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In respect of rights



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October 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.

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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

From the Anti-Discrimination Commissioner

I have just finished my annual report to the Attorney-General, the Hon Vanessa Goodwin, MP.



While newsletter readers will have to wait until the Attorney-General tables the report in Parliament, I can give you the highlights on 2014-15:

- The release of the report, *Treatment of historic criminal records for consensual homosexual sexual activity and related conduct*. The report provided a number of recommendations for the State Government to consider and has been welcomed by the Attorney-General, the Hon Vanessa Goodwin.
- Growing support and engagement by Tasmanian Government agencies, service providers and local government in the national anti-racism strategy, *Racism. It stops with me*, with two major events to witness and celebrate signing onto the campaign and pledge.
- Securing commitment from the Department of Justice to developing a Disability Justice Strategy for Tasmania to identify and address barriers experienced by people with disability participating in the justice system in this State. My office will lead this work in the coming year.
- Significant progress in updating all our brochures and other information materials into a new format that will ensure they are much more accessible and readable.
- Increased delivery of community education to schools, with this increase likely to continue in 2015–

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

likely to continue in 2015/16.

- Appointment to and participation in the Ministerial Taskforce on Improved Support for Students Living with a Disability to advise Education Minister, the Hon Jeremy Rockliff. This built on previous work done with the Department of Education's Inclusion Working Group – Disability Focus in 2013–14.
- Implementation of changes to our office processes and structure, particularly in the area of complaint management, following the independent review completed in July 2014.
- Continuing strong performance in the area of complaint management and resolution, with complaints managed in a more timely way with strong rates of resolution.
- The Attorney-General's announcement of changes to the Anti-Discrimination Tribunal and working with the key participants to assist in ensuring as smooth a transition as possible.
- Partnership with A Fairer World to deliver the *Let's Get Together* diversity education program for schools.
- Continuing strong contribution to national and state inquiries relating to discrimination, equal opportunity and human rights, particularly in relation to people with disability, with submissions to the review of the *Disability (Access to Premises – Buildings) Standards 2010* (Cth) and to the Senate Inquiry into violence, abuse and neglect of people with disability in institutional settings.
- Abolition by the State Government of compulsory medical assessments for drivers aged 75 years and over.
- Involvement in the development of improvements to policing and emergency services in diversity including race and multiculturalism, and sexual orientation, gender identity and intersex through participation in ongoing working groups.

Robin Banks
Anti-Discrimination
Commissioner

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*.

Exemption granted on 28 July 2015 and gazetted on 19 August 2015

Exemption No's 15/03/073, 15/07/036, 15/07/077, 15/07/079, 15/07/080 granted to **Tasmania University Union Inc** on 28 July 2015 for 3 years. The exemptions have been granted to permit Tasmania University Union Inc to restrict nominations and elections of five student representative positions (north and south) to people with specified attributes. The positions and attributes are as follows:

- **Women's Officer:** restricting the positions to people who identify as women. As such, the exemption is granted from the provisions of the Act that protect against discrimination in employment on the basis of gender and gender identity (15/03/073).
- **Position supporting and advocating for students who are lesbian, gay, bisexual, transgender, intersex, queer or asexual (LGBTIQQA)** (however named): restricting the positions to people who identify as one or more of lesbian, gay, bisexual, transgender, intersex, queer or asexual. As such, intersex, gender identity and sexual orientation (15/07/076).
- **International Students Officer:** restricting the positions to people who are enrolled as International students (full-fee-paying overseas students) at the University of Tasmania. As such, the exemption is granted from the provisions of the Act that protect against discrimination in employment on the basis of race (being relevantly nationality and/or national origin) (15/07/077).
- **Aboriginal and/or Torres Strait Islander Officer:** restricting the positions to people who identify as Aboriginal and/or Torres Strait Islander. As such, the exemption is granted from the provisions of the Act that protect against discrimination in employment on the basis of race (15/07/079).
- **Disability Officer:** restricting the positions to people who identify as having disability. As such, the exemption is granted from the provisions of the Act that protect against discrimination in employment on the basis of disability (15/07/080).

Exemption granted on 1 September 2015 and gazetted on 9 September 2015

Exemption No. 15/07/044 granted to **Jireh House Association Inc** on 1 September 2015 for 3 years. This

exemption has been granted to permit Jireh House Association Inc to recruit and employ women only in

identified core positions. The exemption is granted on the basis that:

1. the discrimination is for the purposes of operating a crisis accommodation service for women and women with children who are homeless or at risk of homelessness due to domestic and family violence and other life crisis; and
2. being a woman is a genuine occupational requirement of working with women who require crisis accommodation and other services provided by Jireh House Accommodation Inc because staff members in these roles all have regular personal contact with women escaping domestic and family violence.

For more information on exemptions go to;

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

FAQs - Discrimination and hidden disabilities

Applying for jobs can be stressful enough. There can be even more stressful if there is uncertainty about what you do or don't have to disclose to an employer about disability.

- Discrimination occurs when someone is treated unfairly (less favourably than another person) or disadvantaged because of their particular attribute, in this case disability.
- The *Anti-Discrimination Act 1998* prohibits discrimination based on disability in seven areas of activity; one of which is employment. The protection against discrimination in employment includes any discrimination during the recruitment process.

I am currently applying for jobs. Do I have to disclose to an employer that I have bipolar disorder?

- If your condition does not affect your ability to fulfil the inherent requirements of the position then there is no relevance to your work or workplace. Therefore, no, you don't have to disclose.
- If you choose to disclose a disability to an employer and believe that is the reason you didn't get a job (or an interview), this could be discrimination.
- Any interview process should be based on a fair selection process free from discrimination.
- Selection of successful applicants should be based on merit not on

assumptions or judgements that may be unfair, resulting in unlawful discrimination.

- The process and criteria should also be free of the potential to have negative impacts or disadvantage a person because of a particular disability.

Do I have to tell my employer if I am on any medication?

- If you are taking any medication that may negatively affect your capacity and ability to fulfil the requirements of the job then it should be disclosed. This does not necessarily mean you need to disclose what you take the medication for. For example; if you are taking medication that may affect your driving this is relevant, however the condition the medication is for is likely to be irrelevant.
- If there is an inherent requirement of the workplace under its work health and safety obligations that employees must disclose certain medications then yes, you are obliged to do so.
- If you are unsure of your duty to disclose, check the position description and the workplace policies regarding work health and safety obligations and employee responsibilities.
- For workplaces where disclosure is mandatory, the workplace should advise in job advertisements or prior to interview what medications must be disclosed and the relevance to the job and industry.

I have recently being diagnosed with anxiety disorder. Do I have to tell my employer?

- If your condition does not affect your ability to do your job then there is no relevance to your work or workplace. Therefore, no, you do not have to disclose.
- It is up to you to decide whether or not you will tell your employer. If you feel safe to do so, feel confident you won't be treated less fairly and/or would like support from your employer

then it is your choice to disclose.

- If you are uncertain, you may find it useful to discuss this with your family, doctor, others you know with the condition or a support person before taking any action to disclose.

I didn't tell my employer I have a disability but they have found out after giving me the job. Is this a problem?

- If there was no inherent requirement that your disability meant you couldn't do, then your disability should remain irrelevant to your job performance (unless there has been a change that may affect your ability to perform the job). If you receive less favourable treatment because your employer has found out about your disability this could constitute unlawful discrimination.
- Likewise, if you have disclosed the medication/s you are taking and there is no link between the employer's work health and safety obligations and no relevance to your job and yet you are treated badly because of the disclosure this could constitute unlawful discrimination.
- Your employer should be judging you on your current job performance and whether you have been able to do the job to an acceptable level.
- If you have been performing well in your job then your employer should not treat you badly or differently because you did not disclose an irrelevant disability before taking up the position.
- Your employer should be supporting you and providing a safe and fulfilling workplace regardless.
- If you are treated differently because of your disability this may be unlawful discrimination and you may make a complaint to this office.

Case Summary

Mulligan v Virgin Australia Airlines Pty Ltd
[2015] FCAFC 130

Virgin Australia have been found to have unlawfully discriminated against a prospective passenger who has cerebral palsy. The airline would not allow his dog to travel in the aircraft cabin with him.

The man tried to book a domestic flight with Virgin Australia and informed the airline that he has disability, being cerebral palsy, and has an assistance dog. Virgin Australia had issues about the eligibility of the dog to accompany him in the cabin. The man was told his dog could not travel in the passenger cabin with him.

The man claimed he had been discriminated against by Virgin Australia because of disability. The airline needed to establish the requirements relating to training and accreditation of assistance dogs had been met. Having determined the requirements were not met, the Federal Circuit Court dismissed the man's application and ordered him to pay Virgin's costs.

The man appealed to the Full Court of the Federal Court. The Full Court found the dog met the requirements of an 'assistance animal' under the *Disability Discrimination Act 1992* (Cth). The Full Court held that by refusing to permit his dog to accompany him in the cabin of its aircraft Virgin Airlines had unlawfully discriminated against him.

The Full Court awarded the man \$10,000 in compensation. It also overturned the costs order made in the Federal Circuit Court and ordered Virgin Australia to pay all costs.

<http://www.austlii.edu.au/au/cases/cth/FCAFC/2015/130.html>

October and November Training Calendar

October is WorkSafe Month 5 - 31 October 2015

WorkSafe Tasmania is hosting free webinars during WorkSafe Month this October

Roz Smart will be presenting the webinar:

Small business: Protect your reputation: Know your rights and responsibilities

Date: Wednesday 14 October

Time: 10:00 - 11:00 am

for more information about the webinars and to register go to:

<http://worksafe.tas.gov.au/safety/events/worksafe-month>

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Workplace Support / Contact Officer (WSCO) Networking Meeting

Hobart

Monday 16 November
9.00 am - 12.00 pm

Launceston

Tuesday 17 November
9.00 am - 12.00 pm

Burnie

Wednesday 18 November
12.30 - 3.30 pm

FREE for existing WSCOs

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LUNCHBOX LEARNING Anti-Discrimination Policies

Launceston

Monday 30 November

12.30 - 1.30 pm

\$55.00 (ex GST)

We can also deliver all 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.

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

Gearing Up Expos

Staff members, Louise and Leica had the great pleasure of attending the Hobart and Launceston Gearing Up Expos again this year and Roz looked after the Burnie Expo.

As usual the Expos were professional, entertaining and filled with exciting and informative information and resources. Louise, Leica and Roz had the privilege of speaking to many Expo attendees about their rights under discrimination law. Thank you to the organisers for all their work in providing such awesome Expos.



Louise Adams and Leica Wagner at our booth waiting for the first of many visitors at the Hobart Gearing Up Expo



Our booth ready to go at the Burnie Gearing Up expo

Local News



Mental Health Week 2015

Mental Health Week is part of a national mental health promotion campaign held in October each year. It aims to engage communities in activities that promote mental wellbeing and also raise awareness and understanding about mental health issues and how they affect the lives of people in our community.

Mental Health Week 2015 in Tasmania takes place from Sunday 4 October - Sunday 11 October 2015.

The theme for Mental Health Week this year is 'Mental Health Begins with Me' and encourages us all to find ways to maintain our own mental health.

The Mental Health Council of Tasmania is encouraging everyone to post their personal mental health promise via www.1010.org.au

their personal mental health promise via www.toto.org.au

<http://www.mhct.org/mentalhealthweek.html>

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LIVE LOUD

To create a better understanding of the lives of transgender and non-Binary Tasmanians, the **LIVE LOUD** research project wants to listen to their stories and experiences. The project aim is to improve resources and enable the ongoing development of mainstream and targeted community, education and health services, including supports for transgender and non-Binary Tasmanians.

LIVE LOUD is being conducted by Working it Out. For more information about the project or if interested in being part of the research in any capacity contact Working it Out (03) 6231 1200 or xris@workingitout.org.au or duncan@workingitout.org.au

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Hobart Human Library invitation

The Hobart Human Library provides a unique workshop to complement school (Grades 5-12) or workplace diversity training. The 90 minute workshop is designed to build empathy through personal conversations with a diverse range of people from the local community.

A Fairer World, in partnership with the City of Hobart, is providing free events to introduce the Hobart Human Library to schools and workplaces in the municipality of Hobart.

- New Town High School on Monday 19 October, 5.00 – 6.30 pm (refreshments from 4.30 pm)
- Elizabeth College on Wednesday 28 October, 5.30 – 7.00 pm (refreshments from 5.00 pm)

Human libraries are used around the world as a fun way to challenge prejudices and build empathy between diverse people. They do this by creating a comfortable space for 'readers' to speak informally with a 'book' who has encountered prejudice or stereotyping as a result of their culture, religion, background, gender, sexual orientation, physical or cognitive ability.

The Hobart Human Library is available for booking by schools and workplaces and this is an opportunity to experience it firsthand.

Spaces are limited, please RSVP by e-mail (a week before the event you wish to attend) to Helen Hortle, e-mail admin@afairerworld.org or phone 6223 1025 to ensure your seat as a 'reader'.

Come and enjoy a library where the 'books' are living people.

Download a PDF event invitation here:

http://www.afairerworld.org/_Coming_events/HobartHumanLibraryInvitation.pdf

For more information about the Hobart Human Library download the PDF brochure here:

http://www.afairerworld.org/_Current_projects/HobartHumanLibrary2015.pdf, or contact A Fairer World (by the above contact information) for accessible information.

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Sexuality, Gender and Dementia Seminar

The Old Woolstore
1 Macquarie Street, Hobart

Friday 9 October 2015

9.30 am Registration with morning tea

RSVPs are essential: TAS.Admin@alzheimers.org.au

or phone: (03) 6279 1100

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Health and Wellbeing Expo

The Rotary Club of Ulverstone West is hosting a FREE Health and Wellbeing Expo at the Ulverstone Civic Centre
Friday 23 October 2015
10.00am - 3.00 pm

The expo includes Hat Day, an initiative of Australian Rotary Health, raising awareness for mental health and youth suicide prevention.

For more information go to:

<http://www.rotaryulverstonewest.org.au/health.html>

National News

Report released on Disability Standards for Accessible Public Transport

In July 2015, the Federal Government released the final report of the review into the Disability Standards for Accessible Public Transport. The report details how State and Federal Governments are progressing when it comes to providing accessible transport and makes a range of recommendations.

In its response to the review the Australian Government has indicated support for a number of recommendations including:

- That the Australian Government, jointly with State, Territory and Local Governments, develop accessibility guidelines for a whole-of-journey approach to public transport planning by 30 June 2016; and
- That the Australian Government, jointly with State and Territory Governments, commence a process for updating and modernising the Transport Standards to bring them into line with other laws and regulations, such as the Access to Premises Standards, by 30 June 2017.

Visit the Department of Infrastructure and Regional Development at <https://infrastructure.gov.au/transport/disabilities/index.aspx> to read the report and the Australian Government's response to it.

Human Rights Week



The Tasmanian Human Rights Awards celebrate notable activities in Tasmania or by Tasmanians with nine awards given annually.

The official invitation to the Tasmanian Human Rights Week Launch and Awards announcement will be in next month's edition of *In respect of rights*.

For more information go to

http://www.afaairerworld.org/_HRWeek/award.html.

*Please note: 2015 nominations are now closed.

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 October



1 October
International Day of Older Persons
www.un.org/en/events/olderpersonsday/

2 October
International Day of Non-Violence
<http://www.un.org/en/events/nonviolenceday/index.shtml/>

Mental Health Week
4 - 11 October 2015
<http://www.mhct.org/mentalhealthweek.html>

9 October
World Sight Day
<http://www.vision2020australia.org.au/events/2015-10-08/world-sight-day-2015>

10 October
World Mental Health Day
http://www.who.int/mental_health/world-mental-health-day/en/

11 - 17 October
Anti-Poverty Week
<http://www.antipovertyweek.org.au/about/about-anti-poverty-week>

11 - 17 October
Carers Week
<http://www.carersaustralia.com.au/>

12 - 18 October
Seniors Week
<http://www.cotatas.org.au/programs-events/sw2015/>

17 October
International Day for the Eradication of Poverty
www.un.org/en/events/povertyday/

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