

# In respect of rights



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## 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  
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.

## From the Anti-Discrimination Commissioner

Welcome to the first *In respect of rights* for 2014. The year started for my office with work well underway on implementing new processes and planning publications to reflect the changes to the *Anti-Discrimination Act 1998* (Tas) that took effect on 1 January 2014. If you aren't aware of the range of changes, you can find out about them in the 'Frequently Asked Questions' sections of the November and December 2013 editions



[http://www.antidiscrimination.tas.gov.au/news\\_and\\_events/in\\_respect\\_of\\_rights](http://www.antidiscrimination.tas.gov.au/news_and_events/in_respect_of_rights)

So our work is definitely focused for the first part of the year on bedding down those changes and ensuring that people and organisations across the State are aware of them and how they impact on rights and obligations.

If you would like us to come and speak to your organisation or group on the changes, please let us know on [antidiscrimination@justice.tas.gov.au](mailto:antidiscrimination@justice.tas.gov.au). We are going to try to work our way around the State in the coming months to both provide updates and hear from you about what is important in this area of law for you.

One important change is that the complaint form that can be used to make a complaint under the Act has been updated to reflect the changes. If you have copies of the old complaint form, please replace them with the new form, which is available on the office website at [http://www.antidiscrimination.tas.gov.au/complaints/what\\_a\\_complaint\\_should\\_include](http://www.antidiscrimination.tas.gov.au/complaints/what_a_complaint_should_include)

This webpage provides links to both a Word and PDF version of the form.

**Robin Banks**  
Anti-Discrimination Commissioner

## Update from the office



## Happy New Year for 2014

The staff of the OADC are back at their desks with the addition of

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)

The staff of the OADs are back at their desks with the addition of Cindy Reardon who has joined the administration team for a short period. We farewelled Elma Nidorfer who has returned to the Legal Aid Commission. Thanks Elma and welcome Cindy.

### **Report on complaints and enquiries for the second half of 2013**

In the six months from 1 July to 31 December 2013, 97 complaints alleging breaches of the *Anti-Discrimination Act 1998* were received. This is an increase from 80 for the same period in 2012.

In the same period, staff dealt with 331 enquiries. This is also an increase from 299 for the same period in 2012.

We held 47 meetings to assist the parties to complaints to resolve the complaints. Of these 33 were early resolution meetings. Twenty seven of these meetings resulted in the parties reaching an agreement to resolve the complaint. A further seven meetings were adjourned to enable the parties to further discuss resolution options and we are still working with the parties on this. The continuing strong trend of complaints being resolved at early resolution meetings is welcomed.

## **FAQs - Obligations of organisations under the Act**

### **What are the obligations of an organisation under the Tasmania's *Anti-Discrimination Act*?**

- Every organisation has an obligation to take reasonable steps to ensure its members, officers, employees and agents are aware of and do not engage in, repeat or continue discrimination and prohibited conduct.
- If an organisation does not comply with these obligations, it is liable for any breach of the Act committed by any of its members, officers, employees or agents.
- This obligation and the consequences of non-compliance are set out in section 104 of the *Anti-Discrimination Act 1998* (Tas).

### **Andrea believes she has been sexually harassed at work by a colleague, Taylor. She has complained about Taylor to her boss but nothing has been done. What can she do?**

- Andrea can make a complaint under the *Anti-Discrimination Act 1998* (Tas) to the Anti-Discrimination Commissioner. She can complain about both Taylor and the organisation she works for. She can complain about Taylor as he is the person she believes has sexually harassed her. She can complain about the organisation if she believes that it hasn't taken reasonable steps to ensure Taylor didn't sexually harass her.
- In the complaint process, Taylor and the organisation will have the opportunity to hear and respond to Andrea's complaint against them.
- People can make a complaint under the Act naming both an individual and an organisation as responsible. The complaint can also just name the individual or just the organisation as responsible.

### **What organisations are covered?**

- Organisations include government bodies, private enterprise and not-for profit organisations.
- Organisations include shops and other businesses, clubs, schools, service providers, community and voluntary organisations, industry bodies and unions, medical and allied health practices and more.
- Organisations also include local councils, State Government Departments and State Authorities.

### **An organisation must take reasonable steps. What are reasonable steps?**

- If an organisation can show that it has taken reasonable steps to ensure its members, officers, employees and agents are aware of and do not engage in discrimination or prohibited conduct, the organisation will not be liable for the discrimination or prohibited

organisation will not be liable for the discrimination or prohibited conduct of a member, officer, employee or agent.

- What will be considered 'reasonable steps' will be different according to the circumstances of each complaint and may also depend on factors such as the size of the organisation and its resources.

Cases have held that reasonable steps may include:

- Developing policies and grievance procedures about discrimination and prohibited conduct (as set out in the *Anti-Discrimination Act*) and communicating these effectively to all members, officers, employees and agents
- Monitoring the workplace to ensure compliance with policies and procedures.
- Training members, officers, employees and agents about discrimination and prohibited conduct.
- Dealing with any internal complaints fairly, promptly and in accordance with policies and procedures.

**A small organisation has developed discrimination policies and grievance procedures and trained all its members. Some time later, Paul makes an internal complaint about racial harassment against Mischa. The organisation engages an external agency to investigate the complaint as this is what is required in its grievance procedure. The external agency makes some recommendations that the organisation adopts. Paul is still unhappy. What can he do?**

- Paul can make a complaint under the Act to the Anti-Discrimination Commissioner and name both Mischa and the organisation as responsible if he wishes.

However, this may be a situation where the organisation has taken reasonable steps because:

- It has developed discrimination policies and grievance procedures
- It has trained all its members
- It promptly engaged an external agency to investigate Paul's complaint, as is required by the grievance procedure
- It adopted the recommendations from the external investigator.

In this situation, the organisation may not be liable for Mischa's conduct, but Mischa would still be individually liable if discrimination or prohibited conduct in breach of the Act is proven.

## Complaint Outcomes

### **Workplace sexual predator ordered to pay woman \$467k in damages**

#### ***Ewin v Vergara (No 3) [2013] FCA 1311 (5 December 2013)***

The Federal Court of Australia has ordered an accountant to pay a woman almost half a million dollars in damages for relentlessly sexually harassing her over several days in 2009. The woman alleged a range of behaviours by the accountant culminating in his raping her.

Justice Mordy Bromberg said she did not need to prove that she had been raped for her sexual harassment claim to succeed under the *Sex Discrimination Act 1984* (SDA).

The respondent denied the allegations and attempted to cast the woman in the role of sexual predator and himself as an 'unwilling victim forced into submission' because he feared for his job.

The respondent also argued that the definition of 'workplace' did not include a corridor area outside the offices of the complainant and the respondent, so whatever sexual harassment and activity alleged to have happened there could not be captured by the SDA. Justice Bromberg said the wide definition of 'workplace' provides no textual support for that contention. Justice Bromberg said, 'No discernible policy objective was suggested for such a construction and the object of the provision would be significantly undermined if such a narrow construction was adopted... The objective of eliminating sexual

harassment in the workplace would be significantly undermined if associated common areas such as entrances, lifts, corridors, kitchens and toilets were construed as falling beyond the geographical scope intended by the SDA.'

Justice Bromberg remarked that before the harassment, the woman was a 'confident, highly functioning individual who was outgoing and socially active'. 'Her reaction to the sexual harassment has resulted in dramatic changes to both her personality and her lifestyle', he said. 'That has substantially diminished [her] quality of life and caused her substantial pain and suffering.'

<http://www.austlii.edu.au/au/cases/cth/FCA/2013/1311.html>

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A complainant alleged discrimination on the basis of **irrelevant criminal record in employment**. He alleged that because of his criminal record his shifts were reduced and he was told he was not able to work on shifts with people with disability. He ended up resigning. At the OADC early resolution meeting, the complainant provided further details about his complaint and some disrespectful behaviour he had experienced from some managers. Both parties participated in the discussion and listened to each other in a respectful way. The complaint was resolved with the respondent agreeing to:

- look at the issues raised by the complainant, hold discussions with some managers about discrimination and consider further training for those managers;
- make 'discrimination' a standing agenda item at OH&S committee meetings;
- have one issue of a monthly newsletter focus on discrimination and respectful behaviour;
- issue a memo to supervisors and managers about the importance of ensuring conversations about personal information, including criminal records, take place in a private area; and
- have a person talk to employees with disability about discrimination at a meeting.

The complainant indicated that he had really wanted to talk to the General Manager about his concerns and had tried to do so on the day he resigned but the Manager was away from the workplace and the complainant's message was not passed on to him. If they had talked, this complaint would most likely not have been made. Fortunately, through the OADC's early resolution process, they were able to sit down and talk about it and the complainant was happy that his concerns were taken on board.

## January and February 2014 Training Calendar

### Update and awareness of the Tasmanian Anti-Discrimination Act and amendments

#### Hobart

Tuesday 28 January, 10.00 am - 12.00 pm

#### Burnie

Wednesday 29 January, 2.00 - 4.00 pm

#### Launceston

Thursday 30 January, 9.00 - 11.00 am

#### FREE

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

#### Hobart

Monday 17 February, 1.00 - 5.00 pm

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Tuesday 18 February, 9.00 am - 12.30 pm

#### Launceston

Thursday 20 February, 1.00 - 5.00 pm

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&  
Friday 21 February, 9.00 am - 12.30 pm

**\$440.00 (pre GST)**

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**Update and awareness of the Tasmanian Anti-Discrimination Act and amendments**

**Hobart**

Tuesday 18 February, 1.30 - 3.30 pm

**Launceston**

Friday 21 February, 1.00 - 3.00 pm

**FREE**

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

**Hobart**

Monday 24 February & Tuesday 25 February  
9.30 am - 4.30 pm both days

**\$770.00 (pre GST)**

## Training

### Report on education and training for the second half of 2013

In the six months from 1 July to 31 December 2013, the OADC training team; Roz Smart and Louise Adams, delivered 118 training sessions for a total of 295 training hours. This is 23 less training sessions but 6 more training hours than the same period in 2012.

The training team were also busy travelling around the state, they spent 119 hours on the road compared to 107 hours for the same period in 2012.

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### Are you a proactive organisation?

Are you confident that you and your organisation are doing everything possible to prevent discrimination, harassment and bullying?

If there was a discrimination, harassment or bullying complaint within your organisation are you confident that you and your staff would know what to do and would be confident that the complaint would be handled well for all involved?

A healthy organisation is one that has adopted robust yet transparent strategies that start at the very top and flow through to all staff. The costs of discrimination, harassment or bullying are well known and they far out-weigh the 'too hard' mentality that some organisations adopt rather than prioritising inclusive, healthy and supportive environments.

### Value your organisation by valuing your greatest resources

## 2014 Training Calendar

The January - June 2014 training calendar for the Office of the Anti-Discrimination Commissioner is now finalised and available on the website where you will also find the form to **register** for training courses [http://www.antidiscrimination.tas.gov.au/education\\_and\\_training](http://www.antidiscrimination.tas.gov.au/education_and_training)

If you are interested in attending any of our other training courses or booking in-house training please contact our trainers [roz.smart@justice.tas.gov.au](mailto:roz.smart@justice.tas.gov.au) or [louise.adams@justice.tas.gov.au](mailto:louise.adams@justice.tas.gov.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>.

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