be female or male.
- The express protection in the *Anti-Discrimination Act 1998* on the basis of intersex will raise awareness of intersex issues, preserve choice for intersex people and protect them from discriminatory practice.
- The Act will define 'intersex' as meaning 'the status of having physical, hormonal or genetic features that are: (a) neither wholly female nor wholly male; or (b) a combination of male and female; or (c) neither male nor female.'

#### **Are the changes in effect now?**

- No, the changes have not yet come into effect. They are likely to

take effect from early 2014. The delay in the changes taking effect is to allow the Commissioner and the Tribunal to ensure that they are ready to deal with the new parts of the Act.

## Human Rights Week



### The Human Rights Week Organising Committee

invites you to the launch of

**Human Rights Week 2013  
&  
announcement of  
Tasmanian Human Rights Awards**

including:

Aboriginal Acknowledgement  
QTas Choir

Guest Speaker: Sharon Jones  
Advocate, Activist & Campaigner  
Sexuality & Gender Identity Rights

**12.30 pm – 1.30 pm, Monday 2 December**

Reception Room, Parliament House  
(Refreshments will be served at the conclusion of the formalities).

RSVP by: Tuesday, 26 November 2013 to Leica on:  
[leica.wagner@justice.tas.gov.au](mailto:leica.wagner@justice.tas.gov.au)

The Human Rights Week Organising Committee acknowledges support from:  
Hobart City Council, National Disability Services  
& the Office of the Anti-Discrimination Commissioner (Tasmania)

## Complaint Outcomes

A complainant alleged disability discrimination in employment on the basis of his vision impairment. The complainant alleged that he was bullied and treated aggressively by a senior manager and that during a performance discussion reference was made to his vision impairment.

The complaint was able to be resolved through an early resolution meeting:

1. The complainant agreed to accept an offer of voluntary redundancy.
2. The complainant retained ownership and possession of disability-related equipment that was purchased by the employer for the complainant's use, including a scanner, cctv and magnifying screen.

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A complainant worked on a voluntary basis for the respondent organisation for many years. The complainant alleged that a supervisor told her that, because she has a mobility aid (in the form of a crutch), she had lost her position, and that anyone with a disability would not be given a volunteer position because occupational health and safety requirements would not allow it. She alleged disability discrimination in connection with employment (under the Tasmanian Act, employment

includes both paid and voluntary work).

The individual respondent apologised to the complainant at the early resolution meeting, and agreed to provide a written apology and acknowledgement.

The organisational respondent provided a written acknowledgement to the complainant. A senior manager, on behalf of the organisation, also affirmed that the organisation would welcome the complainant continuing her volunteering work.

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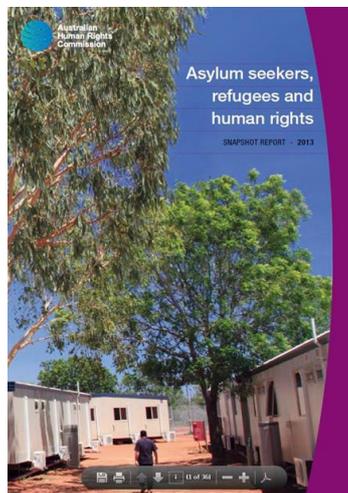
A complainant alleged unlawful discrimination in employment on the basis of irrelevant criminal record. The complainant had successfully completed a student work placement at the respondent organisation. He had been serving a prison sentence while studying. After he finished the placement he continued working with the respondent organisation in a voluntary capacity.

The complainant alleged he was told by a staff member of the respondent that it had a policy of not hiring anyone with a conviction for a particular criminal offence and that management discovered this policy only when an attempt was made to employ the complainant in a paid capacity.

Without admission of liability, the organisation agreed to pay the complainant \$5,000. It acknowledged that the complainant was given incorrect information by a staff member. The respondent acknowledged the distress that the complainant felt as a result of what had happened. The respondent's human resources manager agreed to recommend that discrimination be included as part of the organisation's current review of policies.

The respondent also affirmed that the complainant was welcome to apply for positions with the organisation.

## National News



### **Asylum seeker policies raise human rights issues: report**

The Australian Human Rights Commission has released a report, *Asylum seekers, refugees and human rights: Snapshot report 2013*, which highlights the significant gap between Australia's human rights obligations under international law and its current treatment of asylum seekers and refugees.

The report is available at:

[www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report](http://www.humanrights.gov.au/publications/asylum-seekers-refugees-and-human-rights-snapshot-report)

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### **Pregnancy and return to work review accepting submissions**

Federal Sex Discrimination Commissioner, Elizabeth Broderick, is urging people across Australia to make submissions online to the Australian Human Rights Commission's Pregnancy and Return to Work National Review, which has begun its consultation process.

'In particular, the Commission invites online submissions from women and men who have experienced discrimination while on parental leave or upon their return to work following parental leave, as well as from community organisations that work with women who have experienced discrimination,' Commissioner Broderick said.

Submissions will be accepted until 16 December 2013 and can be made at [www.humanrights.gov.au/supporting-working-parents-pregnancy-and-return-work-national-review-organisations](http://www.humanrights.gov.au/supporting-working-parents-pregnancy-and-return-work-national-review-organisations)

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### **Racism. It Stops with Me**

Federal Race Discrimination Commissioner, Dr Tim Soutphommasane has released a 'One Year On' report on the Australian Human Rights Commission's national anti-racism campaign, Racism. It Stops with Me.

<http://www.humanrights.gov.au/publications/racism-it-stops-me-and-national-anti-racism-strategy-one-year>

## **November and December Training Calendar**

### **Workplace Support / Contact Officer (WS/CO) Training**

#### **Hobart**

Monday 4 November, 1.00 - 5.00 pm  
&  
Tuesday 5 November, 9.00 am - 12.30 pm

#### **Launceston**

Monday 11 November, 1.00 - 5.00 pm  
&  
Tuesday 12 November, 9.00 am - 12.30 pm

**\$440.00 (pre GST)**

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### **Workplace Support / Contact Officer (WS/CO) Networking Meeting**

#### **Hobart**

Tuesday 26 November, 9.00 am - 12.00 pm

#### **Launceston**

Wednesday 27 November, 12.30 - 3.30 pm

**FREE**

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### **Train the Trainer**

**Conduct your own Discrimination, Harassment & Bullying Program in your workplace**

#### **Hobart**

Monday 2 December & Tuesday 3 December  
9.30 am - 4.30 pm both days

**\$770.00 (pre GST)**

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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**

### **WorkSafe Tasmania Month**

During October, the OADC delivered anti-discrimination awareness sessions as part of WorkSafe Month. This is the sixth year the OADC has been involved in WorkSafe Month.

It was great to see so many participants for all the sessions and we had some interesting and thought-provoking discussions. This year we delivered sessions on:

delivered sessions on:

- Bullying - what it is, what it's not and what to do about it
- Get in on the Act
- Managers Supporting Workplace Support Contact Officers
- Fit for Work

We also took part in the **Workplace Bullying Conference Day** with WorkSafe Tasmania. This was an excellent day with presentations by Neale Buchanan (WorkSafe Tasmania), Robin Banks (Anti-Discrimination Commissioner) and Jennifer Anderson (Fair Work Commission). There were panel discussions **'Workplace Bullying: where does it fit?'** with Neale and Robin (Hobart, Launceston and Burnie), Kevin Harkins and Bob Gozzi (Hobart), Brett Smith and Mark Fagan (Burnie) and Keith Rice (Launceston). Each conference concluded with an afternoon panel discussion **'Managing workplace bullying complaints and getting people back to work'** and special thanks go to Beverley Schiller, Bruce Coles and Tony Newport for their participation on the panel and sharing of their experience and knowledge to all three conferences.

Thank you to everyone who attended the sessions and to WorkSafe Tasmania for once again organising such a valuable opportunity.

Roz Smart

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### 2014 OADC Training Calendar

Our 2014 training calendar will be finalised in time for the December edition of *In respect of rights*, stay tuned.

### Local News



#### TasPride Festival

Across Hobart, Launceston and Burnie  
1 - 9 November

[http://taspridefestival.com/?page\\_id=5322](http://taspridefestival.com/?page_id=5322)

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***Rites of Passage*** is a unique Australian drama made by a group of disadvantaged young people about their lives.

See the Hobart Premier:

6 November, 7.00 pm

The screening will be followed by a question and answer session with the film-makers including some of the young people.

UTAS Law School Theatre, Sandy Bay (off Grosvenor St)

\$10 via EventBrite [www.rophobart.eventbrite.com.au](http://www.rophobart.eventbrite.com.au)

Find out more and watch a trailer at the Facebook page

<https://www.facebook.com/#!/events/608752462480525/>

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#### Book Launch

*Short stories about positive change in women's lives*

Guest speaker: The Hon Cassie O'Connor

Glenorchy LINC main library

Wednesday 6 November 2013

12.30 - 2.00 pm

RSVP Kathie Imlach ph: (03) 62 33 8663

or

Sabine: [eo@hobartwomensshelter.org.au](mailto:eo@hobartwomensshelter.org.au)

## Play by the Rules



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

## Awareness Days in November



### 16 November

International Day for Tolerance

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

### 20 November

Transgender Day of Remembrance

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

### 20 November

Universal Children's Day

<http://www.timeanddate.com/holidays/un/universal-childrens-day>

### 23 November to 1 December

Social Inclusion Week

2013 Theme: Collaborate, Connect, Celebrate

[www.socialinclusionweek.com.au](http://www.socialinclusionweek.com.au)

### 25 November

International Day for the Elimination of Violence against Women

White Ribbon Day

Australia's campaign to  
stop violence against women

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

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