

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.

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

From the Anti-Discrimination Commissioner

There is a lot going on in my office at the moment, with the complaints, education and training teams and our policy work at capacity.

On the **policy and project** front, we are working on several major projects including:

- Finalising guidelines for government on record collection and keeping in relation to sex and gender arising from changes to discrimination law covering gender identity and intersex. For more about those changes, see the November and December 2013 issues of In respect of rights at

http://www.antidiscrimination.tas.gov.au/news_and_events/?a=189866

The impact of record collection and record keeping that fails to recognise the diversity of gender identity and intersex is significant and not well understood. The Open Society Foundations has recently posted a short message about this impact and it is definitely worth viewing:

http://www.opensocietyfoundations.org/explainers/essential-legal-right-trans-people?utm_source=health_A&utm_medium=email&utm_content=6XqD78ekhEFtNssnfX2aDSFk4aZK8Uxch65WblwvIKU&utm_campaign=health_A_050314

- Finalising an issues/consultation paper on expunction of criminal records in relation to consensual sexual conduct between adult males in recognition of the continuing negative impact of the historic criminalisation of such conduct in Tasmania. This issue received some media attention earlier in the year when the Victorian Premier announced that his government would move to legislate for expunction. The South Australian Government has already progressed some reforms in this area and it was very positive to hear all political parties in Tasmania giving their in-principle support to expunction in Tasmania. Stay tuned for more on this issue in coming months.

- Submission to the Federal Aviation Access Forum on its proposed 'two-wheelchair policy' for airlines providing domestic air travel in Australia. For more about the Forum and its proposed policy:

<http://www.infrastructure.gov.au/aviation/aaf/index.aspx>

At the end of April, we made a submission to the Federal Attorney-General's Department exposure draft Bill for repeal of section 18C (and other changes to Part IIA) of the *Racial Discrimination Act 1975* (Cth). The submission is available at:

http://www.antidiscrimination.tas.gov.au/news_and_events/submissions

The position my office has taken is that the case for repeal has not been demonstrated and that it is vitally important that Australia retain this federal protection to ensure that all in the Australian community can enjoy lives free from racism, given the significant harm to individuals and to our society that racism causes.

On the **complaints and enquiries** front, 146 complaints have been lodged with my office in the current financial year (from 1 July 2013 to 30 April 2014). This is an increase on last year's complaint numbers and the complaints team continues to work at capacity to assist parties to investigate and resolve those complaints). Resolution has been achieved in 70% of cases where parties



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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complaints, resolution has been achieved in 170 of cases where parties have participated in a dispute-resolution process. The complaints team regularly travels to various parts of the state to conduct dispute resolution meetings. Complaints of disability discrimination continue to dominate with discrimination in connection with employment and the provision of facilities, goods and services representing the vast majority of complaints.

In the same period, staff members have also dealt with 556 enquiries about possible complaint matters. These are received by e-mail, phone, post, in person, via our online enquiry form and through the Report it! forms (electronic and hard copy). Disability, race and gender have dominated the enquiries in the areas of employment and provision of facilities goods and services.

On the **education and training** front, 217 education or training sessions have been delivered this financial year (to the end of April). This includes over seventy community sessions and events, sixty-five for state government authorities, 18 for local government, thirty-three to education providers, plus eighteen OADC calendar training sessions. These have been delivered across the state with the training team regularly on the road to ensure that people throughout the state have access to the sessions.

Robin Banks
Anti-Discrimination Commissioner

FAQs - What is unlawful discrimination?

What is unlawful discrimination?

- It is unlawful discrimination when a person is treated less favourably (worse) than other people because they have a particular characteristic, such as their age, race, sex or disability.
- It is also discrimination when a person is disadvantaged compared to other people because they have a particular characteristic.

When is discrimination against the law?

- Discrimination is **unlawful** under the *Anti-Discrimination Act 1998* (Tas) (the Act) if it is discrimination on the basis of one or more of the 22 characteristics listed in the Act (these characteristics are called 'attributes'), and if it happens in an area of activity that is listed in the Act

The attributes listed in the Act are:

- Age
- Race
- Disability
- Irrelevant medical record
- Gender
- Gender identity
- Intersex
- Breastfeeding
- Pregnancy
- Sexual orientation
- Relationship status
- Lawful sexual activity
- Marital status
- Family responsibilities
- Parental status
- Irrelevant criminal record
- Religious belief or affiliation
- Religious activity
- Political belief or affiliation
- Political activity
- Industrial activity
- Association with a person who has or is believed to have any of the other attributes.

The areas of activity listed in the Act are:

- Employment (paid and unpaid)
- Education and training
- Provision of facilities, goods and services

- Accommodation (all types)
- Membership and activities of clubs
- Administration of any law of Tasmania or any State Government program
- Awards, enterprise agreements or industrial agreements

Is it ever okay to treat someone differently?

- Treating someone differently isn't necessarily unlawful discrimination. It is permitted if it is necessary to properly allow for individual needs, as this is not 'less favourable' treatment.
- Less favourable treatment is not always unlawful discrimination. A person may be treated less favourably than others if it is for lawful reasons such as to ensure that the person appointed to do a job can perform the job's inherent requirements.

What are some examples that are not unlawful discrimination?

- Not employing a pregnant woman for a 12 month contract in Antarctica makes good sense for logistic reasons.
- Not allowing an employee that suffers from severe vertigo to work on scaffolding is good management and meets other legal obligations such as occupational health and safety laws.
- An employer changing an employee's duties (with consultation) while the employee does more training to further develop skills (after making a number of mistakes on a project), may be the best management approach in a situation. This is not unlawful discrimination as the job has been changed because of poor performance and not an because of (or linked to) an attribute.

For more information on what is unlawful discrimination in Tasmania go to;

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

Case Summary

Employment terminated through facebook message

Corrie v Sheel Panel Service (Vic) Pty Ltd T/A Sheen Panel Service (Vic) [2013] FWC 7830

The Fair Work Commission recently considered whether a person had been dismissed by her employer when she received a facebook message from the daughter of the company director indicating it would be inappropriate to continue in her role in certain circumstances.

Ms Corrie had worked with corporate group for over three years.

She received a Facebook message from Ms Denys, also an employee and the daughter of a Director. In the message, Ms Denys called Ms Corrie a 'horrible human being' and told her to 'wait for Karma to come back and bite... in the ass.' When Ms Corrie asked this was about she got a response from Ms Denys stating, 'if it's true that you're engaged whilst STILL being married. We all think (including [her father]) ... that it's inappropriate for you to come back to work'. When Ms Corrie asked whether Mr Brett Keating, another director, had been informed, Ms Denys said that he had.

Ms Corrie's work mobile phone was disconnected the next day. Ms Corrie subsequently telephoned Mr Keating and asked for a separation certificate. The certificate Ms Corrie received recorded the reason for separation as 'shortage of work'.

Commissioner Roe found that given Mr Denys' role as a Director and his relationship with Ms Denys, Ms Denys' Facebook conversation with Ms Corrie constituted dismissal by her employer.

The Commissioner also determined that Mr Keating's actions affirmed the termination of Ms Corrie's employment. Mr Keating was aware of the Facebook conversation and, if the employer had not intended to terminate Ms Corrie's employment, he could have corrected the situation. This was supported by the disconnection of Ms Corrie's mobile phone and the reason given in the separation certificate.

Having found that Ms Corrie's employment had been terminated by the employer, Commissioner Roe referred the matter back to the Fair Work Commission to determine whether the dismissal was unfair.

The decision is available at:

<https://www.fwc.gov.au/documents/decisionssigned/html/2013FWC7830.htm>

How not to respond to a complaint of bullying: 'Go put some lippy on'

Keegan v Sussan Corporation (Aust) Pty Ltd [2014] QSC 64

The Supreme Court of Queensland has recently decided this case in relation to inappropriate workplace behaviour. It is a case that highlights the importance of ensuring that staff members with management and/or supervisory duties are suitably trained and skilled, and that workplace processes are followed in relation to complaints.

Gabrielle Keegan was employed by retail chain Sussan.

Ms Keegan sued Sussan for personal injury and loss resulting from Sussan's negligence, breach of contract and breach of statutory duty. She claimed \$1.2 million in damages and was awarded just under \$240,000 (after approximately \$66,000 was deducted in refund to WorkCover). Ms Keegan alleged that she suffered a major psychiatric injury over 11 days due to bullying and harassment by Diana Clarke, who was her new store manager. Ms Keegan was certified as unable to return to work following the injury.

Ms Keegan was assistant manager at Sussan's Cairns central store for about six years. In early 2010, Ms Keegan took parental leave and while she was on leave, the Cairns central store manager left and Ms Clarke was appointed by the Queensland Business Manager, Jayne Makarien, to replace her. This decision was made in spite of Ms Clarke's former employer indicating she would not hire her again and did not believe she was 'manager material' and would 'need to learn management skills and people skills'. Ms Clarke received limited induction and on-the-job training.

Ms Keegan returned to work in late 2010 and was subjected, in her view, to bullying by Ms Clarke over several days. The conduct Ms Keegan complained of included:

- 'unwarranted criticism about the previous state of the store; not signing customers to the store's VIP discount program; poor handwriting; failing to remove security tags from clothing and not mopping the floor properly';
- being repeatedly spoken to in a 'loud and aggressive tone';
- being excluded from 'matters of business management' despite her being the assistant manager;
- being spoken to aggressively, including Ms Clarke holding a mop head about 10cm from Ms Keegan's face and challenging Ms Keegan about the state of the mop.

On Ms Keegan's third day back from leave she was telephoned by Ms Makarien to check how it was working out. At that stage, Ms Keegan responded that Ms Clarke 'was good'.

After further criticism from Ms Clarke the next day, however, Ms Keegan phoned Ms Makarien to express her concerns and complain about how she was being treated by Ms Clarke. Ms Keegan was in tears and told Ms Makarien that she was being bullied by Ms Clarke.

Ms Keegan alleged that Ms Makarien responded by telling her she would speak to Ms Clarke and to 'go put some lippy on and go home to [her] bub'. Ms Makarien responded to Ms Keegan's fear of having complained by telling her that she didn't favour any of her managers.

Despite this, Ms Makarien did not do what was required under the company's bullying and harassment policy. This included that complaints be taken seriously, treated confidentially and investigated. Rather, Ms Makarien told Ms Clarke about Ms Keegan's concerns and to be 'more mindful' in future. On that day she also confirmed Ms Clarke's permanent employment and congratulated her on improvements to the store.

When Ms Keegan returned to work, Ms Clarke confronted her about the complaint and Ms Clarke's treatment of Ms Keegan got worse over the next few days. Both Ms Clarke and Ms Keegan had further conversations with Ms Makarien, who did not follow up with the other to confirm or clarify the situation. The day after the Ms

not return up from the center to continue during the situation. The day after the Ms Keegan's last day at work she again spoke to Ms Makarein and was told to 'work it out' for herself.

Ms Keegan's health was affected by the situation and she was certified unable to return to work due to injury. She became unable to care for herself or her baby. Her husband and her mother had to provide care for them both.

Sussan denied it was liable for Ms Keegan's psychiatric injury and argued that the injury was extraordinary and unforeseeable given what it described as Ms Clarke's 'essentially unremarkable behaviour'. It also asserted that Ms Keegan had pre-existing personality traits that made her prone to such injury and that the support provided by Ms Keegan's mother and husband exacerbated the injury.

The Court found that Sussan had breached its duty of care to Ms Keegan and caused her injury. In reaching this conclusion, the Court found that Ms Clarke had engaged in, over the course of the 11 days, 'unreasonable and excessive' behaviour against Ms Keegan. The Court noted that Sussan knew that Ms Clarke was 'an inexperienced manager'. Once Ms Keegan had spoken to Ms Makarein about her concerns that she was being bullied, Sussan was 'on notice' and it became reasonable foreseeable that Ms Keegan would suffer injury if the situation wasn't dealt with appropriately.

The Court found that Ms Makarein had not followed the company's policy or implement an appropriate way of dealing with Ms Keegan's complaint. In considering Sussan's liability for the failure, the Court said:

'No attempt at all was made to investigate the complaint. No attempt was made to even investigate the possibility the complaint was in fact as serious as its content and Ms Keegan's distressed state suggested it was. Having taken the very difficult step for any employee of actually going over her supervisor's head and complaining that her supervisor was bullying her, Ms Keegan was given patronising advice ... Worse still, the following day [Ms Keegan] learnt that Sussan's apparent method of handling her complaint about [Ms Clarke's] bullying conduct had in effect been to leave [Ms Clarke] and her to sort the problem out between each other. This was an unambiguous indication that Sussan, through its Queensland manager Ms Makarein, was not taking Ms Keegan's complaint seriously and that Ms Keegan was being left to fend for herself in her dealings with her supervisor. That indication was reinforced by Ms Makarein's dismissive responses to Ms Keegan's further attempts to contact her for assistance.'

The full decision is available at:

<http://www.austlii.edu.au/au/cases/qld/QSC/2014/64.html>

May and June Training Calendar

Workplace Support / Contact Officer Networking Meeting

Hobart

Monday 26 May, 9:00 am - 12:00 pm

Launceston

Tuesday 27 May, 12:30 - 3:30 pm

FREE to existing Workplace Support / Contact Officers

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Workplace Support / Contact Officer Role

Hobart

Monday 16 June, 1:00 - 5:00 pm

&

Tuesday 17 June, 9:00 am - 12:30 pm

Launceston

Tuesday 24 June, 1:00 - 5:00 pm

&

Wednesday 25 June, 9:00 am - 12:30 pm

\$440.00 (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

Local News



IDAHO (International Day Against Homophobia, Biphobia & Transphobia) breakfasts.

Hobart

16 May

Burnie

17 May

Launceston

19 May

Get together a group of your work colleagues, friends or family and join others for breakfast to show your support for the LGBTI members in our community.

Tickets are now available for purchase from www.workingitout.org.au.

For more information, contact Working it Out on 6231 1200 or accounts@workingitout.org.au.

Advance notice - local awards



Each year, the Tasmanian community celebrates International Human Rights Day (10 December) with a week of human rights activities including the conferring of awards that recognise significant contributions to human rights by people and organisations based in Tasmania.

You can find out about Human Rights Week and previous award recipients at: http://www.afaairerworld.org/_HRWeek/

It's time to start thinking about who has made a significant contribution to human rights with the call for awards nominations likely to happen next month. Stay tuned and start considering who you might nominate.

National News

Human Rights Guide to the Australian Curriculum

The Australian Human Rights Commission has released a publication to help identify many of the opportunities that the Australian Curriculum provides for teaching students about the promotion and protection of human rights, both in Australia and around the world.





The publication, **Human Rights Examples for the Australian Curriculum**, is a guide that will assist teachers in identifying practical opportunities in English, History, Geography, Science and Maths for teaching human rights-related content to students up to Year 10.

The guide is available at:

<https://www.humanrights.gov.au/news/stories/new-human-rights-guide-australian-curriculum>

Play by the Rules



Play by the Rules has an online interactive bi-monthly magazine. To catch up with the latest news and subscribe go to <http://pbtr.com.au/>.

Awareness Days in May



4 - 10 May

Privacy Awareness Week

<http://www.privacyawarenessweek.org/>

15 May

Global Accessibility Awareness Day

Participate in Global Accessibility Awareness Day (GAAD). The purpose of the day is to get people talking, thinking and learning about digital (web, software, mobile, etc.) accessibility and users with different disabilities.

<http://www.globalaccessibilityawarenessday.org/>

12 - 18 May

National Volunteering Week

<http://www.volunteeringaustralia.org/nvw2014/>

17 May

International Day Against Homophobia

<http://dayagainsthomophobia.org/international-day-against-homophobia-transphobia-2014-to-focus-on-freedom-of-expression/>

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

15 - 21 May

National Families Week

<http://www.familiesaustralia.org.au/familiesweek/2>

21 May

World day for Cultural Diversity for dialogue and development

<http://www.timeanddate.com/holidays/un/world-day-cultural-diversity-dialogue>

26 May

National Sorry Day

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

27 May - 3 June

National Reconciliation Week

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

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