

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) 6165 7515
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@ustice.tas.gov.au

Website
www.antidiscrimination.tas.gov.au

Please let the office know before an

From the Anti-Discrimination Commissioner

In a new year break with tradition, this month's newsletter begins with Graeme Innes's most recent Howzat blog. Graeme Innes AM is a self-described 'cricket tragic, sailor, human rights activist' and was the Australian Disability Discrimination Commissioner.

Robin Banks
Anti-Discrimination Commissioner



CHANGING ATTITUDES CHANGES LIVES

Graeme Innes

Dave changed his attitude, which changed my life. This is how it happened.

I roared out of the garage of Sydney University, and the College of Law, a shiny new lawyer. My social justice engine, fuelled by its knowledge of unfair dismissals and unconscionable contracts, was ready to drive people from the back roads of disadvantage onto the freeway of life.

Then reality kicked in. I spun my wheels for twelve months while I went to thirty job interviews. I didn't get any of those jobs, mostly because employers could not comprehend how a blind person could work as a lawyer.

So that shiny new baby lawyer took a job as a Clerical Assistant, the first step in the NSW Public Service. I used to joke that I was the only clerical assistant in the NSW public service with a law degree.

My first job was answering the telephone, and telling people the winning lotto numbers. I was made redundant from that role by an answering machine.

After a short stint at the Land Titles office, I found a job in the Department of Consumer Affairs. Again I was answering the telephone, but at least I was providing advice to consumers. But I was still the only clerk with a law degree.

Then I met Dave. He was the Senior Legal Officer at the Department. We used to chat at the coffee machine, and at drinks in the pub across the road on a Friday night. I kept talking to him about how I

wanted to be a lawyer. and how I would do the job if I could get it. He



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

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

wasn't absolutely convinced, but agreed to give me a try. Dave's change of attitude changed my life.

I worked as a Clerk in Legal, and then as a Legal Officer. I contributed to the department's work on bicycle helmet regulations, and the National Uniform Credit Code. I was there in a time of reform, when Sid Einfeld was the Minister for Consumer Affairs. I was living the dream.

Then the NSW *Anti-Discrimination Act* was amended to include disability as a ground of discrimination, and the President of the ADB, Carmel Niland, wanted someone with lived experience of disability, and some knowledge of the sector, as a conciliator. I had made it.

I made it because I was determined, and because Dave changed his attitude. He was definitely not convinced that a blind person could operate as a lawyer, but he decided to give it a try. People with disabilities in Australia are limited by the soft bigotry of low expectations. We don't get appointed to jobs that we know we can do, because others think that we can't. We are not offered the careers that we want, we are told what more limited careers we can have. We don't do things because people assume – usually incorrectly – that we can't.

I, and the Board of the Attitude Foundation in Australia, want to change those attitudes, because we know that changing attitudes changes lives. We will use film, television, media and the internet to change those attitudes.

You can work with us, and others like you, to change attitudes. You can write the story of how attitudes changed, and be a guest blogger. You can become a supporter, and recruit others to our cause.

You can contribute to Attitude Foundation Australia.

Go to <http://www.attitude.org.au> now, and let's start changing lives today.

From the Office of the Anti-Discrimination Commissioner



Happy New Year from everyone at the OADC, we look forward to working with you all again this year.

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 is published in the Gazette.

Exemptions granted and not yet gazetted

Exemption No 14/12/036 granted to **Warrabee Committee Inc (Warrabee Women's Shelter)** on 7 January 2015 for 3 years. This exemption was granted to permit Warrabee Committee Inc (Warrabee

Women's Shelter) to recruit and employ women only in the identified positions of Shelter Service Co-ordinator, Child Support Worker and Offsite Worker at Warrawee Women's Shelter in Ulverstone. The exemption is granted on the basis that:

- a) the discrimination is for the purposes of operating a support service for women and children experiencing homelessness and/or in need of crisis accommodation, being a scheme for the benefit of a group—being women escaping domestic/family violence—that has special needs because of gender; and
- b) being a women is a genuine occupational requirement of working with women escaping domestic/family violence.

Exemptions granted and gazetted on 10 December 2014

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.

For more information on exemptions go to;

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

Frequently Asked Questions - Vulnerability in the Workplace

Discrimination, harassment and bullying can (and do) occur at any time. However, it is worth being aware of vulnerability factors for the workplace and for staff that may increase the potential for inappropriate behaviours such as discrimination, harassment and bullying.

There has been a lot of talk in my workplace about redundancies, some people say the older staff are being targeted, is this okay?

- Redundancies are a live issue for our current work environments and while welcomed by some employees, there are other employees that find the prospect of redundancy terrifying.
- A position is made redundant when its duties are no longer needed to be done by anyone. Redundancy can be voluntary or compulsory: either the worker(s) volunteer to have their job made redundant, or the employer chooses which job roles are redundant.
- The redundancy process should be transparent, fair and equitable and include thorough consultation and notification to all employees to maintain trust and respect.
- The process used by an employer to select which positions are to become redundant (or to encourage particular employees to apply for voluntary redundancy) must not be directly or indirectly discriminatory. Choosing the most senior employees or the most junior employees to make redundant may result in an age discrimination complaint. See our case summary below for an early test case in relation to sex discrimination successfully challenged the use in the steel industry of the 'last on: first off' approach to redundancy as it disproportionately resulted in women being made redundant: *Australian Irtton and Steel Pty Ltd v Banovic* (1989) 168 CLR 165.

In my workplace everyone is feeling pressured, our workload has increased yet we have less staff. Some staff are taking the

pressure out on others by yelling and general rudeness. Is this fair?

- Work stressors such as: increased workload, organisational changes, job insecurity, competitiveness and unclear job expectations are known to increase the risk of hostility, resentment, workplace bullying and harassment.
- A vulnerable environment is not an excuse for unacceptable behaviours.
- Workplace communication and consultation about acceptable behaviour and standards is crucial in a vulnerable environment.

My team has a new manager and he has changed our processes; everything now takes twice as long. Is this bullying?

- Change in a team can be exciting and result in increased productivity and better systems.
- Changing processes is not bullying if it is done reasonably, fairly and respectfully.
- A change process should be implemented well with clear communication ensuring understanding for all as to the new process and with allowance for staff to take reasonable time to adjust.

In my workplace I am in a minority because of my religion (or race/ethnicity, disability, sexual orientation, gender, etc). As a member of a minority I feel that I am being targeted for all the worst jobs and unfairly criticised when I make a mistake.

- The allocation of work tasks should be done fairly, based on factors such as: experience, specialised skills, competence and availability.
- The process used by an employer for allocating work tasks must not be discriminatory. Choosing an employee of a particular religion, race, disability, sexual orientation, gender, etc, for the worst jobs may result in a discrimination complaint.
- Bullying and harassment are usually related to power. Belonging to a minority may result in an unbalanced power relationship. If you feel that you are being treated unfairly because you belong to a minority, that treatment may be discriminatory.

I am a casual employee at my work. My employer says that I am, therefore, not entitled to any support, benefits or training. Is this correct?

- Casual employees, new workers, apprentices and trainees, and return-to-work employees may feel vulnerable in the workplace.
- Support, communication and consultation for all employees is crucial in a vulnerable environment and is especially crucial for those who have particularly vulnerabilities.
- Any mandatory training should be given to ALL employees.
- Under the *Anti-Discrimination Act 1998* protection against discrimination and prohibited conduct in connection with employment includes protection in connection with:
 - (a) employment or occupation in any capacity, with or without remuneration; and
 - (b) membership of partnerships; and
 - (c) registration or recognition by, or membership of, professional and trade organisations; and
 - (d) registration or recognition by qualifying bodies; and
 - (e) engagement of commission agents; and
 - (f) registration or placement by employment agencies; and
 - (g) engagement under a contract for services; and
 - (h) employment by any person; and
 - (i) registration or enrolment by vocational training bodies;
- Treating any employee differently and worse than another because of an attribute (personal characteristic listed in the *Anti-Discrimination Act*) may be unlawfully discriminatory.

Case Summary

Sex Discrimination

Australian Iron and Steel Pty Ltd v Banovic [1989] HCA 56; (1989) 168

For a number of years, women had been seeking employment at Australian Iron and Steel. Between June 1977 and April 1980, the company employed over 4,000 iron-workers, of whom only 58, or a little over 1%, were women. It had over 2,000 women on its waiting list, some of whom had been there for seven years. By contrast, there were only 47 men on the list, and their longest waiting period was two and a half months. Thirty-four women complained under the *Anti-Discrimination Act 1997* (NSW) that the company had failed to hire them because they were women. After a long period of conciliation, the company agreed to engage the women as ironworkers. Over 150 women were eventually employed.

In 1982, the Australian steel industry suffered a major downturn and Australian Iron and Steel laid off several hundred workers on the 'last on, first off' principle. Many of the women were retrenched. They filed further complaints alleging the retrenchments to be themselves the result of earlier discrimination. The women argued, that if they had not been subject to the original discrimination but had been hired when they applied for jobs, they would not have been retrenched.

The NSW Equal Opportunity Tribunal's consideration of the case included the issue of whether the nature of most of the work in steel mills rendered it unsuitable for women. The company claimed that all but a few of the thousands of jobs at its works required lifting beyond the statutory limit set for women and therefore its actions in discriminating were not unlawful. However the Tribunal found that many of the jobs said to be 'weight barred' to women were in fact not so and it subsequently awarded over \$1 million to the 34 women, with several individual awards at the maximum of \$40,000. The company then took the case to the Court of Appeal and having failed there on to the High Court.

The issue in the High Court was whether the Tribunal had erred in finding that the company's act of retrenching the women amounted to an act of discrimination which was separate and additional to their discriminatory conduct in delaying employing them.

In December 1989, the High Court dismissed the company's appeal. Its judgement considered for the first time the definitions of 'direct' and 'indirect' discrimination under sections 24(1) and 24(3) of the NSW *Anti-Discrimination Act* and, in particular in relation to indirect discrimination, when a requirement or condition, which on its face seems neutral, will be discriminatory.

http://www.austlii.edu.au/au/cases/cth/high_ct/1989/56.html

February Training Calendar

Where is the Line?

Launceston

Monday 16 February
10.30 am - 12.30 pm

Hobart

Tuesday 17 February
9.00 - 11.00 am

\$110.00 (pre GST)

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Discrimination Free Recruitment and Selection

Launceston

Monday 16 February
1.30 - 3.30 pm

Hobart

Monday 23 February
1.30 - 3.30 pm

\$110.00 (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.

Training News

Northern training and education

Roz is now based half and half in Launceston and Hobart. This may make your northern training or education sessions easier to schedule. Contact Roz at roz.smart@justice.tas.gov.au if you would like to organise training or education for your northern business or organisation.

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The **January - June 2015 training calendar** for the Office of the Anti-Discrimination Commissioner is now finalised and available on the website

http://www.antidiscrimination.tas.gov.au/education_and_training/training_calendar_and_courses

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

Human Rights Week Tasmania



Human Rights Youth Award 2014 sponsor correction

Members of the Human Rights Week Organising Committee would like to apologise and correct the sponsor's name for the Human Rights Youth Award as being: Sponsored by Newport, Wildman & Associates NOT Salamanca Chambers.

Louise Adams
OBO the Human Rights Week Organising Committee
Tasmania
(Committee Member & Administrative Support)

Local News

Talking Point: Break the silence on cruel abuse

Catherine Viney, chief executive of Cosmos, a non-profit organisation working with people with intellectual disabilities was prompted to write an article for *The Mercury* on 23 December 2014.

In the article Ms Viney describes the Tasmanian disability sector as 'mostly well-monitored with caring, kind and competent staff'. She goes on to say:

'Cosmos is an organisation that is values-based, and our values are part of everything we do. We take them seriously and hold each other accountable.

'When things happen at Cosmos that we don't want to happen, we support participants, their families and staff throughout the process.

'We take our responsibility in caring for vulnerable people very seriously.

'Currently, the State Department of Health and Human Services has an effective reporting method for reporting allegations of abuse.

'Improved checks for people working with children and vulnerable adults is another step in the right direction by our State Government.

'But don't let us stop there.

'It is high time as a community we ensure that those who are the most vulnerable among have their voices heard and are supported to speak openly about their poor experiences.

'Bring on a Royal Commission.'

To read the full article go to <http://www.themercury.com.au/talking-point-break-the-silence-on-cruel-abuse/story-fnj3twbb-1227164482747>

National News

New education resources

On 1 December 2014, the Australian Human Rights Commission launched seven new education resources on race relations.



These resources, which were developed as part of the National Anti-Racism Strategy, are designed to assist students to gain a critical understanding of human rights and responsibilities and to apply these in everyday life.

The resources are mapped to the national curriculum and include interactive activities, worksheets and assessment tasks.

<https://www.humanrights.gov.au/education/human-rights-school-classroom>

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>.

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