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## In respect of rights



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### April 2015

### 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](mailto:antidiscrimination@ustice.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.

## From the Anti-Discrimination Commissioner

Over coming weeks the Tasmanian parliament will debate a proposed change to Tasmania's *Anti-Discrimination Act 1998* to allow religious schools to discriminate against children by excluding them from admission if the child is not of that religion.



The *Anti-Discrimination Act 1998* recognises that all of us —adults and children—should be treated fairly and without discrimination. It is about giving everyone in our diverse community a 'fair go'.

Until 1 January 2014, any school excluding a child because of their religious belief was engaged in unlawful discrimination.

Since that date, religious schools have been able to apply to me as Anti-Discrimination Commissioner for an exemption to permit them to give preference to a child of the school's religion if there is competition for limited available places. That change was made to balance the desire of religious schools to ensure members of their faith could attend the school with the right of children to be free from discrimination.

As Commissioner I will look for opportunities to brief parliamentarians and communities on concerns I have that the proposal is inconsistent with the purpose of discrimination laws and with internationally recognised human rights, and will not provide the protection for religious schools that its proponents are seeking.

It has been asserted that the amendment supports the internationally recognised

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](mailto:roz.smart@justice.tas.gov.au)

human right to freedom of thought, conscience and religion. This right includes freedom to have or adopt a religion or belief of choice and to manifest one's religion in worship, observance, practice and teaching, and the liberty of parents to ensure the religious and moral education of their children is in conformity with their own convictions.

Rather than protecting religious freedom, the proposed approach could undermine the parents' choice by making it the school's choice that prevails, not that of the parents.

The proposed exception also does not provide any certainty to religious schools. Rather, it presents them with a defence on which they may seek to rely if a complaint is made. This is because the proposed change is to introduce an 'exception' to the Act. An exception is a 'defence' to a complaint of discrimination and only permits actions that are found to come within the terms of the exception. If the words of an exception require testing of evidence, a person or organisation seeking to rely on it must prove it on the balance of probabilities.

This means if a complaint were made about a school excluding a child on the basis of that child's religious belief and it could not be resolved through my office's conciliation process, it would be referred to the Anti-Discrimination Tribunal for a hearing.

The Tribunal would be required to determine what are the 'tenets, beliefs, teachings, principles or practices' of the particular religion and whether or not the child shared those 'tenets, beliefs, teachings, principles or practices'.

Cases of this sort in other parts of Australia show the issues to be decided are complex and result in lengthy legal and religious argument.

In contrast, an exemption granted under the existing provisions provides a religious school with certainty because they have been granted express permission to give

preference to a child of their religion over other children

religion over other children.  
The Commissioner can reject a complaint to which the exemption applies.

Proponents of the proposed change argue that the current exemption process is 'draconian' and 'onerous'. Currently, the school must be able to show that it is a religious school, that its admission policies do not discriminate against children seeking to attend on any basis other than religion, and that the school is facing the need to choose between children seeking to attend because of limited places available.

It is difficult to see how these requirements are 'draconian' or 'onerous' for organisations that are obliged to run their school in accordance with Australian laws.

Schools are the place where the next generation learn not only about maths and science, language and arts, history and geography, but also about living in a diverse and respectful community.

It is important our Parliamentarians constantly look at how to improve and clarify discrimination law and there needs to be a very persuasive reason for making changes that remove existing protections against discrimination against children in education.

**Robin Banks**  
Anti-Discrimination  
Commissioner

## From the OADC

**The following message is an invitation from the Australian Race Discrimination Commissioner to his consultation in Tasmania on the *Racial Discrimination Act 1975*:**



Good Afternoon,

This year the Australian Human Rights Commission will celebrate 40 years of the *Racial Discrimination Act 1975* (Cth). It will be an occasion for us to reflect on what the Act has achieved and to consider systemic progress under the Act in the future.

We are planning a public consultation in each state and territory to promote understanding of the Act, and to hear from the community about how we can most effectively advocate on issues of racial discrimination. Among other things, these

consultations will help inform a publication I will release later this year...

This should be an excellent opportunity to hear from the community and I hope to see you there.

**Details of the Tasmania consultation are as follows:**

**Date: Monday 20 April 2015**

**Time: 2:30 pm to 4:30 pm**

**Venue: Lower Level Room, Mathers House,  
108-110 Bathurst Street, Hobart 7000**

Please RSVP by Wednesday 8 April 2015 via Eventbrite at

<http://www.tasconsultation.eventbrite.com.au/>.

For enquiries please call Ms Samantha Schubert on **(02) 9284 9829**.

Yours sincerely

Dr Tim Soutphommasane  
Race Discrimination Commissioner

Australian Human Rights Commission

## **Frequently Asked Questions: Disability discrimination in education and training**

**I am going to attend a training course but I am worried about accessibility. Is it discrimination if the training venue isn't accessible to me as a wheelchair user?**

- Yes it could be disability discrimination if you aren't able to go to the training because the venue isn't accessible.
- The *Anti-Discrimination Act 1998* prohibits discrimination based on disability in the area of education and training.
- Discrimination occurs when someone is treated unfairly (less favourably than another person) because of their particular attribute, in this case disability.
- When planning training, the organiser should always check the venue is accessible. The organiser should do this even when they don't know that a person with physical disability is coming to the training.
- Any training opportunities should be accessible to everyone and accessibility should be taken into account when choosing and booking venues. This includes not only thinking about access for people who use mobility aids, but also ensuring that the venue has a hearing loop installed. For more about ensuring events (including training) are accessible, see [http://www.meetingsevents.com.au/downloads/Accessible\\_Events\\_Guide.pdf](http://www.meetingsevents.com.au/downloads/Accessible_Events_Guide.pdf) (Apologies for this being a link to a PDF only. We are currently trying to source a fully accessible format document.)
- You could check with the organiser before the training to make sure the venue is accessible if you felt comfortable to do so. If it isn't, they may be liable for a complaint from any person unable to access the venue or the training.

**My daughter Jane has a learning disability. If her school doesn't work with us to develop an Individual Education Plan (IEP) for her, is this discrimination?**

- Yes it is likely to be if your child requires an IEP to

be an active learner while at school.

- The Commonwealth Disability *Standards for Education 2005* (the 'Education Standards') set out clear standards for education providers, such as schools.
- The main aim of the Education Standards is to ensure students with a disability have the right to participate in educational programs on the same basis as students without a disability.
- Schools (and all other education providers) have a responsibility to provide the best learning opportunities for all students.
- If your child needs an IEP and adjustments to be made to ensure their learning and participation opportunities then the school needs to work with you to develop an IEP and to identify the appropriate adjustments to be made.
- If the school develops an IEP or decides on adjustments without consulting with the student or, with younger students, the student's parents or guardian, they will not have complied with their obligations under the Education Standards.
- For more about the Education Standards, see <http://resource.dse.theeducationinstitute.edu.au/>.

**I am enrolled as an external student in a social work degree. I have a medical condition that I have advised the University about. My field placement was cancelled despite me providing medical evidence I was fit to undertake the placement. Is this discrimination?**

- Yes, it could be discrimination and it could also breach the Education Standards.
- If staff at the university had concerns about your placement, they should have discussed those concerns with you to find a solution rather than cancelling your placement.
- If you are being treated less fairly on the basis of any assumption or judgement that conflicts with medical advice then this could constitute unlawful discrimination.
- You could ask to speak to the head of the social work school about what has happened. You may find it helpful to contact your university's equal opportunity office before having that meeting.
- The university should explain the basis for its decision to cancel your placement.
- You could also make a formal complaint to the Anti-Discrimination Commissioner as a way to have this situation addressed and resolved so you can complete your studies and fulfil all the course requirements.

**Many parents of school-age children are frustrated by not knowing who they can complain to about a school issue? What can they do?**

- Parents/Carers may choose to complain directly with the school Principal or a teacher.
- Others may choose to complain to the Department of Education or head office of the education provider.
- The Department of Education website has the information on how to make a complaint or raise a concern about the Department of Education: [http://www.education.tas.gov.au/About\\_us/contact-us/Pages/Contact-Us.aspx](http://www.education.tas.gov.au/About_us/contact-us/Pages/Contact-Us.aspx)
- The Catholic Education Office of Tasmania also has information about its complaints process on its website at: <http://catholic.tas.edu.au/key-documents/policies>
- Schools outside these systems should ensure that there is a clear process available to parents to complain or raise concerns with the school. Most

complain or raise concerns with the school. Most non-Government schools are members of Independent Schools Tasmania (IST). IST may be able to help if you don't know who to complain to within the school:

<http://www.independentschools.tas.edu.au/>

- You may also make a complaint of unlawful discrimination and/or other prohibited conduct to the Tasmanian Anti-Discrimination Commissioner or the Australian Human Rights Commission.

## Case Summary

### Religious Discrimination

An employee was sacked after sending an inappropriate and offensive email regarding Muslims.

The employee using his private e-mail address via his employer's e-mail system to send an inappropriate and offensive Anti-Muslim e-mail to a large number of recipients, some of whom worked for the employer.

The employee claimed unfair dismissal. The Fair Work Commission found there was a valid reason for Mr Anderson's dismissal but found, however, that it was 'harsh and unreasonable'. Mr Anderson was awarded compensation but the employer was not ordered to reinstate him.

Mr Anderson appealed the decision not to order his reinstatement.

The Full Bench of the Fair Work Commission rejected his appeal because:

- the employer's 'Workplace Conduct Policy' required employees to treat each other with 'dignity, courtesy and respect' and 'specifically prohibited religious vilification';
- the employer also had a specific policy that about the appropriate use of its computer system;
- the e-mail sent by the employee was found to be 'inappropriate and offensive' and 'vilified' people of the Muslim faith.

It also found there was 'a real possibility' Mr Anderson would engage in similar conduct if reinstated and therefore reinstatement was not appropriate.

*Ronald Anderson v Thiess Pty Ltd* [2015] FWCFB 478, 30/01/2015

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FWCFB/2015/478.html?stem=0&synonyms=0&query=FWCFB%20478>

## Complaint Outcomes

### Disability discrimination

A complainant could move around a particular business's display at an outdoor event because the ground surface was not suitable for the person's mobility device. The business was keen to resolve the situation and did some research into how similar

interstate events achieve accessibility. The business also consulted with the complainant and together they agreed that for future such events the business:

- use specific plastic or rubber matting for the main pathways;
- compact any wood chips used on other ground surfaces to limit wood chips straying on the pathway
- meet with the complainant after the next event to discuss the effectiveness of the solution and any further improvements needed and review plans for accessibility of the business's display at future events.

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A venue with a gaming licence had a 'blanket rule' that all hats must be removed and refused to serve a patron even though she tried to explain she was wearing a hat because she had recently had surgery, had a large scar and a patch around the scar where her hair had not yet grown back. The woman left feeling humiliated by the experience.

She made a complaint to the Commissioner, which was resolved at conciliation by;

- the venue owner apologising to her for what happened;
- the venue owner agreeing to follow up with the gaming operator to ask for a change to its signage to take account of people who need to wear hats for medical or religious reasons;
- the venue owner agreeing to place their own sign next to the gaming operator's sign inviting patrons to approach staff if they need to wear a hat.
- the venue owner agreeing to provide training to new staff on discrimination awareness.

## **April and May Training Calendar**

**Discrimination, Harassment & Bullying  
Management for Managers**

**Hobart**

Tuesday 21 April  
9:00 am - 1:00 pm

**Launceston**

Thursday 23 April  
1:00 - 5:00 pm

\$220.00 (pre GST)

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**Train the Trainer  
To deliver your own  
Anti-Discrimination Training**

**Hobart**

Monday 27 & Tuesday 28 April  
9:30 am - 4:30 pm both days

\$770.00 (pre GST)

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**Workplace Support / Contact Officer  
Networking Meeting**

**Hobart**

Tuesday 26 May  
9:00 am - 12:00 pm

**Launceston**

Wednesday 27 May  
12:30 - 3:30 pm

**Burnie**

Thursday 28 May  
9:00 am - 12:00 pm

FREE for existing Workplace Support/Contact Officers

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)

## Local News



**Devonport: Support  
Group for Trans\*  
and Gender Diverse folks  
Share, Connect, Support  
and Grow**

Commencing Wednesday  
8 April 1:00 - 3:00 pm and  
monthly thereafter at the  
'Junction', 64 Stewart Street,  
Devonport.

Contact Bel for more  
information  
Phone: **0419 361 128** (Tuesday  
and Wednesday)  
E-mail:  
[bel@workingitout.org.au](mailto:bel@workingitout.org.au)

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**Hobart: Do you have a  
story of prejudice or  
discrimination?  
Could you be a human  
book?**

'I am a person of short stature and since I have told my story in the Hobart Human Library, I have been amazed at the interest from the 'readers' of all ages and from all backgrounds. The 'readers' are involved and engaged in the story, and can ask questions at the end. This increases awareness in many different ways: of people who are same-sex attracted, people from other countries, and people with an acquired brain injury or disability, to name just a few...'  
Glenda Radcliffe, human book

The Hobart Human Library is recruiting and training new 'human books' to join its diverse catalogue. If you:

- have encountered prejudice or stereotyping because of your culture, religion, refugee background, gender, sexual orientation, physical or mental ability, and
- would like to share your own true story face-to-face, to increase understanding and acceptance of difference

... then the Hobart Human Library is a fun and rewarding experience that allows you to use your difference to make a difference!

The Hobart Human Library runs workshops in schools and workplaces, using the power of conversation to build empathy and respect in a diverse world.

All human books receive training, cost reimbursement and formal recognition, as well as the satisfaction of making a difference.

The Library is a project of A Fairer World and community partners including Amnesty International, Anglicare Tasmania, Working It Out, LINC Tasmania, and the Office of the Anti-Discrimination Commissioner.

**Don't judge a book by its cover!**

For more information or to express interest in training as a human book, contact:

Helen Hortle, Co-ordinator of A Fairer World,

[helen@afairerworld.org](mailto:helen@afairerworld.org) or

phone **03 6223 1025**

[www.afairerworld.org](http://www.afairerworld.org)

## National News

### Rights &



**Responsibilities 2014** was a national consultation conducted by the Australia Human Rights Commissioner, Tim Wilson, between August and December 2014. The consultation examined how well people think their human rights and freedoms are protected in Australia. Commissioner Wilson recently released his report of the consultation.

To access the report in PDF or word go to:

<https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/rights-responsibilities-consultation-report>

### 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 April



#### National Youth Week

10 - 19 April 2015

<http://www.youthweek.com/>

#### World Health Day

7 April 2015

<http://www.who.int/campaigns/world-health-day/2015/event/en/>

#### International Pay it Forward Day

30 April 2015

<http://payitforwardday.com/>

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