

In respect of rights

From Equal Opportunity Tasmania



From the Anti-Discrimination Commissioner

The new year always brings an opportunity to reflect and plan. It is often a good time, while things are a bit quieter, to look at organisational priorities and training needs. It is also a good time to look at what we could be doing better. One challenge for many organisations is finding ways to better reflect, in our own staff and practice, the diversity of the community we serve here in Tasmania.

Having staff who reflect the diversity of our community helps to make our organisations more approachable and better equipped to understand and respond to the needs of our community. It is also a way to challenge our own often unconscious biases about others and find different ways of viewing the world.

I hope January 2017 provides you with time to take stock and consider what you can do to be more inclusive of the diversity of people in Tasmania.

As many of you will know the Tasmanian Government is in the process of recruiting a new Anti-Discrimination Commissioner following my decision, over a year ago, to look for new challenges. My term as Commissioner is due to end on 31 January 2016. This means my message in February's edition of *In respect of rights* will be my last.

Over the past six years I have tried to increase understanding of the critical role of equality in protecting the health of our community, to improve the efficiency and transparency of our complaints handling systems, and to foster discussion and understanding between Government, businesses, community organisations and individuals whose human rights are protected by our laws.

Robin Banks
Anti-Discrimination Commissioner

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Job opportunity with Equal Opportunity Tasmania

Are you interested in becoming part of the Equal Opportunity Tasmania team or know someone who is?

We are recruiting for a new **Senior Training, Education and Development Officer**.

Applications close on 10 January 2017.

For more information:

<http://careers.jobs.tas.gov.au/cw/en/job/494654/senior-training-education-and-development-officer-355542>

Frequently Asked Questions: Race Discrimination

Race discrimination occurs when a person is treated worse (less favourably) than other people or is excluded from the same opportunities as others because of their race. Race discrimination is unlawful under the *Anti-Discrimination Act 1998* (Tas) (the Act)

Race includes:

- a) colour;
- b) nationality;
- c) descent;
- d) ethnic, ethno-religious or national origin; and
- e) status of being, or having been, an immigrant.

I want to advertise for an Australian tenant to rent my unit. Is this okay?

- When advertising, doing any promotion or

preparing publications you need to be aware of discrimination and how the advertisement or material may affect the people who read it.

- By advertising in a way that specifies that a person must be from one place, in this case Australia, the owner of the unit is excluding others from renting the unit. This is discrimination on the basis of race and, as such, is unlawful.
- The Act prohibits publishing or displaying any material, including advertisements, that 'promotes, expresses or depicts' discrimination or prohibited conduct.
- Both the advertiser and the owner of the place or publication in which the advertisement is published or displayed may be responsible for discriminatory advertising. This is because the Act makes it unlawful for a person to 'knowingly ... aid another person to contravene' the Act.

Does my mother have the right to refuse treatment at her aged-care facility by a Chinese nurse?

- If a person refuses to let the nurse treat them because he or she is Chinese, the nurse is being treated differently because of race and, as such, is being discriminated against.
- However, the aged-care facility is your mother's home and she has the right to refuse care.
- If the aged-care facility treated the staff member unfairly because a resident didn't want their help, the facility would be exposed to a possible complaint of race discrimination by the nurse.
- If possible, the facility should talk to your mother about their obligations under the Act and their duty of care to their staff.
- The care situation needs to be managed to meet the rights of your mother and the obligations of the facility.

There is a kid at our school who has come from Sudan and he is 'black'. So we nicknamed him 'Blacky'. Someone said we should have asked him if he wanted a nickname and 'Blacky' isn't appropriate anyway?

- Not everyone is confident to speak up if they are not happy or comfortable with something.
- To give someone a nickname that makes direct reference to their skin colour is less favourable treatment related to race and, as such, race discrimination.

Surely I can say what I want ... Isn't this

is a free country with the right to free speech?

- Some people mistakenly believe that the public expression of racist attitudes is a legal and acceptable form of free speech.
- In Australia, as well as internationally, the right to freedom of speech carries with it certain responsibilities and restrictions that protect the rights of others against open hostility and discrimination. The Act prohibits incitement, by a public act, to hatred, serious contempt or severe ridicule on the basis of race.
- Making negative or derogatory comments about a person or about a group of people because of their race is likely to be seen as less favourable treatment and therefore unlawful race discrimination.

Can our company have a policy that says employees must not wear hats or other headwear at work?

- This requirement may have an unfair effect on the basis of religious belief or activity (and also possibly race) because some people wear head coverings as part of the practice of their religion, for example, Sikh men wearing turbans, Islamic women wearing hijabs, nuns wearing a veil.
- If a workplace wishes to have a policy about wearing hats, other head coverings or any other form of clothing at work that might be inconsistent with religious practice, the workplace would need to show that the uniform requirements reflect the inherent requirements (such as safety aspects) of the job. The employer needs to ensure its has sufficient flexibility in the policy to enable staff members to comply with the policy while adhering to their religious practice.

On a social networking site I have seen a group set up for members to make comments that racially vilify Aboriginal people. Is this okay?

- This is not okay. It is against the law.
- When racism happens online it is known as cyber-racism. On the internet, cyber-racism is found in a range of forms: a website itself, written content or images on sites, blogs, videos, on-line comments, etc. Racist comments, images or language in text messages, on social networking sites or in e-mails are also examples of cyber-racism.
- There are a number of different organisations to which you can report inappropriate material and you can also make a complaint under the *Anti-Discrimination Act* to [Equal](#)

Opportunity Tasmania.

- It is a good idea to keep a record of the offensive material, preferably by taking screen captures and printing the materials with dates and identifying features. There are also some instant messaging programs available that have an inbuilt option of automatically saving conversations.

I have seen job advertisements for an Aboriginal Youth Worker and only Aboriginal people can apply. Isn't this discrimination?

- Discrimination laws recognise that sometimes an exception may be appropriate to the law prohibiting discrimination, and makes 'discrimination' on specific grounds lawful. Exceptions are set out in Part 5 of the Tasmanian Act, along with the procedure to follow if someone wants to apply for an exemption from the Act's provisions.
- Section 41 of the Tasmanian Act (employment based on race) states that 'a person may discriminate against another person on the ground of race in relation to employment if the discrimination is based on a genuine occupational qualification or requirement in relation to a particular position'.
- Some ads that specify the race of applicants will have been approved by the Commissioner through her granting an exemption consistent with section 41.

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

Race Discrimination

Mr Wang was a reasonably senior medical practitioner in China. He has a specialist qualification in neurology. He is an Australian citizen. He completed the necessary Australian Medical Council (AMC) examinations for recognition of his Chinese medical qualification in 2011. In 2013, he applied for a 2014 internship at Canberra Hospital so he could qualify for registration as a medical practitioner.

In 2014, a new Government 'internship policy' was implemented that set out the

priority order for applicants for internship in ACT hospitals. Under the policy, graduates from the ANU Medical School had the highest priority; graduates of various other Australian universities were the next priorities; then graduates from New Zealand universities. Overseas trained doctors had the lowest priority.

Mr Wang complained that the new internship policy discriminated against him because of his race.

The ACT Civil and Administrative Tribunal decided that Mr Wang had been discriminated against and ordered the ACT Government pay him \$40,000 in compensation. The Tribunal also directed the ACT Government to consider Mr Wang's merits for the next internship intake with no assumption that the undergraduate clinical placement of ANU students is superior clinical experience, or preparation for work, than the years of clinical practice of Mr Wang including the years he has spent in Australia in aged care, and the additional course he has undertaken since coming to Australia.

[Wang v Australian Capital Territory \(Discrimination\) \[2016\] ACAT 71 \(30 June 2016\)](http://www.austlii.edu.au/au/cases/act/ACAT/2016/71.html)
<http://www.austlii.edu.au/au/cases/act/ACAT/2016/71.html>

Training News



Featured Employer

Grange Resources is resolute in managing workplace issues such as discrimination, harassment, bullying and the like and seeks to provide a stress-free workplace for its workers, contractors and visitors. A key part in maintaining this environment is training workers, supervisors and management in all aspects of the law and in the right way to manage issues.

Grange Resources has an excellent working relationship with its Employee Assistance Provider, Newport & Wildman. This is supplemented by well-trained Contact Officers across all sites. Contact Officers are regularly re-trained with assistance from Equal Opportunity Tasmania's Training, Education and Development Officer Louise Adams (pictured here) and Grange Resources thanks Louise for her excellent work.

Gilbert Charles | Site Senior Officer | HSE Manager

www.grangeresources.com.au

Job Opportunity

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2017 Training

Our January to June 2017 training calendar is available on our [website](#). For more information about the new training calendar and other 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).

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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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.



reference and education tool for and about discrimination law and the Tasmanian community and workplaces.

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