

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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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@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

From the Anti-Discrimination Commissioner

I am pleased to inform you that my **Annual Report for 2013-14** was tabled in Parliament's Legislative Council on 19 November and in the House of Assembly on 25 November 2014 and is now available from our website



http://www.antidiscrimination.tas.gov.au/resources/annual_reports

A key highlight during the year was the passage by the State Parliament of amendments to the *Anti-Discrimination Act 1998* (Tas), which took effect on 1 January 2014 providing enhanced rights protection and improved options for complaint handling, in particular dispute resolution.

Another key aspect of the amendments was to recognise the need for express protection against discrimination and related conduct based on gender identity and intersex.

Other matters of significance reported for the year, include:

- Increase in the 2013–14 State Budget allocation to the office that recognised and responded to the increasing level of external demand on the resources of the office and the importance of the office having the capacity to be pro-active in supporting compliance with the *Act*.
- Co-ordination by the office of the Australian Council of Human Rights Authorities (ACHRA)
- Submission on the amendments to section 18C and related provisions of the *Racial Discrimination Act 1975* (Cth).
- Positive response to the Insurance, Volunteering and Age report from the insurance industry with focused work at the national level by the Australian Human Rights Commission.
- Continuing increase in the levels of complaints received (up 13% on the previous year) and an increase in the participation of complaint parties in early dispute resolution processes and in complaints resolving.
- Continuing demand for training and education and increased levels of delivery of training and community education to not-for-profit organisations and the State Government, with workplace training being delivered to 2,530 participants (up from 2,160 in the previous period).
- Focus in policy work on transport and justice sector issues for people with disability, and on ensuring government services are inclusive and responsive to the needs of people who are lesbian, gay, bi-sexual, trans or intersex.
- Engagement of public transport providers and local government in the national anti-racism strategy, *Racism. It stops with me*.

The report reflects and I recognise the quality services provided by the staff of my office and the high levels of satisfaction with those services

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
E-mail roz.smart@justice.tas.gov.au

staff of my office and the high levels of education that these courses across the spectrum of education, training, complaint handling, advice to government, policy development and input, information and promotion. I thank my team of highly skilled staff for their continued enthusiasm and promoting a more inclusive and respectful Tasmania.

I look forward to future developments in all areas of our work during 2014-15 and hope that you continue reading this monthly e-newsletter for the latest information and news about discrimination and related topics to increase your awareness of rights and obligations under the Act.

From all at the Office of the Anti-Discrimination, we wish you all a safe and inclusive festive season and New Year.

Robin Banks
Anti-Discrimination Commissioner

New Deadline

Treatment of convictions for consensual sexual activity between adult males

The deadline for comments to the discussion paper has been extended to 10 January 2015

To read the discussion paper and details of how to comment go to:
http://www.antidiscrimination.tas.gov.au/news_and_events/historic_convictions_discussion_paper

Sexual Harassment



In Australia the end of year work function has traditionally included social gatherings, parties and alcohol, unfortunately this atmosphere has sometimes led to instances of sexual harassment. So this month we highlight sexual harassment in our FAQs and case summary and with these great resources from <https://knowtheline.humanrights.gov.au/>

Sexual harassment is prevalent in Australian workplaces. One in four women have experienced harassment at work, and men's harassment of other men is also on the rise.

The **Know Where the Line Is** national awareness raising strategy is a tripartite partnership between the Australian Human Rights Commission, the Australian Council of Trade Unions and the Australian Chamber of Commerce and Industry which offers a unique and important opportunity to join forces to target employers and employees as part of broader efforts to prevent and reduce the harm of sexual harassment in Australian workplaces. This partnership recognises that not only is workplace sexual harassment an abuse of human rights, it is also something which has a negative impact on employee safety and security and is costly to businesses.

But most people who experience sexual harassment don't report it – many don't even recognise that their experience of unwelcome sexual behaviour at work is against the law.

Employers and employees need to know where the line is when it comes to sexual harassment. Unless we work together – community, business, government and unions – to create more gender equitable workplaces, we will never see an end to workplace sexual harassment.

FAQs - Sexual Harassment

A workplace promotes its end of year Christmas party to all staff via email. The email states; '...the party starts at 7:00 pm and finishes at 12:00 midnight. All staff are reminded that they must conduct themselves at all times in line with the workplace Code of Conduct and Sexual Harassment Policy. These policies are attached for you to read'.

Is this fair as the party starts after standard work hours?

- Yes, it is fair and is in accordance with employer and employee obligations under *Anti-Discrimination Act 1998 (Tas)* (the *Act*).
- All employers must show they have taken reasonable steps to ensure everyone involved in their workplace(s) is aware of and does not engage in discrimination and prohibited conduct including sexual harassment.
- Regardless of the party being held outside standard work hours, it is still a 'work' function and therefore is run under work conditions including all staff being free from discrimination and sexual harassment.
- This does not mean fun cannot be had. What it means is that all staff are reminded in advance of their obligations to behave appropriately and respectfully at the party.

I am away on a work trip interstate with some work colleagues and one of them starts 'hitting on me'. They said they can because we aren't at our workplace. Is this right?

- No, not if the behaviour is non-consenting.
- It doesn't matter if you aren't working on-site.
- You are away on a 'work trip' so any behaviour still needs to meet with your workplace Code of Conduct and Sexual Harassment Policy.
- There is also an obligation of all parties to adhere to discrimination law.

My boss touches me in a way that makes me uncomfortable. I am afraid if I complain he will sack me.

- The touching by your boss is unwelcome and unwanted sexual behaviour and therefore would constitute sexual harassment.
- Your boss has a responsibility under the *Act* (as well as under laws such as work health and safety) to provide a safe workplace for all employees.
- If you don't feel comfortable to speak to your boss about his inappropriate behaviour then you could lodge a complaint of sexual harassment with this office.
- If your boss sacked you or you were treated worse because of your complaint that may constitute unlawful victimisation. Victimisation is treating someone less fairly because they complain about sexual harassment or any other unlawful behaviour.

Can I tell a workmate they look sexy?

- No, as this comment could constitute sexual harassment.
- Under the *Act* sexual harassment is unlawful and anyone who is sexually harassed can make a complaint.

Sexual harassment:

- **Includes making unwelcome comments with sexual connotations to another person or about another person in their presence including, for example, inappropriate comment about clothing, telling a person they look 'hot' or 'sexy', etc;**
- **Includes one-off incidents: unwanted or unwelcome sexual behaviour does not have to happen repeatedly to be unlawful sexual harassment;**
- **Is not mutual attraction or welcome conduct of a sexual nature between consenting adults.**

All workplaces need to remind all staff of their responsibilities under the *Act* including workplace policies regarding appropriate behaviour in the workplace.

Sexual harassment is NEVER okay and it doesn't matter who is doing the harassing: it's against the law.

Find out more about sexual harassment and other prohibited conduct go to: www.antidiscrimination.tas.gov.au

Case Summary

Sexual harassment, bullying and intimidation Awarded damages of over \$700,000

Trolan vWD Gelle Insurance and Finance Brokers Pty Ltd [2014] NSWDC 185.

A complainant alleged that the respondent systematically conducted himself in an unwelcome and sexualised manner, his conduct included:

- Pressing against her in the kitchen and rubbing his penis against her back and buttocks through his clothing
- Touching her breasts on a number of occasions, including placing his hand in her shirt and groping her breast
- Commenting on her dress
- Shouting at her
- Unwelcome conduct occurring 2-3 times a week, including putting his hand up her dress as she was keying in her code to exit the car park
- Sliding his hand up and down her trouser legs to within an inch of her vagina
- Pinning her hands and attempting to kiss her
- Seven to eight occasions where the respondent said that he wished to show her something on the computer and then grabbed her breasts or vagina, and
- Telling her that he wanted to make love to her and that she needed a baby.

The complainant spoke to the respondent's wife about the conduct who said she would follow up on it. However, the conduct continued unabated. After visiting her doctor the complainant went onto workers' compensation benefits and she brought a negligence claim seeking damages for psychological injury.

The District Court of New South Wales found that the employer had breached its duty of care through the conduct of its director and by failing to address or curtail the conduct. The court noted that the complainant's former employer owed her a non-delegable duty to take reasonable care to avoid exposing her to an unnecessary risk of injury in the workplace, which included ensuring that she was not bullied, intimidated or sexually harassed in the workplace. It failed in this duty.

The court was satisfied that the complainant's psychological illness was caused by the respondent's offensive and sexually harassing behaviour, and was compounded by his bullying and intimidatory behaviour.

The court awarded a total of \$733,723, which included sums for past and future economic loss, superannuation and tax paid on workers compensation benefits.

<http://www.austlii.edu.au/au/cases/nsw/NSWDC/2014/185.html>

Recently Granted Exemptions

Under the *Anti-Discrimination Act 1998* (Tas), the Commissioner is empowered to grant exemptions that permit a person or organisation to engage in an action or activity that would otherwise be unlawful under the Act. Such exemptions can be granted for up to three (3) years.

Whenever the Commissioner grants an exemption, a notice of this must be published in the Tasmanian Government Gazette:

<http://www.gazette.tas.gov.au/>

Any person may apply to the Anti-Discrimination Tribunal for a review of the Commissioner's decision within 28 days from the date the notice

of the Commissioner's decision within 28 days from the date the notice is published in the Gazette.

Exemptions granted and not yet gazetted

Exemption No 14/10/035 granted to the **Archdiocese of Hobart** on 29 October 2014 for 3 years. This exemption was granted to permit the Archdiocese of Hobart to recruit and employ women to the position of DV Case Manager for the Centacare Housing and Tenancy Support (CHATS) Programme on the basis that the recruitment and appointment is for the purposes of:

- (a) providing sufficient access to appropriate support from Case Managers to ensure that clients are enabled to progress towards meeting their goals through the CHATS Programme; and
- (b) providing appropriate access to female Case Managers for those CHATS clients, referred to the CHATS programme, who are escaping domestic/family violence and are, as a result, in need of support from a female Case Manager; and
- (c) enabling CHATS programme to maintain the employment of two (2) female Case Managers to manage the existing case load of women clients and any new women clients requesting a female Case Manager.

Exemptions granted and gazetted on 3 December 2014

Exemption No 14/10/075 granted to the **Department of Education (Elizabeth College)** on 21 November 2014 for 12 months. This exemption was granted to permit Department of Education (Elizabeth College) to recruit and employ a female, over 18 years of age, for a fixed-term position of Teacher Assistant-Outdoor Education at Elizabeth College, Hobart for the purpose of: a) meeting the supervisory requirements as set out in the Department's procedures for Planning Off Campus Activities; and b) providing assistance to the Outdoor Education Officer, where the incumbent is male, in order for Off Campus and other related activities to continue to be provided to Elizabeth College students.

For more information on exemptions go to;

<http://www.antidiscrimination.tas.gov.au/exemptions>

December Training Calendar

The Workplace Support / Contact Officer (WSCO) Role

Hobart

Monday 1 December

1:00 - 5:00 pm

&

Tuesday 2 December

9:00 am - 12:30 pm

Launceston

Monday 15 December

1:00 - 5:00 pm

&

Tuesday 16 December

9:00 am - 12:30 pm

\$440.00 p/p (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

Training News

Thank you to all of our training participants from 2015, it has been another busy year for Louise and Roz and while we are looking forward to the traditional Christmas period training lull to catch our breath, we also look forward to 2016 and all that that will bring.

forward to 2015 and all that that will bring.

January - June 2015 Training Calendar

The January - June 2015 training calendar for the Office of the Anti-Discrimination Commissioner is now finalised and available on our website 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 or louise.adams@justice.tas.gov.au

Training fees increase

Our hourly rate for training will increase in 2015 to \$280.00 (pre GST) per hour. To see our fee policy go to

http://www.antidiscrimination.tas.gov.au/education_and_training/fees_and_charges#Fees%20and%20charges

Human Rights Week Tasmania 2014



Tasmanian winners of the annual human rights week awards were announced at an event held at Parliament House on the 3rd December.

The awards recognise the many and varied contributions individuals and organisations have made to the promotion and protection of human rights in Tasmania. The ceremony marked the start of human rights week.

Awards were presented across nine categories for outstanding contributions by Tasmanians including School, Print Journalism, Individual, Youth, Organisation, Multi-Cultural, Sport, Mental Health and Lesbian, Gay, Bisexual, Transgender and Intersex cultural awareness.

Co-sponsor of Human Rights Week activities in Tasmania, Anti-Discrimination Commissioner, Ms Robin Banks, encouraged all Tasmanians to recognise the work being undertaken by award recipients. 'More than 30 individuals and organisations were nominated for awards this year. Each and every one of them has worked hard to promote diversity and the recognition of rights.'

Human Rights Awards winners 2014

A Fairer World School Award

Sponsored by Anne and Tony Peacock

Winner – St James Catholic College

For the work done to make the school a place of understanding and respect, and in particular the commitment to addressing prejudice and racism through education and open discussion.

Human Rights Youth Award

Sponsored by Salamanca Chambers

Winner – Emillie McDonell

For her contribution to the founding of the Refugee Legal Service, her work to encourage understanding of human rights issues in the legal profession, and her leadership in promoting public debate on social justice issues and poverty alleviation.

High Commendation Jointly – Oliver Hovenden and Annie Chessells

For their contribution to raising awareness about human rights issues at a local and international level and their energetic involvement in

activities aimed at promoting social justice through the Justice Action Network.

Human Rights Lesbian, Gay, Bi-Sexual, Transgender and Intersex (LGBTI) Cultural Awareness Award

Sponsored by the Rainbow Communities Tasmania Inc

Winner – Andrew Badcock

For his use of personal storytelling, advocacy and education to build greater understanding and respect for LGBTIQ people and in particular for his ongoing involvement in Police recruit training, schools and marriage equality.

High Commendation – Caleb Nichols-Mansell

For his courage in sharing his personal journey as a young Aboriginal man to educate the general community through storytelling in the media and public engagements and in particular his commitment to tackling homophobia and discrimination.

Angus Downie Print Journalism Award

Sponsored by Robin Banks and Michael Small

Winner – Caroline Tang

For her consistent reporting on a broad range of legal and human rights issues and in particular for her thoughtful articles that have promoted informed debate about racism and discrimination.

Multicultural Award

Sponsored by the Migrant Resource Centre (South)

Winner – Bridging Visa Social Club and in particular the contribution of Mieka Tabart

For their use of gentle, compassionate and dignified social and cultural interaction between asylum seekers and members of the community to promote non-discrimination, community interaction, respect and healing.

Human Rights Organisation Award

Sponsored by the Hobart City Council

Winner – Launceston Human Library

For creating an open and respectful place within the community where people can listen to stories that help to challenge prejudices and discrimination and that promote empathy, understanding and respect for human rights and diversity.

Robin Hood AM Sports Award

Sponsored by Communities, Sport and Recreation Tasmania

Winner – Wynyard Yacht Club and in particular the contribution of Neal Rodwell

For the way the club has transformed itself into a welcoming, inclusive community open to young and old, people with disability and disadvantaged families, and in particular the development of a culture of belonging.

Lucy Henry Human Rights Award

Sponsored by the Mental Health Council of Tasmania

Winner – Dannii Lane

For her many years of dedication to promoting reform in the mental health arena and in particular her contribution to the development of a Statement of Rights and ongoing influential work to find ways to reduce seclusion and restraint in Tasmanian psychiatric facilities.

High Commendation – Zac Lockhart

For his advocacy for the human rights of people experiencing a mental illness and in particular his work to promote a positive message and reduce the stigma often experienced by young people who are homeless and have mental health difficulties.

Human Rights Individual Award

Sponsored by Salamanca Chambers

Winner – The Late Jeremy Ball

For his passionate and creative commitment to promoting equality,

fairness and inclusion so that young, old and new Tasmanians could work together to remove barriers and celebrate each other's contribution to our community.

High Commendation – Phillipa McCormack

For her role in supporting and encouraging community connections for young asylum seekers, her innovative 'Pot luck dinner' project and her ongoing role in public awareness raising to support asylum seekers in Tasmania.



Photo of the family of the Individual Human Rights Award winner the late Jeremy Ball accepting his award from The Premier, Will Hodgman and Robin Banks



Photo of the Premier, Will Hodgman with Human Rights Committee members; Carolyn Cox, Louise Adams and Leica Wagner

Local News

"Racism. It Stops With Me" campaign supported

IN AN Australian first, all four emergency service organisations in Tasmania have come together to jointly pledge their support for the 'Racism. It Stops with Me' campaign.



Tasmania Police, Ambulance Tasmania, the Tasmania Fire Service and the State Emergency Service joined with Australia's Race Discrimination Commissioner, Dr Tim Soutphommasane and Tasmania's Anti-Discrimination Commissioner, Robin Banks, to sign up to the national agreement.

To read more go to

<http://www.examiner.com.au/story/2745208/racism-it-stops-with-me-campaign-supported/?cs=95>

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Being Proud, Individual journeys, shared stories

Being Proud is a project for Tasmanian parents and carers of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) students.

In December two parents will visit Tasmania to tell their stories and several parents from Tasmania will tell theirs.

Being Proud will support parents to increase their resilience and engagement with schools to champion change in their school communities around LGBTI bullying, prejudice and discrimination.

Contact Susan on 6231 1200 or exec@workingitout.org.au for more information. Please also contact Susan if you can't attend any sessions but would like to know more about the Being Proud project.

<http://www.workingitout.org.au/events/>

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/>.

You Can Play replay

A replay of the You Can Play forum hosted by SBS broadcaster Anton Enus with a panel of experts and live studio audience is now available to view at <http://youcanplay.com.au>

Awareness Days in December



World AIDS Day

1 December

<http://tascahrd.org.au/world-aids-day-2013/>

<https://www.facebook.com/pages/AIDS-Awareness-Week-2014-Tasmania/214616668600275>

International Day for the Abolition of Slavery

2 December

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

International Day of People with Disability

3 December

<http://www.idpwd.com.au/>

International Volunteer Day

5 December

<http://www.volunteeringaustralia.org/2014/11/international-volunteer-day-december-5/>

International Migrants Day

18 December

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

International Human Solidarity Day

20 December

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

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workplaces.