

In respect of rights



From the Anti-Discrimination Commissioner

It is with great sadness and much anticipation that I write, in my formal role as Anti-Discrimination Commissioner, to say goodbye.

I feel very privileged to have had this role and to have been part of the important work of promoting and protecting human rights in Australia. This work can be very challenging but extremely rewarding and I thank all of those who have worked with me and my office over the past six and a half years.

I welcome the incoming Commissioner, Sarah Bolt, and look forward to supporting her in the continuing work.

During my time as Commissioner, I have worked with and been supported by the dedicated, passionate and effective team at Equal Opportunity Tasmania. Every day they make a difference to the community in Tasmania by seeking to promote and achieve equality of opportunity for all.

Thank you

Robin Banks
Anti-Discrimination Commissioner
(2010-2017)

From Equal Opportunity Tasmania

As we thank and farewell Robin as our Commissioner, boss and friend for the past six and a half years we welcome back Sarah Bolt, Anti-Discrimination Commissioner as of 1 February.

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 23 December 2016 and gazetted 11 January 2017

16/12/030 – Application for an exemption granted under section 57 of the Act for a period of three years. This exemption has been granted to permit the **Department of Primary Industries Parks Water and Environment** to recruit and employ women only in two of the three cadet positions available each year in the Department of Primary Industries Parks Water and Environment (DPIPWE) Cadet Program, on the basis that it is consistent with:

1. section 25 of the Act, which provides an exception for discrimination 'for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of a prescribed attribute'; and
2. section 26 of the Act, which provides an exception for discrimination 'for a group of people who are disadvantaged or have a special need because of a prescribed attribute'.

The exemption is for the period of three (3) years subject to the fulfilment of the conditions that the Department of Primary Industries Parks Water and Environment:

1. report on or before 30 June 2017 to the Anti-Discrimination Commissioner on any actions taken in reliance on this exemption;
2. report on or before 23 November 2019

- to the Anti-Discrimination Commissioner detailing the outcomes of the DPIPWE Cadet Program; and
3. on at least one occasion in the 12 months immediately after this order is made, invite Equal Opportunity Tasmania to attend and present a training and education awareness session for those involved in the program to increase awareness of rights and obligations under the *Anti-Discrimination Act 1998* (Tas). This session is to be repeated each year to ensure all new cadets receive this training.

A person may apply to the Anti-Discrimination Tribunal for a review of the Commissioner's decision **within 28 days from the date of this notice being published.**

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Exemption granted on 23 December 2016 and gazetted 11 January 2017

16/11/008 – Application for an exemption granted under section 57 of the Act for a period of three years. This exemption has been granted to permit **Colony 47 Incorporated trading as Colony 47 Inc** to recruit and employ females only for the positions of Mara House Co-ordinator, Residential Response Worker and Residential Youth Worker at Mara House, on the basis that it is consistent with:

1. section 25 of the Act, which provides an exception for discrimination 'for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of a prescribed attribute'; and
2. section 27(1)(c) of the Act, which provides an exception for gender discrimination 'in employment, if it is for the purpose of the residential care of persons under the age of 18 years'; and
3. section 27(1)(d) of the Act, which provides an exception for gender discrimination 'in employment, if it is based on a genuine occupational qualification or requirement in relation to a particular position'.

The exemption is for the period of three (3) years subject to the fulfilment of the conditions that Colony 47 Inc:

1. report on or before 30 June 2017 to the Anti-Discrimination Commissioner on

- any actions taken in reliance on this exemption; and
2. on at least one occasion in the 12 months immediately after this order is made, organise and promote community education for its staff, members, officers, clients and volunteers of Colony 47 Inc through the Equal Opportunity Tasmania's community education program to increase awareness of rights and obligations under the *Anti-Discrimination Act 1998* (Tas).

A person may apply to the Anti-Discrimination Tribunal for a review of the Commissioner's decision **within 28 days from the date of this notice being published.**

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**Exemption granted on 6 January 2017
and gazetted 11 January 2017**

16/12/027 – Application for an exemption granted under section 57 of the Act for a period of three years. This exemption has been granted to permit the **Department of Premier and Cabinet** to specifically recruit and employ graduates with a disability into the Tasmanian State Service who are eligible to participate in the Graduate Program for People with Disabilities ('the Program'):

1. A person will be eligible to participate in the program if they meet the definition of 'disability' as set out in the *Disability Services Act 1992*, which covers people with intellectual, psychiatric, sensory or physical impairments, as well as individuals with cognitive impairments who fall within the equivalent Commonwealth legislation.
2. Persons who have a disability and have been assessed by Centrelink as requiring specialist employment assistance, and have been referred to any approved Disability Employment Services provider will also be eligible to participate in the program.

This is consistent with:

1. section 25 of the Act, which provides an exception for discrimination 'for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of a prescribed attribute'; and
2. section 26 of the Act, which provides an exception for discrimination 'for a group

of people who are disadvantaged or have a special need because of a prescribed attribute’.

The exemption is for the period of three (3) years subject to the fulfilment of the conditions that the Department of Premier and Cabinet:

1. report on or before 31 July 2017 to the Anti-Discrimination Commissioner on any actions taken in reliance on this exemption; and
2. report on or before 6 January 2019 to the Anti-Discrimination Commissioner detailing the outcomes of the Graduate Program for People with Disabilities.
3. on at least one occasion in the 12 months immediately after this order is made, invite Equal Opportunity Tasmania to attend and present a training and education awareness session for those involved in the Program to increase awareness of rights and obligations under the *Anti-Discrimination Act 1998* (Tas). This session is to be repeated each year to ensure all new graduates and managers of new graduates receive this training.

A person may apply to the Anti-Discrimination Tribunal for a review of the Commissioner’s decision **within 28 days from the date of this notice being published**.

For more information on exemptions go to; <http://equalopportunity.tas.gov.au/exemption> S.

Frequently Asked Questions: from past training participants

Hasn't this all gone too far, we can't say anything anymore?

- What do you want to say?
- Inappropriate comments, questions or statements that make someone feel uncomfortable or disadvantaged are not ok in a workplace.
- Appropriate, open, inclusive conversation and dialogue is ok in a workplace.
- If you are not sure if what you want to say is appropriate, re-think why you want to say it and perhaps re-phrase or

ask a colleague for advice.

- A workplace with an inclusive, open culture is one where people have permission to say 'please don't say that' and no offence is taken.
- If you do say something that causes offence, apologise sincerely and learn from the experience.

I am a white, Australian, heterosexual male, what about MY rights?

- Unlawful discrimination is treating someone unfairly because of a personal attribute.
- Race, sexual orientation and gender are all attributes under the Act and being Australian, heterosexual and male are covered by the definitions of race, sexual orientation and gender.
- So, if you are treated unfairly because you are white and/or Australian you may be experiencing race discrimination.
- If you are treated unfairly because you are heterosexual you may be experiencing sexual orientation discrimination.
- If you are treated unfairly because you are male you may be experiencing gender discrimination.
- If a person feels that they are being treated unfairly because of an attribute they can make a complaint of discrimination.

My son is being harassed because he has red hair, yet if he teased another child because they are Aboriginal he would get into trouble, isn't that discriminatory?

- As in the question above, race is one of the attributes under the Act.
- The definition of race under the Act includes –
 - (a) colour; and
 - (b) nationality; and
 - (c) descent; and
 - (d) ethnic, ethno-religious or national origin; and
 - (e) status of being, or having been, an immigrant.Although colour is included in the definition, red hair is not indicative of a race. People of all races may have red hair.
- However, although your son may not be able to make an unlawful discrimination complaint under the Act, harassment for any reason is not ok.
- Just because a behaviour is not covered

under the Act does not mean that the behaviour is ok.

- Your son's school or the group where the harassment is occurring should have harassment and bullying policies.
- You (and/or your son) can speak to someone in authority in the school or group about the harassment and bullying.
- The school or group have a duty of care to ensure the fair treatment of everyone in their organisation.

She sleeps with everyone, how is it sexual harassment when she is teased about that?

- Sexual harassment can include (among other things) repeated and unwanted enquiries or comments about another staff member's sex life or relationships and sexual jokes and comments.
- What someone does (or doesn't do) in their personal life is not appropriate workplace conversation.

They're just playing the disability/race/bullying/gay 'card' so they can get what they want!

- Often a person who makes a complaint just wants the unfair treatment or behaviour to stop or an apology.
- Making a complaint is not fun and neither is unfair treatment.
- No one should have to experience unfair treatment and everyone has the right to speak up.

For more information about the law or making a complaint, you can call 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 \(www.equalopportunity.tas.gov.au\)](http://www.equalopportunity.tas.gov.au).

Case Summary

Punch and Doran v King (Ref No 589/2014) [2016] TASADT 7 (16 May 2016)

Two complaints were referred to the Anti-Discrimination Tribunal (ADT) in Hobart for Inquiry. The male complainants alleged unlawful discrimination on the basis of sexual orientation, offensive conduct on the basis of gender and relationship status and incitement to hatred, serious contempt and/or ridicule on the basis of sexual orientation.

The complainants and respondent live on opposite sides of the road to each other. The complainants are homosexual and have lived in a same-sex relationship for several years. The complainants were subjected to on-going discrimination in the form of verbal and physical abuse and taunting as well as their dog being attacked by the respondent's dog. A restraint order was obtained by the complainants against the respondent.

The ADT ordered the respondent to pay to the complainants an amount of \$6000 as compensation for loss and injury suffered by the complainants. The Tribunal did not consider an apology and/or anti-discrimination training to be appropriate in this case.

<http://www.austlii.edu.au/au/cases/tas/TASA/DT/2016/7.html>

Training News



Delivering the message proactively

Once again I have recently been privileged to deliver anti-discrimination awareness as part of the annual TasPorts HR and governance road show. Taking the time and investing the money to visit all sites (King Island and Flinders Island included) and therefore all staff is a great way to demonstrate that an organisation is committed to getting it right. TasPort's approach may not prevent all issues or complaints but it goes a long way to ensuring that staff know that the message is serious and that they are supported should they ever have issues.

Well Done TasPorts and thanks for having me along.

Roz Smart

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Goodbye and thanks for having me

What a great job I have had.

Approximately 1200 training sessions to over 300 organisations later I would like to say thank you.

In 10 ½ years I have travelled at least 1100 hours and seen some amazing places, I even learnt to enjoy driving.

To the 3000+ people that have listened to me speak, thank you.

To those people who struggled to stay awake in my earlier sessions, I apologise.

To the people who have challenged me and made me **really** work for my money, thank you.

To the people with whom I have enjoyed wonderfully engaging conversations and who have made me learn and laugh, thank you for making my job fantastic.

My last day at Equal Opportunity Tasmania is 17 February. **Training, Education and Development Officer, Louise Adams, will continue to deliver great training and education, together with my yet to be announced replacement.**

Roz Smart

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March 2017 Training

Workplace Support/Contact Officer Role

Launceston

Monday 6 & Tuesday 7 March
1.00–5.00 pm & 9.00 am–1.00 pm

Hobart

Monday 27 & Tuesday 28 March
1.00–5.00 pm & 9.00 am–1.00 pm

\$440.00 per person

To register or for more information about EOT training options, go to:
<http://www.equalopportunity.tas.gov.au/training/resources>

**To talk to us about coming to your workplace, community, school or organisation,
phone 6165 7515 or e-mail training@equalopportunity.tas.gov.au.**



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 \(http://pbtr.com.au\)](http://pbtr.com.au).

February Awareness Days

World Interfaith Harmony Week

1 - 7 February

A week to promote harmony between all people regardless of their faith

<http://worldinterfaithharmonyweek.com/>

World day of Social Justice

20 February

The United Nations (UN) World Day of Social Justice promotes poverty eradication, full employment and social integration

<https://www.un.org/en/events/socialjusticeday/>

<https://www.facebook.com/worlddayofsocialjustice>

International Mother Language Day

21 February

The United Nations (UN) International Mother Language Day is annually held on 21 February to celebrate languages spoken worldwide. It also observes the human right to use these languages.

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

<https://www.facebook.com/motherlanguageday>

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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Website

www.equalopportunity.tas.gov.au

E-mail

office@equalopportunity.tas.gov.au

complaints@equalopportunity.tas.gov.au

training@equalopportunity.tas.gov.au

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 1300305 062

Please let the office know before an appointment if you need assistance or the services of an interpreter.



In respect of rights is published by **Equal Opportunity Tasmania** to be an information, reference and education tool for and about discrimination law and the Tasmanian community and workplaces.

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