

# In respect of rights



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Issue 11

November 2012

## 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) 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

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)

Please let the office know before an appointment if you need assistance

## Message from the Anti-Discrimination Commissioner



There is lots happening over the next month or so that we can all get involved in to make a positive difference. This month's *In respect of rights* lists events for TasPride Festival in November, Human Rights Week in December and more.

These events and the articles about the recent SlutWalk and the federal sexual harassment survey report, and the recent relaunch of our own **Report It!** project are all reminders that every one of us can take action to improve the situation for every one in our communities. All of these talk about what we, as bystanders, can do when we see or hear stuff that is not okay.

Remember, being a bystander doesn't mean standing by and letting bad stuff happen! Imagine if it was you who was the target of that bad stuff: you'd want those around you to do something. Remember that and act: say it's not okay and **Report It!**

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

**Robin Banks**  
Anti-Discrimination Commissioner

## From the OADC

### What's next? Equality & Law Reform Discussion

**Launceston**  
Thursday 22 November 2012  
1:00 - 1:50 pm  
University of Tasmania  
Newnham Campus  
Faculty of Arts Building, room NH.L142

**Hobart**  
Friday 23 November 2012  
1:00 - 1:50 pm  
Tasmanian University  
Sandy Bay Campus  
Law Faculty Building, room 226

Rodney Croome, campaign co-ordinator of Australian Marriage Equality and Robin Banks, Tasmanian Anti-Discrimination Commissioner, discuss the latest law reform in Tasmania and what's next in the campaign for equality.



### Ogilvie Mentor Program

The OADC is pleased to be involved in the Mentor Program, part of the Big Picture Program at Ogilvie High School. **Samantha Salter** joined the OADC training unit in mid-October and will be with us for one day a week for five weeks. Sammie has already shown enthusiasm and initiative and we are

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

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E-mail [roz.smart@justice.tas.gov.au](mailto:roz.smart@justice.tas.gov.au)

looking forward to the next few weeks of the program.

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## OADC Intern

### Farewell and Thank You

The OADC has a policy of actively engaging with interns from the University of Tasmania and other educational institutions to assist in undertaking research and other work to help prevent discrimination. This week we say a big thank you and goodbye to two students who have been with us this semester.

Final year Social Work student from the University of Tasmania, **Carolina Vargas**, has undertaken research into the removal of children from parents with disability within Tasmania.

Her research has involved making contact with a diversity of organisations and individuals working in the area and understanding the processes, procedures and policies associated with decisions about child removal.

Carolina's report will be available through the OADC in the next few weeks.

Arts Law student from the University of Tasmania, **Genevieve Cooley**, has undertaken research for the OADC on Benchmarking Human Rights. Her project aimed at identifying indicators that allow us to better measure the impact of our actions on the broader community.

Genevieve and Carolina have made an invaluable contribution to our understanding of these issues and their efforts will inform our future work. We wish both of them the best for the future and thank them for their contribution.

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## Learning about intersex

In late October, staff at the OADC had the opportunity to meet with Mami Mitchell, from the Intersex Trust Aotearoa New Zealand ([www.ianz.org.nz](http://www.ianz.org.nz)), and Sharon Jones, from Working It Out ([www.workingitout.org.au/](http://www.workingitout.org.au/)), and watch the film *Intersexion*.

The first question any new parent asks... 'Is it a boy or a girl?'

What if it's neither? 1 in 2,000 babies is born with genitalia so ambiguous that the doctors cannot easily answer this question.

In this groundbreaking documentary, intersex individuals reveal the secrets of their unconventional lives – and how they have navigated their way through this strictly male/female world, when they fit somewhere in between.

The OADC is hopeful that the coming month will see the Tasmanian Parliament pass amendments to the *Anti-Discrimination Act 1998* (Tas) to ensure clear protection against discrimination on the basis of gender identity and intersex. Over the coming months, the OADC will be working with Mami and Sharon and others to ensure that its information materials properly reflect these characteristics in respectful and appropriate ways and to ensure that the OADC is able to support organisations - in the government, private and community sector - to respond to the new coverage.

For more about the film, contact Mami at the Trust ([www.ianz.org.nz](http://www.ianz.org.nz)) or Sharon at Working It Out ([www.workingitout.org.au/](http://www.workingitout.org.au/)).

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

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## SlutWalk Hobart

On 13 October, staff from the OADC, including the Anti-Discrimination Commissioner, joined with hundreds of other women at the SlutWalk march and rally in Hobart.

SlutWalk originated in Canada in 2011 as a protest against explaining or excusing sexual assault on the basis of how women dress or their appearance after a Toronto police officer told women that to remain safe on the streets they should avoid dressing like 'sluts'.

Since then SlutWalks have taken place all over the globe as a way of taking a stand against victim blaming and to spread the message that those who experience sexual assault are not at fault and are never to blame, ever!

This year's walk was particularly poignant coming as it did after the killing of Jill Meagher in Melbourne. For many, Jill's death served to highlight the extent to which women remain unsafe on the streets and the need to continue to take a unified stand against sexual assault. It also served as a reminder of the thousands of women who are sexually assaulted across Australia every year.

In what has become a signature theme of the walk, hundreds of women, men and children in brightly coloured gear hollered, stomped and shouted around the streets of Hobart against woman shaming and victim blaming.

The Commissioner spoke briefly to the rally, linking violence against women and discrimination and reminding us all that we can and should speak out against both wherever and whenever they occur. The Commissioner's speech will be available on the OADC website in the coming weeks.

The march finished with a moving account by Kelly of her experiences as an intersex person who has been sexually assaulted. Her story was personal and powerful and reduced many in the crowd to tears. It demonstrated above all the need for every member of the community to actively participate in ridding our society of the culture of rape.



Robin Banks, speaker at SlutWalk Hobart



SlutWalk Hobart photos



SlutWalk Hobart photos



SlutWalk Hobart photos

## FAQs - Sexual Harassment

### Can I tell my workmate they look hot?

- No, as this comment could constitute sexual harassment.
- Under the *Anti-Discrimination Act 1998* (Tas) (the Act), sexual harassment is unlawful and anyone who is sexually harassed can make a complaint.

**Sexual harassment:**

- includes making unwelcome comments with sexual connotations to another person or about another person in their presence including, for example, inappropriate comment about clothing, telling a person they look 'hot' or 'sexy', etc;
- includes one-off incidents: unwanted or unwelcome sexual behaviour does not have to happen repeatedly to be unlawful sexual harassment;
- is not mutual attraction or welcome conduct of a sexual nature between consenting adults.

All workplaces need to remind all staff of their responsibilities under the Act including workplace policies regarding appropriate behaviour in the workplace.

**John works in a busy office. He is always immaculately dressed, wears nice cologne and speaks in a gentle soft voice. Colleagues are trying to work out if John is 'Gay'. Is this discrimination?**

- Yes, it may be discrimination based on sexual orientation. The Act prohibits people being treated less favourably based on their sexual orientation or imputed sexual orientation. Sexual Orientation includes: heterosexuality, bisexuality, homosexuality or transsexuality.
- Whether John is 'Gay' or not is irrelevant in his workplace and is no-one else's business.
- Stereotypes and judgements made of someone's sexual orientation are both unfair and inaccurate. If these stereotypes and judgements lead to less favourable treatment then it could also be against the law.

**A workplace promotes its end of year Christmas party to all staff. The promotional information says the party starts at 7:00 pm and finishes at 12:00 midnight. There is also a reminder to staff that they must conduct themselves at all times in line with the workplace Code of Conduct and Sexual Harassment Policy. The workplace attached copies of the Code and Policy for staff to re-acquaint themselves with.**

**Is this fair as the party starts after standard work hours?**

- Yes, it is fair and is in accordance with employer and employee obligations under the Act.
- All employers must show they have taken reasonable steps to ensure everyone involved in their workplace(s) is aware of and does not engage in discrimination and prohibited conduct including sexual harassment.
- Regardless of the party being held outside standard work hours, it is still a 'work' function and therefore is run under work conditions including all staff being free from discrimination and sexual harassment.
- This does not mean fun cannot be had. What it means is that all staff are reminded in advance of their obligations to behave appropriately and respectfully at the party.

**Are sex workers protected under the Act?**

- Yes, sex workers have the same protection under the Act as any other worker.
- Under the Act, it is unlawful to treat a person less favourably because of particular personal characteristics ('attributes') such as their lawful sexual activity, gender, sexual orientation, etc, in paid or voluntary work.
- Sex workers, the same as any other workers, have protection from prohibited conduct under the Act.
- Prohibited conduct includes: sexual harassment; conduct that offends, humiliates, ridicules, intimidates or insults another person because of gender, marital status, relationship status, pregnancy, breastfeeding, parental status or family responsibilities; inciting hatred, serious contempt or severe ridicule by a public act, for example, because of a person's lawful sexual activity.

**Sexual harassment is NEVER okay and it doesn't matter who is doing the harassing: it's against the law.**

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Find out more about the OADC's new **Sexual harassment course - what it is, what it's not and what to do about it**, detailed below in the OADC's November Training Calendar.

## Legal News

**The Fair Work Ombudsman (FWO) has initiated its first age discrimination prosecution:** against the operator of a group of restaurants on the Gold Coast.

The FWO is alleging a number of breaches of the *Fair Work Act 2009* (Cth). The respondent is facing a maximum penalty of \$33,000 per breach, with its two joint directors and equal shareholders potentially liable for penalties of \$6,600 per breach.

The FWO's case in the Federal Magistrates Court in Brisbane was sparked by a long service leave request from an employee. The man worked at the restaurants for periods of time between 1996 and 2011. In October 2010, he asked one of the directors about long service leave and she allegedly responded by asking if he was going to retire. The employee responded that he was not, allegedly saying that long service leave had 'nothing to do with retirement'. The employee again raised the matter in January 2011, when it was agreed that he would take 13 weeks' long service leave.

When the employee returned to work after the leave, his status was changed from full time to part time. No reason was given at the time, but 3 days later he was told that it was because the workplace was not busy enough for him to be employed full time, and also because he had refused to undertake training courses required for him to remain in full-time employment. No details about the training, the new hours of work or pay rates were given.

In August 2011, the employee allegedly received a letter from one of the directors informing him that his employment would end on the day of his 65th birthday: because it was company policy not to employ staff after they turned 65. The termination was confirmed in a subsequent letter, with the company advising that it did not wish to enter into any further correspondence with him.

The FWO's claim in the Federal Magistrate's Court alleges that the company and its directors contravened the *Fair Work Act* by unilaterally changing the employee's employment status, failing to roster him, advising him that his employment would end on his 65th birthday, dismissing him and refusing to communicate with him.

The FWO is alleging that the employee has suffered economic and non-economic loss and damage, including stress, anxiety, hurt, humiliation and inconvenience. It is seeking penalties against the company and the directors, as well as a court order for compensation.

## National News

### **Sexual Harassment still widespread in Australian workplaces**

Federal Sex Discrimination Commissioner, Elizabeth Broderick, has released *Working without fear: Results of the sexual harassment national telephone survey 2012*, which shows that sexual harassment is not only widespread in Australian workplaces, but that progress in addressing it has stalled.

'This research is conducted every four years and shows that little has changed', Commissioner Broderick said. 'It shows that approximately one in five people aged 15 years and older were sexually harassed in the workplace in the past five



harassed in the workplace in the past five years, an extraordinary figure.'

The research shows that one in four women (25%) and one in six men (16%) have been sexually harassed in the workplace in the past five years. If a person's entire lifetime is considered, the gender difference is even more profound with a third of women (33%) and less than one in ten men (9%) experiencing sexual harassment.

Targets of sexual harassment are most likely to be women under 40 and harassers are most likely to be male co-workers. Women are at least five times more likely than men to have been harassed by a boss or employer. Men harassing women accounts for more than half of all sexual harassment, while male harassment of men accounts for nearly a quarter.

Commissioner Broderick said that one of the most encouraging parts of the research concerned the role of bystanders: people who witnessed or later became aware of sexual harassment.

'Fifty-one per cent of people who were bystanders – that is over half - took some action to prevent or reduce the harm of the sexual harassment they were aware of', she said. 'Bystanders have an extremely important role to play in confronting and combatting sexual harassment.'

Commissioner Broderick said that bystanders can help to prevent and reduce the harm of sexual harassment and ensure safe work environments for themselves and their colleagues, but they needed to be supported and empowered, which would mean a huge shift in organisational culture.

'Sexual harassment is unlawful and has no place in Australian workplaces', Ms Broderick said. 'Eradicating sexual harassment from our workplaces will require leadership and a genuine commitment from everyone – government, employers, employer associations, unions and employees.'

The survey provides the only national and trend data on sexual harassment in Australian workplaces and is available at:

[www.humanrights.gov.au/sexualharassment/survey/](http://www.humanrights.gov.au/sexualharassment/survey/)

### ***Principles to promote and protect the human rights of international students launched***

The Federal Race Discrimination Commissioner, Dr Helen Szoke, launched the *Principles to promote and protect the human rights of international students* at the Australian International Education Conference on 4 October 2012.

The implementation of these high-level, human rights-based Principles will enhance the safety and well-being of international students in Australia. The Race Discrimination Commissioner encourages all those working with international students to consider how these can be effectively adopted and implemented in the ongoing development of policies and services relating to international students.

Broadly, the Principles can be used:

- as a guide for all organisations and government agencies that provide services to international students
- to inform the ongoing development of policies and services relating to international students, and
- to provide international students and their representative bodies with a guide on how their human rights can be better promoted and protected, to support their advocacy with governments, service providers and other agencies.

To maximise its impact, it is recommended that these Principles are referred to on an ongoing basis, as services and policies affecting international students are reviewed and developed.

A downloadable copy of the Principles, a copy of the Commissioner's speech at the launch and a YouTube clip of Dr Szoke talking about the Principles are available at:

[http://humanrights.gov.au/racial\\_discrimination/international\\_students.html](http://humanrights.gov.au/racial_discrimination/international_students.html)



## International News

### Facebook and YouTube self-regulation fails in response to racially offensive posts

Sometime on the weekend of 22-23 September, a Facebook page was born: 'Let's End the Māori Race'. It didn't get much media coverage, but the message of racist incitement sparked complaints: to the New Zealand Human Rights Commission, to Māori organisations, but mostly to Facebook itself via 'Report story' buttons.

At first nothing happened. The page remained. Worse, it sparked Facebook responses, like the "Let's End the 'Let's End the Māori Race' page; a page almost as full of racially-motivated abuse and hatred as the original. People reported that page too.

Then, quietly, sometime in the afternoon of Tuesday 25 September, the original page disappeared. Someone, somewhere had decided 'Let's End the Māori Race' had breached Facebook's rule against posting hate speech and was taken down.

It had taken 3 days and the intervention of the country's national cybersafety not-for-profit Netsafe to get the page removed. And the potentially inflammatory response page remained, albeit with traffic down to a tiny fraction.

When complaints started coming in about the "Let's End the Māori Race" page, Commission staff searched Facebook for an address, phone number or even email to register a complaint. They found nothing.

'They are anonymous. There is no way of finding anyone to talk to. You can report it [using the arrow next to Facebook posts, for example, or the flag under YouTube videos], but you can't engage', said New Zealand Race Relations Commissioner, Joris de Bres.

He says while both sites have terms and conditions banning hate speech ([http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines) and <http://www.facebook.com/legal/terms>), the companies themselves are the ones that decide what constitutes hate speech and whether a particular comment or page should be taken down.

Commissioner De Bres says it is frustrating that the only thing the Commission could do in these cases was encourage as many people to report the site to Facebook and hope something happens. 'But you are 100 per cent reliant on the goodwill of those internet social media giants.'

In Australia, Facebook's refusal to take down hate sites against the man accused of killing ABC journalist Jill Meagher has led to a group, headed by Victorian Attorney-General, The Hon Robert Clark, being set up to create national guidelines on social media.

Victorian Police Commissioner, Sir Ken Lay, attacked Facebook in the *Sydney Morning Herald* for 'inciting hatred and undermining the state's legal system'. The worst site was eventually removed, Commissioner Lay said, but it was the site's creator – not Facebook – that made the decision.

Article thanks to the New Zealand Human Rights Commission Newsletter, *Nga Reo Tangata: Media and Diversity Network*.

## November and December Training Calendar

### Supporting the Process: Training for Advocates and Community Workers

#### Hobart - THIS HOBART COURSE IS NOW FULL

Monday 5 November (1:30 - 5:00 pm) AND

Tuesday 6 November (9:00 am - 2:00 pm)

#### Launceston

Wednesday 7 November (9:00 am - 12:30 pm) AND

Thursday 8 November (9:00 am - 2:00 pm)

## Workplace Support/Contact Officer Role

### Hobart

Monday 12 November (1:00 - 5:00 pm) AND

Tuesday 13 November (9:00 am - 1:30 pm)

### Launceston

Friday 16 November (9:00 am - 5:00 pm)

\*Note, full day course (this training is normally delivered over two x half days)

**\$440.00 (pre GST)**

## Sexual Harassment - what it is, what it's not and what to do about it

### Hobart

Monday 26 November

9:00 - 11:00 am

### Launceston

Tuesday 27 November

1:00 - 3:00 pm

**\$110.00 (pre GST)**

## Workplace Support/Contact Officer Networking Meeting

### Hobart

Monday 17 December

9:00 am - 12:00 pm

### Launceston

Tuesday 18 December

1:00 - 4:00 pm

FREE to Workplace Support/Contact Officers

for more detailed course information, price, registration forms or contact details, follow this link

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

## Training News

### Work Safe Tasmania Month

The OADC training team once again delivered anti-discrimination awareness sessions for WorkSafe Month this year.

It was great to see so many participants for all the sessions and we had some interesting and thought-provoking discussions. This year we delivered sessions on:

- Disability discrimination;
- Race discrimination;
- GLBTI (gay, lesbian, bisexual, transsexual and intersex) discrimination;
- Pregnancy discrimination, with Phina from Pregnancy Support; and
- Managing the risk of workplace bullying, with Kirsten Way from Workplace Health & Safety Queensland and Neale Buchanan from Workplace Standards Tasmania.

Thank you to everyone who attended the sessions and to WorkSafe Tasmania for once again organising such a valuable opportunity.

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### 2013 Training Calendar

The OADC's February to June 2013 training calendar has now been finalised and is available on our website

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

We also offer a comprehensive range of anti-discrimination courses for all levels of employment and community, including school talks for all student grades. Please contact Roz at [roz.smart@justice.tas.gov.au](mailto:roz.smart@justice.tas.gov.au) or Louise at [louise.adams@justice.tas.gov.au](mailto:louise.adams@justice.tas.gov.au) for more information.



## Community News and Networking



**TasPride**  
Inc.



**TasPride Festival 2012**  
**Across Hobart, Launceston and Burnie**  
**16-24 November**

GET A SLICE OF THE ACTION!

This year is rather special as TasPride celebrates 20 years in the community.

The 2012 TasPride Festival has a program packed with free and ticketed events in Hobart, Launceston and Burnie.

The Theatre Royal Backspace is the queer hub of the Festival's program with talks, theatre and live music programmed throughout the day and night with a fully operating bar to help the celebrations. The TasPride Parade will once again be a focal point of the Festival followed by the massive 20th Birthday Party that will close the Festival for 2012.

To download a full program visit <http://taspride.com/>

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### **END PHYSICAL PUNISHMENT OF CHILDREN (EPOCH) TASMANIA**

(Patron: the Hon Alastair Nicholson QC AO RFD)

CORDIALLY INVITES YOU TO  
THE 10th ANNUAL EPOCH ORATION

Guest Orator  
JACOMB BELL

Former Child Member of the Children's Commissioner's inaugural  
Consultative Council 2000

**19 November 2012**

1:00 – 2:30 pm

Parliament House, Salamanca, Hobart, Tasmania

Free Admission

Refreshments provided

Sponsored by End Physical Punishment of Children ( EPOCH Tas)  
founded in 2002

E-mail replies to: [patmalar@hotmail.com](mailto:patmalar@hotmail.com)

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### **Write for Rights, Amnesty International** **25 November to 16 December 2012**

Amnesty International is holding the annual Write for Rights letter writing marathon from 25 November to 16 December 2012 to advocate for 11 communities and individuals suffering human rights violations. The cases range from prisoners of conscience to corporate social responsibility.

You and your organisation can take part in lots of different ways: from signing a petition, writing individual letters or holding a public event. Come and join the Amnesty stall at the Human Rights Rally on 8 December on Parliament Lawns to write a letter or sign a petition.

Campaign information for how organisations can get involved or partner with Amnesty are available at

[www.amnesty.org.au/iar/comments/30138/](http://www.amnesty.org.au/iar/comments/30138/) or contact Kirsty at 6221 1002 or [Kirsty.Madden@amnesty.org.au](mailto:Kirsty.Madden@amnesty.org.au) for further information.

Last year's Write for Rights campaign resulted in some great wins for individuals at risk and Amnesty International would love to have more

organisations and individuals participate to have a bigger impact this year.

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### REGISTRATIONS FOR THE 2013 GEARING UP EXPO IN SOUTHERN TASMANIA are now open.

The Expo will be held at the Princes Wharf No 1 in Salamanca on Thursday 23 May 2013.

This key event is to provide information and advice to people with disability, their families and carers.

For more information and to register for the Expo go to <http://gearingupexpo.com.au/hobart-event-information/hobart-exhibitor-registration>

## Human Rights Week 2012



3 - 10 December 2012

### Human Rights Week Rally

Saturday 8 December  
11:00 am - 1:00 pm  
Parliament Lawns,  
Salamanca

For more information about Human Rights Week Tasmania go to:  
[http://www.afaairerworld.org/\\_HRWeek/index.html](http://www.afaairerworld.org/_HRWeek/index.html)

## Awareness Days in November



16 November

### International Day of Tolerance

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

20 November

### Transgender day of Remembrance

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

20 November

### Universal Children's Day

<http://www.timeanddate.com/holidays/un/universal-childrens-day>

24 November to 2 December 2012

### Social Inclusion Week

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

25 November

International Day for the Elimination of Violence against Women

### White Ribbon Day

Australia's campaign to  
stop violence against women

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

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discrimination law and the  
Tasmanian community and  
workplaces.