

In respect of rights



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Issue 9

September

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) 6233 4841
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

Message from the Anti-Discrimination Commissioner

On 26 August 2012, an advertisement was placed on the online free advertising site, Gumtree, stating 'supermarket cleaner wanted'. The address given was 'eastland rosny'. The now infamous ad read:



'Positions available for experienced cleaners in supermarket cleaning for night and/or morning work. Must be able to work unsupervised, to a timelimit and have an eye for detail. Must have own transport + licence and abn (australian business number). Store requires no indians or asians please. MUST SPEAK ENGLISH.'

I became aware of the ad through Facebook (yes, it can be a force for good) and found that by the time I tried to locate the ad it had been removed.

Local newspaper, *The Mercury*, got onto the story quickly and it was page 1 of the paper on Tuesday 28 August. The story has been picked up around the world with many locally and internationally expressing outrage and distress at such a blatantly racist job ad.

The supermarket chain involved, Coles, quickly spoke out against the ad with spokesman Jim Cooper saying, 'the ad was placed without Coles' knowledge and we were extremely concerned to learn of the ad and its contents. Coles is a proud, equal-opportunity employer and at no time have we ever issued the directives contained in this ad. We have made these points in no uncertain terms to the cleaning contractors in question.' (as reported on newKerala.com)

Both the *Anti-Discrimination Act 1998* (Tas) and the *Racial Discrimination Act 1975* (Cth) aim to ensure that people of all backgrounds are treated equally and have the same opportunities. The Acts make discrimination against people on the basis of their race, colour, descent or national or ethnic origin unlawful. The focus of all recruitment processes should be on finding the best person for the job.

The essential requirements of a cleaning position should be whether a person is good at cleaning not whether or not they are of a specific race or speak a particular language.

Excluding people from a job on the basis that they are 'Indian or Asian', means that the employer will not be selecting from the pool of qualified people available and, as such, will not necessarily get the best person for the job.

Requiring a person to be able to speak English may also be discriminatory (on the basis of race or disability) if the job can be done without having the capacity to speak English. If a person is unable to actually speak or is fluent in another language but not in English, but can do all of the tasks of the job, then it is potentially discriminatory to advertise in this way.

Not only does the person placing the ad risk a successful complaint of discrimination being made against them, so too does the organisation that published the ad.

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
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
Ph: (03) 6233 7832
E-mail roz.smart@justice.tas.gov.au

have commenced an investigation into this advertisement and hope that through the level of interest in and concern about this ad we are able to create better understanding of the law and remind people that they are required to comply with this law, just as they are required to comply with all laws.

Robin Banks
Anti-Discrimination Commissioner

Racism: it stops with me! Launch of national and local anti-racism campaign

The following was issued as a media release to mark the launch of the new national Anti-Racism Strategy, 24 July 2012.

Report It!

How many times have we all stood by and watched someone being treated badly because of the colour of their skin? Grimaced over the water cooler when a co-worker tells a racist joke? Allowed someone on Facebook to get away with insensitive or stereotyping remarks? Witnessed racist sledging at the footy?

Tasmania's Anti-Discrimination Commissioner, Robin Banks, is asking all Tasmanians to play their part in stamping out racism.

Speaking today to mark the launch of a new national Anti-Racism Strategy, Ms Banks said that it was often part of our makeup to avoid speaking up or taking action when racism and other forms of discriminatory behaviour take place.

'We walk away, often silently shaking our heads and wishing things would change, or we lack confidence to stand up and say something', she said.

A key initiative in the new strategy is the promotion of 'bystander action'.

'Taking action when we see incidents of racism builds a community in which discrimination is not tolerated. It can be anything from speaking to your manager or challenging a friend or colleague over their attitude to diversity or their use of language. It can also mean reporting what you see to the Office of the Anti-Discrimination Commissioner, so that we can take further action', Ms Banks said.

To assist getting others involved in the fight against racism, Ms Banks used the release of the national anti-racism strategy to launch a new **Report It!** initiative in Tasmania.

'**Report It!** is a tool that can be used by those who witness discrimination to make a report to my office', Ms Banks said.

'Originating from the experiences of public abuse and violence against international students at the University of Tasmania, Report It! allows us to monitor patterns of discrimination across Tasmania and take action where we can. A report can be made by anyone: those who are the subject of harassment or abuse and those who witness it' she said. Those making the report can also remain anonymous if they wish.

The **Report It!** form will be distributed widely throughout the State over coming weeks and will be available online at www.antidiscrimination.tas.gov.au

From the OADC

Report It!

The OADC is asking all Tasmanians to play their part in stamping out racism.

Report It! is a tool that can

Been abused or harassed?

Seen abuse or harassment?

Report it!

We want to know.

Help others by telling us about your experience or what you saw.

SCAN with a QR code reader to go direct to the online reporting form



Emergency Line 1300 306 062 or 03 6233 4641
E-mail antidiscrimination@odac.tas.gov.au
Web antidiscrimination.tas.gov.au
Web SMS 0439 411 063
NFD TTY 130 677 & ask for 1300 306 062
NFD Speak & Listen 1300 566 727 & ask for 1300 306 062



Office of the Anti-Discrimination Commissioner

be used by those who experience or witness racism or any other form of discrimination, abuse or harassment to report it to this office.

A report can be made online or the **Report It!** form downloaded and printed, filled in then posted to the OADC.

Further information about this initiative and the Report It! form can be found on our website:

www.antidiscrimination.tas.gov.au

Please forward the **Report It!** form and information around your networks. Please also include this news item in your own newsletters.

For information about the National Anti-Racism campaign go to <http://itstopswithme.humanrights.gov.au/>

FAQs - advertising and publishing without discrimination

I saw an advertisement in the paper for a rental property in a perfect location but the ad states 'no dogs'. I am not sure if I can apply as I have a guide dog.

- A person who is accompanied or reliant on a trained assistance animal, such as a guide or hearing dog protected from discrimination under the *Anti-Discrimination Act 1998* (Tas) (the ADA) and the *Disability Discrimination Act 1992* (Cth) (the DDA).
- This means that an ad, like this one, cannot be used to exclude a person who relies on an assistance animal. A refusal to rent a property to a person who is reliant on an assistance animal because of that animal is likely to be unlawful discrimination in breach of the ADA and DDA.
- Rental property owners can state 'no dogs' as long as they are aware trained animals should not fall under the 'no dogs' rule. Otherwise they are potentially discriminating against a person with disability which is unlawful. It would be better to state 'no dogs, but assistance animals okay'.
- The paper that allowed this ad could also be breaching the ADA, because it is unlawful to permit publishing of discriminatory material.

What can I do when I see something racist, sexist or derogatory in the media or in social media such as the internet, facebook, You Tube etc.?

- Under the *Anti-Discrimination Act 1998* (Tas) a person must not publish or display, or cause or permit to be published or displayed, any sign, notice or advertising matter that promotes, expresses or depicts discrimination or prohibited conduct.
- You can (and should) report such material directly to the media or social media outlet as they have responsibilities under law to make sure their publishing or site is free from any discriminatory material.
- You can report also it to the Office of the Anti-Discrimination Commissioner (OADC) using the **Report It!** online form, an e-mail or by downloading the form from the website. The OADC can follow up possible breaches to the *Act*.
- You could make a formal complaint of discrimination with the OADC if you feel you have been discriminated against because of a protected attribute such as race, gender, religion, age, disability, sexual orientation, etc. (A full list of protected attributes can be found at www.anti-discrimination.tas.gov.au).

***Hughes v Narrabri Bowling Motel Limited* [2012] NSWADT 161**

Sexual harassment

A motel manager has been ordered to pay a former employee \$7,500 damages after making a vulgar comment to her. The NSW Administrative Decisions Tribunal (NSW ADT) found that uttering the comment amounted to sexual harassment.

The complainant (Ms H) was employed as a casual housemaid. Ms H alleged in her complaint that the respondent (Mr W) harassed her on three occasions and that after complaining about the harassment she was victimised by being given extra work as a housemaid and then having her shifts cut by Mrs W.

The three alleged acts of sexual harassment involved two unwelcome sexual advances and one unwelcome request for a sexual favour when Mr W said to Ms H, 'I'm here to get in between your legs'.

The NSW ADT first considered whether there had been sexual harassment as defined in section 22A of the *Anti-Discrimination Act 1977* (NSW). It noted that the test was an objective one, that is, would a reasonable person realise that the conduct in question would be likely to offend, humiliate or intimidate.

Mr W admitted saying to Ms H, 'I'm here to get between your legs', but said that there were no sexual overtones. Mr W said he was simply seeking access to the lower level of the cleaning trolley and that Ms H was in the way. It was not disputed that Ms H's response to him was to say, 'over my f... dead body'. Mr W denied brushing against Ms H as alleged.

The NSW ADT found on the evidence that Mr W said the words with sexual overtones. A reasonable person would have anticipated that Ms H would be offended, humiliated or intimidated by the words. Mr W was in a position of power in that he and his wife were in a position to offer or not offer Ms H work. Saying the words therefore amounted to sexual harassment.

The harassment complaints regarding the two alleged instances of Mr W brushing against Ms H were dismissed as there was no evidence that it was conduct of a sexual nature or that it was unwelcome.

The NSW ADT then turned to allegation that Ms H was victimised by Mrs W. It found on the evidence that Mrs W was not aware of the complaint against her husband until legal proceedings were commenced. The reason she stopped offering Ms H work was that Ms H had claimed extra time on her time sheet for preparing trolleys, which was not appropriate. Two other housemaids who had made the same time-sheet claims subsequently apologised, and were offered further work.

<http://www.austlii.edu.au/au/cases/nsw/NSWADT/2012/161.html>

Conciliation Outcome

Industrial activity in employment

The complainant, Mr A, alleged direct discrimination on the basis of industrial activity because his employer (Business X) told him to stop reporting incidents of abusive customers or customers posing a risk. Mr A was told by his employer that the reporting would have to stop and that his shifts would be changed if they didn't.

Mr A also alleged indirect discrimination on the basis of industrial activity in employment because if the employer has a practice that requires employees to report incidents that occur during shifts, and then the reporting employee loses shifts or has their shifts changed it is arguable that this is unreasonable in the circumstances and would disadvantage people who engage in the industrial activity of reporting workplace incidents.

Mr A named two managers and Business X as responsible (respondents to the complaint) but then made the decision that his employer was the appropriate person to resolve his complaint and

Employer was the appropriate person to receive the complaint and make changes'.

Business X provided its response and had, before the early resolution meeting was held, already made some changes and undertaken an investigation.

The early resolution meeting provided a chance for the complainant to speak face to face with the employer's human resources (HR) officers. The complaint was resolved to the satisfaction of Mr A with Business X agreeing that its HR division would have a follow-up meeting with the managers named originally in the complaint about their ability to manage, their communication skills and how to respond to staff.

Local News

Tasmanian Elder Abuse Helpline

The Tasmanian Elder Abuse Helpline (the Helpline) is a new service operated on behalf of the Tasmanian Government by Advocacy Tasmania Inc.

The Helpline is one part of the Government's Elder Abuse Prevention Strategy 'Protecting Older Tasmanians from Abuse'.

The Helpline provides callers with information, advice and referral on actions they can take to prevent and respond to elder abuse in its many guises; emotional, physical, financial, social, sexual, and neglect. Its role is to assist older people, families, service providers and the wider community to better access existing supports and services. Most people are unsure who to call about suspected elder abuse. The Helpline provides a central point of contact via a toll-free State-wide 1800 number.

Free call: 1800 44 11 69

Mobile & Interstate call: (03) 6237 0047

Free, confidential, and statewide: information, advice and referrals.

<http://www.advocacytasmania.org.au/elderabusehelpline.htm>

National News

Refugee Council of Australia

The second series of television show, *Go Back To Where You Came From*, aired in late August and once again offered Australians a rare insight into the life of a refugee. Amnesty International and the Refugee Council partnered with SBS on a number of community engagement projects tied to the show. Their goal is to ensure that the interest and enthusiasm generated by *Go Back* translates into as much real-world action as possible: volunteering, donating and activism across the refugee sector.

There are three main projects:

1. Get involved register – After the first series aired last year, SBS received many e-mails from people who wanted to do something for refugees. The Get Involved register will enable people to register their interest in further action like volunteering or making a donation. Anyone who puts their name down on the register will get a call back with further information. The Get Involved register is available through the SBS website at <http://www.sbs.com.au/goback/getinvolved>.

2. School pack – This is printed resource with classroom activities and case studies and posters, and a whole lot of associated online materials. The pack should have arrived in every high school in Australia a few weeks ago. You can download a copy of the school pack here: http://media.sbs.com.au/goback/upload_media/documents/AMN044_GB2-SchlPack-Broch-d4FINAL.pdf. If you would like a hard copy, contact Alex Pagliaro at Amnesty International (02 8396 7671 or alex.pagliaro@amnesty.org.au).

3. Community screenings – The Refugee Council of Australia is asking people to hold public or private events with their family, friends, colleagues, neighbours, etc so that the *Go Back* discussion is opened and strengthened, and the

etc, so that the *GO BACK* discussion is spread and strengthened, and the number of refugee advocates and networks grows. The *Go Back* event registration page is at www.sbs.com.au/goback/getinvolved, and Amnesty will send event packs (including posters) to anyone who registers, as well as promoting all the public events through SBS and Amnesty supporter bases. It would be amazing if you could promote this to your networks. Also, if you want your organisation to be an event partner and would like an event poster with your logo on it, contact Alex Pagliaro at Amnesty International (02 8396 7671 or alex.pagliaro@amnesty.org.au).

For more information, contact Lucy Morgan, Information and Policy Officer, Refugee Council of Australia, Suite 4A6, 410 Elizabeth Street, Surry Hills NSW 2010.

September Calendar

Young, old, in-between ... Is your workplace age inclusive?

Hobart

Tuesday 18 September
1.00-3.00 pm

Launceston

Thursday 20 September
1.00-3.00 pm

\$110.00

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

Train-the-Trainer – Anti-Discrimination, harassment & bullying

The OADC facilitated another successful Train-the-Trainer course in August and look forward to hearing about the subsequent training roll-out for those organisations involved. If you are interested in attending future Train-the-Trainer sessions to equip your business to conduct its own discrimination, harassment & bullying prevention workshops please go to the OADC website training page and submit an expression of interest form.

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

Supporting the process – Training for Advocates and Community Workers

The Commissioner, Robin Banks, and Senior Trainer, Roz Smart, will be facilitating the first sessions of *Supporting the process – Training for Advocates and Community Workers* this month. We have been pleased by the number of registrations received and will be in touch with all those on our waiting list with new dates as soon as possible.

WorkSafe Tasmania Month



WorkSafe Month (1 October – 2 November 2012) is about sharing knowledge and taking positive steps to make you, your workmates and your workplace safer and healthier.

The OADC will be delivering sessions for WorkSafe Tasmania Month again in 2012, stay tuned for more information.

To register and for more information, visit

www.worksafe.tas.gov.au/events/worksafe_month/ws_2012/holding_an_event

Community News and Networking



Colourfest – Australia's Multicultural film festival focuses exclusively on culturally diverse Australian stories. Colourfest was conceived as a response to the lack of cultural diversity on Australian screens.

There are two events scheduled for Tasmania:

- Launceston on 25 September 2012 hosted by the Launceston Film Society in collaboration with University of Tasmania Community Friends & Network Programme (CFNP) North.
- Hobart on 26 September 2012 at the Stanley Burbury Theatre, University of Tasmania. This is a proud partnership event between CFNP South and Accommodation Services.

<http://colourfest.com.au/>

UTAS Community, Friends and Network Programme.

The Community Friends and Networks Programme supports UTAS students to create networks and engagement opportunities with other students and members of the broader community in Tasmania.

These are the links to the CFNP newsletters for the North and South:

<http://www.scoop.it/t/community-friends-networks-programme-north>
<http://www.scoop.it/t/community-friends-networks-programme-south>



Are you feeling Harassed? Bullied? Uncertain?

Roz Smart of the Office of the Anti-Discrimination Commissioner will present a lunchtime information session 'Appropriate conduct in the workplace'

Tuesday 25 September 2012

12.30–1.30 pm

Hobart Women's Health Centre

25 Lefroy St, North Hobart

RSVP: by Monday 24 September on 6231 3212 or info@hwhc.com.au

Gold coin donation

The Breath of Fresh Air 2012 Film Festival

Breath of Fresh Air (BOFA) is challenging film makers to craft a 3-minute story – documentary or fictional – about making a positive difference.

Categories:

- BOFA Make a Difference Student Award: \$1,000 donated by the Tasmanian Centre for Global Learning.
- BOFA Make a Difference Youth (under 25) Award: \$2,000 donated by the

University of Tasmania and the Launceston City Council.

- BOFA Make a Difference Open Award: \$5,000 donated by Jackson Volkswagen.

Nominations close 30 September. Competition and entry details at www.bofa.com.au/2012/home/prizes-awards. More about the Film Festival and associated Make A Difference Day at www.bofa.com.au/2012

Make a Difference Day (MADD)

This year, the Breath of Fresh Air Film Festival includes a Make a Difference (MAD) Day on Sunday 11 November at Launceston's Inveresk Precinct. The Festival itself runs over 4 days (8-11 November) at venues in Launceston and Hobart. MAD Day is a free family-oriented open day with venues offering farmer's produce, hand-made crafts and products, tasty and healthy foods, entertainment and information about how to make a difference, locally and globally.

For more information go to www.bofa.com.au/2012 or to apply for a stall at MAD Day go to www.bofa.com.au/2012/home/make-a-difference-day. Applications close 7 September <http://bofa.com.au/2012/home/prizes-awards/>



Tasmanian Human Rights Awards: nominations now open!

The Tasmanian Human Rights Week Committee is calling for nominations for its Human Rights Awards in the categories of:

- School,
- Community organisation,
- Individual,
- Individual Youth,
- Print Journalism, and
- Culturally and Linguistically Diverse (CALD) Community Focussed Activity.

Award recipients are selected from those who are actively engaged in the promotion and protection of human rights.

Nominations close 5.00 pm on Monday 15 October. For more information on Human Rights Week, previous award winners and how to nominate for the awards see www.afairerworld.org/_HRWeek.

Play by the Rules e-bulletin



To see the latest e-bulletin from Play by the Rules please follow this link <http://www.playbytherules.net.au/news-centre/ebulletins>

The Power of Sport research project

Play by the Rules wants to know whether you think sport has the power to build social bridges and break down cultural barriers, particularly for Indigenous people from those from culturally and linguistically diverse (CALD) backgrounds.

To share your views and contribute to this important research project

To share your views and contribute to this important research project, go to www.surveymonkey.com/s/3XMRL8C and fill out the online questionnaire. It will only take 5 minutes, and all responses will be treated confidentially and not be identified.

www.playbytherules.net.au

Days to Celebrate in September



A conversation could change a life.

RU OK? DAY

Thursday 13 September 2012
11.30 am – 2.00 pm
Parliament lawns, Salamanca Place

Guest speakers:
Paula Wriedt
Sergeant Dave Bray & Steve Bakes
Varuni Kulasekera

Performances by:
Sing for your life choir
Students against racism, storytelling, 'Living in-between'
Drumming with Tendeka & group
Burmese Hip Hopsters
<http://ruokday.com/>

Adult Learners' Week

1 – 7 September

The Hobart Older Persons' Reference Group (HOPRG), in partnership with the Hobart City Council would like to invite you to a 'Sharing Adult Learning' event.

The craft, learning and creativity opportunities display will be held during Adult Learners' Week on Tuesday 4 September 2012 in the downstairs room at the 50 & Better Centre and the CWL Building (both off Mather's Lane) from 10.00 am – 12.00 noon. The display will be followed by a light lunch for a gold coin donation, allowing participants to socialise and celebrate with some live music.

For registration or more information please contact Danielle on 6238 2772 or e-mail: walkerd@hobartcity.com.au

Equal Pay Day 2012

2 September

The average woman has to work until this Sunday, 2 September to earn as much as the average man did in the last financial year – an extra 64 days. This Sunday, Equal Pay Day will highlight the serious issue of the gender pay gap.

The relative gap between male and female earnings, currently at 17.5%, is about the same as it was almost two decades ago. The gender pay gap is calculated using full-time, ordinary time earnings and excludes part-time work and overtime payments.

To find out more about Equal Pay Day and what you can do to challenge the continuing underpayment of women:

www.eowa.gov.au

White Balloon Day

Friday, 7 September

Help us protect our kids

<http://www.whiteballoonday.com.au/>

The United Nations' International Day of Peace

21 September

The United Nations' International Day of Peace – marked every year on 21 September – is a global day when individuals, communities, nations and governments highlight efforts to end conflict and promote peace.

www.internationaldayofpeace.org/

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