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In respect of rights



Edition 38

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May 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@justice.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

For some Tasmanians the legacy of the era in which homosexual acts were outlawed remains to this day. These are the people within our community who have a criminal record related to offences for homosexual activity and related conduct prior to the decriminalisation of homosexuality in 1997.



As the last State within Australia to introduce homosexual law reform, the legacy of an era in which discrimination against homosexuals was sanctioned in criminal law remains strong for many.

The stories of lives marked forever by the stain of their interaction with police and related justice authorities should not be forgotten.

The story of Noel and Bert for example: two men living together in Launceston in the late 1950s who were taken to the police station because they could only point to one bed in the house. Bert was sentenced to gaol for a 3-year term. Noel shot himself.

There are those who left the State to find a more inclusive place to live; forced out by the moral turpitude of the times. Untold numbers avoided seeking employment in situations where a criminal record check would disclose these past convictions.

Action to redress the legacy of a historic criminal record is the subject of a new report I have released today. I have provided this report to the Tasmanian Attorney-General, the Hon Vanessa Goodwin, for her consideration and action by the Tasmanian Government.

The Treatment of historic criminal records for consensual homosexual activity and related conduct report outlines options for expunging historic criminal records for consensual homosexual activity and related conduct.

In the report, I recommend arrangements for the introduction of new legislation to establish a scheme to enable a panel of experts to assess historic criminal records and make a binding decision on whether those records should be expunged.

The effect of expunging a criminal record will be to restore all legal rights, as if the record had not been made, and provide for the right of non-disclosure under all circumstances, including situations where a criminal record check is required.

The proposed scheme will represent an important step in removing the discriminatory impacts of the past in this State in relation to sexual orientation and gender identity. I hope the scheme will be up and running in early 2016.

A copy of the report is available by clicking here
http://www.antidiscrimination.tas.gov.au/policy_legal_submissions

Robin Banks
Anti-Discrimination Commissioner

From the OADC

Our office is again pleased to be involved in the Mentor Program, as part of the **Big Picture Program** at Ogilvie High School for 2015.

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

Brooke Lakos is the fourth **Big Picture** student to be part of our training unit for her work experience placement. Brooke started with us in March for one day a week over 6 weeks. Brooke has spent time with the Commissioner and other staff members of our office learning different roles and responsibilities.

Brooke's interests are forensic science, profiling and photography. Brooke says it's been fun here learning people's different roles in the office. This experience has broadened Brooke's understanding of discrimination law and the way people are treated. Brooke's last day with us is 14 May and we all wish her the very best in her last year of high school and wish her the very best for her future endeavours.

FAQs - Sexual Orientation Discrimination

John is a registered nurse and the only man working in his area. He is often referred to as the 'gay one' and 'pretty boy', and he is asked by others if he is gay. Is John being discriminated against?

- Yes it could be unlawful discrimination regardless of what John's sexual orientation actually is if he is being treated less favourably than others because of his sexual orientation or the sexual orientation others presume he has.
- The *Anti-Discrimination Act 1998* (ADA) prohibits discrimination based on sexual orientation in relation to employment.
- Discrimination occurs when someone is treated unfairly (less favourably than another person) because they have a particular attribute, imputed attribute or a characteristic imputed to that attribute. In this case the attribute is John's actual or perceived sexual orientation.
- The definition of sexual orientation in the ADA includes: heterosexual, homosexual and bisexual.
- The ADA also prohibits conduct that offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute, including sexual orientation.
- John has the same right as anyone, regardless of sexual orientation, to go to work and perform his duties in a safe and respectful workplace.
- John could try to get his concerned dealt with in his workplace, or he could chose to make a complaint of unlawful discrimination and/or offensive conduct to the Commissioner under the ADA.

During my staff appraisal session, my manager highlighted a couple of issues about my recent job performance. The manager made continual references to my being gay during the meeting. I believe this was very inappropriate and offensive. Is this harassment?

- Managers have the right to raise issues of concern relating to a job performance. This should be done fairly, and be reasonable and respectful.
- Any issues raised need to have direct relevance to your work performance.
- Your sexual orientation has no relevance to your job performance. If you believe your manager's comments about your sexual orientation were inappropriate and offensive you could raise this with your manager if you felt confident to do so.
- You could also speak to another manager about your concerns or your HR (human resources) department or you could make a complaint of offensive conduct to the Commissioner at this office.

My son is gay and is being called horrible names relating to his sexuality at school. The school is aware of this but little has changed for my son.

My son just wants this behaviour to stop. Can he or I make a complaint of

My son just wants this behaviour to stop. Can he or I make a complaint of unlawful discrimination with your office?

- Yes, your son could make a complaint of unlawful discrimination or offensive conduct himself if he felt confident to do so and is mature enough to understand and participate in the process.
- Otherwise, you could apply to the Commissioner to make a complaint on his behalf.
- The ADA prohibits discrimination in several areas of activity, including education.
- Your son has a right to attend school and not be treated badly because of his sexual orientation.
- Schools should be a safe and respectful environment where all students can learn and reach their full potential.
- You could also have further discussions with the school about the ongoing treatment of your son. If the school is part of a school system, such as the State school or Catholic school system, you could also raise it with the school system head office.

I am a casual trainer at a gym and I am bisexual. My manager has asked me not to do anymore personal training sessions as the clients may feel uncomfortable with my sexual orientation. This will impact on my work hours. Is this discrimination?

- Yes, it may be. Your sexual orientation has no impact on your ability to do your job professionally including facilitating personal training sessions.
- If you are being treated differently to the other trainers at the gym (not permitted to provide personal training sessions) because of your sexual orientation this could be unlawful discrimination.
- If you felt comfortable, you could raise your concerns with either manager or more senior management of the gym.
- You could also make a complaint under the ADA.

My mum is planning to move to an aged-care facility, but she is very worried that as a lesbian she will have to 'hide her sexuality' from the staff and other residents. How can I reassure her that she will still be able to be herself?

- The ADA prohibits discrimination in several areas of activity, including the provision of facilities, goods and services, and accommodation.
- Aged-care facilities are providing facilities, goods and services, and accommodation. Therefore, no matter which aged-care facility your mum chooses, they have a responsibility under the ADA to not discriminate against her because of her sexual orientation.
- Reassure your mum that it would be unlawful for her to be treated differently by the facility, the staff or the residents because of her sexual orientation, or to be required to 'hide her sexuality'.

There is more information on our website about what the ADA covers or you can call our office. You can also get a complaint form from our office or from the website at:

http://www.antidiscrimination.tas.gov.au/complaints/form_what_to_include

Case Summary

Racial abuse

A man was walking outside an entertainment club when the doorman threw balloons onto the street. The man picked them up and told him it was not safe to do this. The doorman verbally abused the man, with comments including 'you should go back to your own country', that 'Australia is a white people's country and that you're not white'. The doorman continued to be abusive and challenged the man to produce his visa. The doorman then approached the man and pushed him in the chest causing the man to stumble backwards.

The Federal Court considered this behaviour by the doorman to constitute racial vilification because it happened in public and was reasonably likely to offend, insult and intimidate the man. The aggressive comments made were based on his race or ethnic origin.

The club was found to be liable for the doorman's actions.

The court awarded \$9,000 compensation.

Haider v Hawaiian Punch Pty Ltd t/as The Honeypot Club
[2015] FCA 37, 6/02/2015

<http://www.austlii.edu.au/au/cases/cth/FCA/2015/37.html>

Complaint Summaries

Disability discrimination

A woman with Multiple Sclerosis alleged disability discrimination against her employer. The employer required her to provide a medical certificate each time she took personal leave, which was difficult for the woman to do. The employer also reduced her work duties, saying, 'you need to sort your illness out'.

The complaint resolved at an early conciliation conference through:

- The employer organising a workplace assessment for the complainant and arranging for the complainant to actively provide input into that assessment.
- Both parties agreed to discuss the workplace assessment report together when it is received and ways in which the complainant's disability can best be accommodated at work.
- It is agreed the complainant will not have to provide medical certificates each time she takes sick leave.
- Every two months, the parties will meet to talk about any adjustments that may be needed or changed.

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Disability discrimination

A complainant had a subarachnoid haemorrhage and was away from work for 10 weeks. He was given a return-to-work plan by his doctor (for a gradual return to work). The return-to-work plan was not followed by the employer (the respondent), which instead gave the complainant a set

number of hours. When the complainant was cleared to return to full-time work. he was

...told his full-time position was no longer available as the person employed while he was off work now had his hours.

The complainant then went on sick leave due to work-related stress, and his employment was then terminated.

The complaint resolved at an early conciliation conference through:

- The respondent paying the complainant \$7,500 in compensation.

May and June Training Calendar

Workplace Support / Contact Officer (WSCO) 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 WSCOs

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Racism, it stops with me!

Hobart

Tuesday 23 June
10.30 am - 12.00 pm

Launceston

Thursday 25 June
12.30 - 2.00 pm

\$80.00 (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

July 2015 - June 2016 OADC Training Calendar

Our training calendar is now annual to help you plan your training. The calendar is available on our website

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

There is a registration form and an expressions of interest form also on the website. Please use the registration form to register for courses as you wish. Please use the expressions of interest form for any courses you may be interested in that are not on the calendar, or if you would like a course delivered in an area other than Hobart, Launceston or Burnie.

All our courses require a minimum of four participants to go ahead. For more information about the courses we offer, go to

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

to see the course descriptors.

We can also deliver all the courses in-house. To talk to us about coming to your workplace, community, school or organisation, phone 6165 7515 or e-mail roz.smart@justice.tas.gov.au or louise.adams@justice.tas.gov.au.

Local News



Lesbian Gay Bisexual Transgender Intersex Queer (LGBTIQ) Youth Forum and National Institute for Challenging Homophobia Education (NICHE) Forums North West

The Tasmanian Suicide Prevention Network (TSPCN) LGBTI Working Group North West in partnership with Relationships Australia Tasmania, Working It Out and the National Institute for Challenging Homophobia Education (NICHE) presents a **FREE professional development opportunity** ideal for anyone working in any of a number of sectors (including health, education, local government, crime prevention, community groups, arts and sporting groups) or interested in the subject

LGBTIQ Youth Forum

Burnie
Thursday 7 May 2015
9.30 am -12.30 pm
Cradle Coast Authority
1-3 Spring Street

NICHE Forums North West

Deloraine
Wednesday 6 May 2015
9.30 -11.30 am
District Hospital Day Centre 1
7 East Barrack Street

Sheffield
Friday 8 May 2015
9.30 -11.30 am
Town Hall Supper Room, 66 High Street

Smithton
Thursday 7 May 2015
2.30-4.30 pm
Wyndarra Centre, 43 Smith St

For more information and RSVPs:
sharonj@reltas.com.au,
or phone 0437 848 697

For more information about Daniel Witthaus;
https://www.youtube.com/watch?v=l2hf2Q_hjXs

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Review of 'The Premises Standards'

Premises Standards Review Public Information
Session - Hobart

Presented by Department of Industry and Science
Where: Glenorchy Civic Centre, Terry Martin Senior
Room, 2 Cooper Street, Glenorchy

When: Tuesday 5 May 2015 from 9.30 am to

10 30 am

To register to attend this session,
<https://register.eventarc.com/29818/public-information-session-hobart>

The session is free.

About the review

The Federal Department of Industry and Science, in conjunction with the Federal Attorney-General's Department, is calling for submissions on the effectiveness of the *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards) in providing access to buildings for people with disability.

The Premises Standards, which came into effect on 1 May 2011, aim to provide people with disability with dignified and equitable access to buildings, and provide certainty to industry that they are complying with the *Disability Discrimination Act 1992* (DDA).

Terms of reference

As required by Part 6 of the Premises Standards, the review will:

- consider the effectiveness of the Premises Standards in achieving their objectives including whether the Standards have:
- provided people with disability with dignified, equitable, cost effective and reasonably achievable access to public buildings, and facilities and services within buildings that they have a right to enter, and
- given greater certainty for the building industry that access to buildings is not unlawful under the DDA; and
- identify any necessary amendments to the Standards.

It will also consider:

- the interaction between the Premises Standards and existing regulatory schemes operating in state and territory jurisdictions; and
- inconsistencies in the interpretation and application of the Standards.

Also, the review will examine progress with the implementation of the Government's response to the *Access to All Areas House of Representatives Standing Committee on Legal and Constitutional Affairs 2009 report*. In doing so the review will include, but not be limited to, a consideration of the following issues:

- the small building exemption,
- the lessee concession,
- 80th and 90th percentile wheelchair dimensions,
- locking off lifts,
- accessible sanitary facilities,
- swimming pools,
- accessible parking,
- accessible room requirements in accommodation buildings,
- wayfinding,
- emergency egress, and
- public transport buildings.

For the review terms of reference and discussion paper, details on how to make a submission, and to register to attend a public information session on the

register to attend a public information session for the review, please visit the review website at www.industry.gov.au/PremisesStandardsReview



IDAHO Day Breakfasts and Afternoon Tea

This year **Working it Out** is hosting three events to celebrate International Day Against Prejudice & Discrimination towards Lesbian, Gay, Bisexual & Trans* people and people with Intersex characteristics (IDAHO).

Breakfast in Hobart

Friday 15 May

7.00 am
Cornelian Bay Boathouse Restaurant,
Queens Walk,
Cornelian Bay

Breakfast in Launceston

Monday 18 May

7.00 - 8.30 am
Fresh on Charles Vegetarian Restaurant,
178 Charles St

Afternoon tea in Burnie

Monday 18 May

3.00 - 5.00 pm
Graze Café, Cradle Coast Campus, UTas,
16 Mooreville Rd

Tickets are available through the Working it Out website or directly via this link:

<http://www.eventbrite.com.au/o/working-it-out-inc-6424640867>

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



Privacy Awareness Week

3 - 9 May 2015

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

National Volunteering Week

11 - 17 May 2015

<http://www.volunteeringaustralia.org/news-media-and-events/national-volunteer-week/>

International Day Against Homophobia (IDAHO)

17 May 2015

<http://dayagainsthomophobia.org/>

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

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

National Families Week

15 - 21 May 2015

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

Global Accessibility Awareness Day

21 May 2015

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/>

World day for Cultural Diversity for dialogue and development

21 May 2015

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

National Sorry Day

26 May

<http://www.timeanddate.com/holidays/australia/national-sorry-day>

National Reconciliation Week

27 May - 3 June 2015

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

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