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## *In respect of rights*



### Edition 44

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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.

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)

## From the Anti-Discrimination Commissioner

As Commissioner, I have a broad range of functions under Tasmania's



*Anti-Discrimination*

*Act*. These include not only dealing with discrimination complaints and enquiries, but also the more pro-active work of promoting understanding of the law and compliance with it. This means supporting everyone in Tasmania to ensure equality of opportunity and inclusion is achieved across the state.

This means discrimination law is not just about telling people what they are not allowed to do. It is also about helping people and organisations understand what they can do to promote and achieve equal opportunity for all.

With this in mind, the Tasmanian Attorney-General, the Hon Vanessa Goodwin will be making an announcement on Tuesday 11 November about my office. I will be sending out a special edition of *In respect of rights* on that day to update all our readers.

**Robin Banks**  
**Anti-Discrimination Commissioner**

## Frequently Asked Questions (FAQs) - Irrelevant Criminal Record

Discrimination occurs when a person is treated unfairly (less favourably than another person) or disadvantaged because they have a particular attribute (an attribute is a personal characteristic), in this case irrelevant criminal record.

The *Anti-Discrimination Act 1998* makes discrimination based on irrelevant criminal record unlawful if it happens in any one of seven areas of

Please let the office know before an 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@ustice.tas.gov.au](mailto:roz.smart@ustice.tas.gov.au)

happens in any one or several cases of activity; one of which is employment. The protection against discrimination in employment includes any discrimination during the recruitment process.

***My employer asked me to provide a police check. Do I need to provide it?***

- A police check or character reference check may be part of a process for a workplace to make sure the employer fulfils its duty of care and provides a safe environment for students, clients, staff and other relevant people.
- If you have been asked to provide a police check and this is an essential requirement of your workplace or job role then, yes you are obliged to provide it.
- If you are unsure of your duty to provide a police check, check the position description and the workplace policies regarding employee obligations and responsibilities. Also check if the information provided explains why a police check is being asked for or required.
- In workplaces or positions in which police checks are mandatory, the workplace should state in job advertisements or before any interview that a police check will be required and why. The workplace must also be prepared to allow you to explain the circumstances of any criminal record and its the relevance or irrelevance to the situation.

***I was told I didn't get the job because of a conviction recorded against my name. Is this discrimination?***

- It may be discrimination if the recorded conviction has no relevance to the job role or to the workplace.
- If, however, your recorded conviction is relevant to the inherent requirements of the role then it may be perfectly reasonable that you did not get the job. If this is the case, it is not unlawful discrimination.
- The selection of successful applicants should be based on merit not on criminal records that have no relevance.
- Employers should carefully consider their position descriptions and be able to justify why they have considered certain criminal convictions to be relevant or not.

***I have found out a potential employee may be involved in a criminal matter but charges have not yet been laid. Can I refuse to employ them?***

- No, the meaning of 'irrelevant criminal record' under the Tasmanian Act includes '(b) a charge has not been laid'

been laid.

- If you refuse to consider the potential employee there is the risk that, if they are not charged or found not guilty, it then becomes an irrelevant criminal record and therefore your decision may be unlawfully discriminatory.
- If you refuse to consider the potential employee because of a rumour they may have been involved in a criminal matter this is even more likely to be unlawful discrimination as the decision is based not on a factual matter that is directly relevant. Discriminatory behaviour also includes treating someone less fairly because of an **imputed** attribute or characteristic.

***I got caught speeding last week now I am scared I will be sacked. Can my employer sack me for this?***

- If your job involves driving for your employer and you haven't lost your licence then you are still able to perform the inherent requirements of your job. Therefore, the answer is 'no', getting caught speeding should not have a negative impact on your job or any connection to your workplace.
- If your job does not involve driving or driving is only a minor part of the work, your speeding conviction is likely to be irrelevant. Therefore, the answer is again 'no', getting caught speeding should not have a negative impact on your job or any connection to your workplace.
- If you were caught speeding while driving for your employer there may be disciplinary actions within your workplace and your employer may discuss your obligations as an employee with you.
- If your licence is suspended and you are unable to get a restricted driver's licence, driving is an essential requirement of your job, and there is no other job you can do in the workplace for the period of your suspension, then 'yes' this may be grounds for dismissal.
- An employer would need to look at all options before dismissing a worker for loss of driver's licence.

***When would a criminal record be relevant to employment or future employment?***

- The kinds of criminal records that are more likely to be seen as relevant in some workplaces are; crimes of violence, sex-related offences, serious drug offences or crimes involving dishonest dealings with money.
- In each case, it depends very much depend on the job and the nature of the work and work arrangements.

In determining whether a conviction is relevant to a job role within a workplace, consideration should be given to;

- The type(s) of offence and how often the person has been convicted.
- The relevance of the conviction to the job.
- How recent the conviction was.
- Any rehabilitation the person has done since the conviction.
- The person's general behaviour since the conviction, particularly in relation to employment
- Whether the offence is still a crime

It should not be about punishing a person again for a criminal record or conviction. It should be about making sure workplaces and services provided are healthy and safe.

If you think you have been discriminated against on the basis of irrelevant criminal record, you can call the our office on 03 6165 7515 or 1300 305 062 and ask to speak to or meet with an enquiries officer or you can [visit our website](#) for more information ([www.antidiscrimination.tas.gov.au](http://www.antidiscrimination.tas.gov.au)).

## Case Summary: pregnancy and disability discrimination

The complainant worked as a sales consultant with a Telstra store owned by Telco Business Solutions (TBS).

The complainant was pregnant and was suffering severe morning sickness. She was told (by her doctor) to reduce her hours of work from 38 hours to 28 hours per week, TBS refused to allow this. Negative comments were made to her about the amount of sick leave she had taken, excessive 'sitting' on the job and taking numerous toilet breaks. The complainant subsequently resigned from her job.

The complainant made a complaint of direct and indirect pregnancy discrimination on the basis of disability because she was suffering from severe morning sickness. The complainant alleged TBS had failed to make reasonable adjustments for her as an employee.

The Victorian Tribunal found TBS, by its conduct, had directly discriminated against the complainant, both in relation to her pregnancy and her severe morning sickness, which the Tribunal recognised was a 'disability' for the purposes of the *Equal Opportunity Act 2010* (Vic). The complainant was awarded \$10,000 in compensation.

*Bevilacqua v Telco Business Solutions (Watergardens) PL No.2 (Human Rights) [2015] VCAT 693 (28 May 2015)*. [Read more about this decision here](#) (<http://www.austlii.edu.au/au/cases/vic/VCAT/2015/693.html>).

## November and December Training Calendar

### 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

**Burnie**

Tuesday 1 December  
12.30 - 1.30 pm

**Hobart**

Monday 7 December  
12.30 - 1.30 pm

\$55.00 (ex GST)

For more detailed course information, price, registration forms or contact details, [visit the education and training page of our website](http://www.antidiscrimination.tas.gov.au/education_and_training)

([http://www.antidiscrimination.tas.gov.au/education\\_and\\_training](http://www.antidiscrimination.tas.gov.au/education_and_training))

## Training News

What a great WorkSafe month again this year. We thoroughly enjoyed rolling out our first webinar to WorkSafe Month participants. Thank you to those that provided feedback, especially the following:

*'I really enjoyed this webinar (and this is about the 7th one that I have watched over WorkSafe Month 2015). The examples given were great and assisted understanding of the topic. Basic info on the slides, coupled with a lovely presentation style made it very enjoyable.'*

Thanks once again to WorkSafe Tasmania for including us in the WorkSafe Month program. Thanks also to Stephanie and the other wonderful staff who always ensure such a smooth program of events.

**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](mailto:roz.smart@justice.tas.gov.au) or [louise.adams@justice.tas.gov.au](mailto:louise.adams@justice.tas.gov.au).**

## Local News

### Tas Pride



This year, the Tas Pride Festival theme



is 'Somewhere  
Over the  
Rainbow', to  
celebrate the

depth and diversity of the talent  
in the gay, lesbian, bisexual,  
trans, intersex and queer  
(GLBTIQ) community in  
Tasmania, and along the way  
encourage acceptance and  
equality in the wider society.  
The TasPride Festival has a  
wide range of events in Hobart,  
and Launceston's second  
diversity street party.

Our office will have a stall at  
Ulverstone's '**OUT**' in the  
**Park** for TasPRIDE and Roz  
will be there to have a chat and  
provide information on  
discrimination and equal  
opportunity:

Ulverstone, Bicentennial Park  
Sunday 15 November  
11.00 am – 3.00 pm

To find out more about the Tas  
Pride events **visit the  
website:**  
([http://taspride.com/?  
page\\_id=186](http://taspride.com/?page_id=186))

## Human Rights Week

### The Human Rights Week Organising Committee



invites you to the launch of  
**Human Rights Week 2015** and  
announcement of **Tasmanian Human  
Rights Award Winners**.

The launch will include:

- Aboriginal Welcome/Acknowledgement
- Musical Performance
- Guest Speaker Rodney Croome AM,  
Tasmanian Australian of the Year for 2015

**12.30 pm – 1.30 pm**

**Thursday 3 December**

Reception Room, Parliament House  
(Refreshments will be served at the  
conclusion of the formalities).

RSVP by Monday 23 November to  
[hrwlaunchinvitation3dec2015@gmail.com](mailto:hrwlaunchinvitation3dec2015@gmail.com)

The Human Rights Week Organising  
Committee acknowledges support from:  
Office of the Anti-Discrimination  
Commissioner, City of Hobart, Tasmanian  
Council of Social Service, *The Examiner* and  
*The Advocate*.

## Play by the Rules



Play by the Rules has an online interactive bi-monthly magazine. To catch up with the latest news and subscribe, **visit the Play by the Rules website** (<http://pbtr.com.au>).

## Awareness Days in November



**16 November**

**International Day for Tolerance**

**Visit the UN International Day of Tolerance page for more information.**

(<http://www.timeanddate.com/holidays/un/international-day-tolerance>)

**20 November**

**Transgender Day of Remembrance**

**Visit the International Transgender Day of Remembrance website for more information.**

(<http://tdor.info/>)

**20 November**

**Universal Children's Day**

**Visit the United Nation's Universal Children's Day website.**

(<http://www.un.org/en/events/childrenday/>)

**21 - 29 November**

**Social Inclusion Week**

**Visit the Australian Social Inclusion Week website.**

([www.socialinclusionweek.com.au](http://www.socialinclusionweek.com.au))

**25 November**

**International Day for the Elimination of Violence against Women: White Ribbon Day**

**Visit the website of White Ribbon: Australia's campaign to stop violence against women**

(<http://www.whiteribbon.org.au/>)

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