

In respect of rights



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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

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

Message from the Anti-Discrimination Commissioner

I am writing this at a time when there is a lot of public debate about changes to anti-discrimination laws, particularly at the federal level. A topic getting particular attention is the inclusion in anti-discrimination law of provisions that clarify or



specify that it is unlawful to engage in conduct that offends, insults or intimidates a person on the basis of a protected characteristic, such as race, gender or disability. Opponents of such provisions are arguing that these infringe freedom of speech and argue that freedom of speech does include freedom to offend.

While we should celebrate and ensure freedom of speech, it is only one of the thirty or so human rights recognised internationally. It sits alongside and may sometimes need to be balanced with ensuring the right to equality and non-discrimination and freedom from attacks upon honour and reputation.

When we consider the provisions in question, it is important to understand that the federal provision does not seek to extend the protection currently available, but rather clarify that conduct that is offensive or insulting on the basis of a protected attribute can be a form of unfavourable or less favourable treatment and, as such, discrimination. This is not new, nor does it extend the reach of discrimination law.

It is hard to imagine that those arguing against the provision support people being able to use racially abusive language in a work or school environment and not be challenged under anti-discrimination law. Or that they would support people being able to poke fun at a person with disability using their disability as the butt of their 'humour', be they a work colleague, a customer or a fellow club member. Discrimination law is about challenging prejudiced and stereotyped views of people based on their personal characteristics. It is about seeking to ensure that people are treated with dignity, respect and afforded equality of opportunity irrespective of their irrelevant personal characteristics. Abusive, insulting, offensive, degrading language all interferes with the achievement of equality of opportunity for all. So, as long as people see it as okay, as fair game, to use a person's characteristics against them, whether through word or deed, discrimination law will not have done its work.

Robin Banks
Anti-Discrimination Commissioner

Legal News

Nojin v Commonwealth of Australia [2012] FCAFC 192

A wage assessment tool which measured the productivity and competency of disabled employees was found to be discriminatory.

Two employees who were intellectually impaired worked for

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

The employees who were intellectually impaired, worked for organisations that were classified as Australian Disability Enterprises. The two men were paid less than the normal adult rate for the work they did, with the rate being calculated by an assessment tool that measured their productivity and competency. This assessment was provided free of charge by the Commonwealth Rehabilitation Service, and used the Business Services Wage Assessment Tool (BSWAT). BSWAT tested for both productivity and competency.

The two men alleged that the BSWAT tests were discriminatory because it was harder for intellectually disabled people to complete the assessment process and meet the standards.

Both employers were non-profit organisations. They claimed that their limited resources and funding, the difficulty of using complex assessment methods and the widespread use of BSWAT all made use of the test reasonable.

The court at first instance found that the test did not amount to discrimination because the method was reasonable in the circumstances, and using it did not impose a requirement on them that they were unable to comply with.

The decision was overturned by the Full Federal Court. The full court found that the employees were discriminated against in contravention of s 15 of the *Disability Discrimination Act 1992* because a requirement or condition was imposed on them that they undergo a BSWAT wage assessment in order to secure a higher wage. The court found that people with intellectual difficulties would be disadvantaged by the use of BSWAT compared to those without intellectual disabilities, and that the application of the BSWAT was not reasonable in the circumstances.

<http://www.austlii.edu.au/au/cases/cth/FCAFC/2012/192.html>

Conciliations

A complainant alleged sexual harassment, both parties to the complaint were keen to resolve it and the respondent admitted fault and was very committed to change.

The conciliation was an early resolution meeting (agreed to and conducted without a prior investigation) conducted as a shuttle teleconference that went for approximately 45 minutes.

The conciliation concluded with both parties coming to a confidential agreement.

National News



MEDIA RELEASE
5 February 2013
Railcorp Discrimination
Win One Of Many

Disability Discrimination
Commissioner Graeme Innes' success in court over the lack of announcements on Sydney trains is just one of twenty stories which changed the lives of people with disability. The stories, told by the Australian Human Rights Commission and its supporters, celebrate the twentieth anniversary of the Disability Discrimination Act.

"Laws set the ground rules, but its people's own actions which can change their lives, and the lives of many others," said Commissioner Innes, launching the web site for the stories today.

"These stories, told in short films, relate the extraordinary actions of ordinary Australians with disability challenging the discrimination they experience," he said.

Commissioner Innes' win against Railcorp is just one example of the impact of discrimination on the community. It's the latest triumph in the twenty years since the Disability Discrimination Act came into effect.

On March 1, Governor-General Quentin Bryce will launch twenty inspiring stories on film. Titled Twenty Years: Twenty Stories, each film focuses on a person who has changed their life, and how that change has benefited others.

"These stories are more than just words and pictures. They're about the buses that we ride on, the buildings that we go into, the schools we attend, and the movies that are now captioned and audio described." said Commissioner Innes.

"20 per cent of Australians have a disability, and the law is there to help and protect us from discrimination. But that law is of little value unless people lodge complaints and see them through." he said.

More information on the Twenty Years: Twenty Stories project is available here:

<http://www.humanrights.gov.au/twentystories/index.html>

Media contact: Neena Mairata (02) 9284 9862 or 0417 957 525

February and March Training Calendar

**Train the Trainer
Conduct your own Discrimination,
Harassment & Bullying program in YOUR WORKPLACE**

Hobart

Monday 25 February
&
Tuesday 26 February

9.30am - 4.30pm both days
\$770.00 (pre GST)

**Bullying - what it is, what it's not and
what to do about it**

Hobart

Tuesday 19 March
9.00am - 12.00 noon

Launceston

Thursday 21 March
1.00 - 4.00pm

Devonport

Friday 22 March
9.00am - 12.00 noon

\$165.00 (pre GST)

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

Relationships

During a recent conversation about workplace relationships I started thinking about what signifies a good relationship. For me personally a good relationship has to be respectful, fair and inclusive, I am certain that most people, if asked for their '3 words' would come up with many similar variations of what is important to them.

Throughout our lives we have many relationships; with our partners, children, parents, extended families, friends, work colleagues, clients and complete strangers. Some of these relationships are easy and enjoyable and some quite the opposite. Does it matter whether we like, love or dislike a person to be able to respect their equal rights?

It is easy to maintain a relationship with someone we like and respect but how do we do that with others?

Workplace relationships can be frustrating, most of us spend more time with our work colleagues than we do with our family members, this is fine if we like them but what if we don't?

How do we remind ourselves that our relationships with our work colleagues are professional relationships at times of high stress, long hours, productivity demands and job insecurities?

Perhaps we simply need to make a conscious effort with continual reminders that all people have a need to be heard, understood and taken seriously. All people have the right to feel safe, be valued, be treated fairly and be accepted for who they are. Is the secret to maintaining relationships just a matter of treating people the way you would like to be treated? Or even better - to treat people in the way **they** would like to be treated?

Most of us know and expect that our personal relationships require regular maintenance yet we often expect our work relationships to manage themselves. We invest time, sweat and money into our work projects and businesses and sometimes forget the needs of us as people.

At the root of a dysfunctional or toxic workplace is often one or many disrespectful and unprofessional relationships and a culture of gossip, rumours, blame and allegations of bullying. In these situations we see employees withdrawing, careful to protect themselves from discomfort at the expense of productivity and team spirit.

It would be naive to expect a relationship to not include disagreements and healthy debate, in a business sense just one benefit of diversity is the opportunities for new ideas and fresh perspectives. In a healthy, productive workplace these disagreements and debate are conducted respectfully, performance management is conducted appropriately and all employees know that they have rights and responsibilities and are comfortable and confident to exercise those rights.

I wonder if the secret to healthy workplace relationships is simply to remember and follow the following five statements.

1. **Without employees there is no workplace**
2. **All people have a need and the right to be heard, understood and taken seriously**
3. **All people have the right to feel safe, be valued and be treated fairly**
4. **All people have the right to be accepted for who they are**
5. **Treat people in the way they would like to be treated.**

Roz Smart
Senior Training, Education and Development Officer

Community News and Networking



Does your workplace celebrate difference?

Applications close 15 February

The Australian Human Resources Institute (AHRI) Diversity Awards recognise the outstanding individuals and organisations who have demonstrated a commitment to positive diversity practices.

Apply for an award in the area of age, gender, cross-cultural management, flexibility, disability, Indigenous employment, Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) or show an overall strategy of inclusiveness.

Human resources professionals and business leaders are encouraged

to apply for themselves and on behalf of their team. Winners will share their success stories with the business community at a lunch in 2013.

To enter and for more information go to;

http://www.awards.ahri.com.au/diversity/index.php#2?utm_source=ahri_edm_pd&utm_medium=edm&utm_campaign=ahri_diversity_2013



National Day of Action against Bullying and Violence

Friday 15 March 2013

The National Day of Action Against Bullying and Violence is an opportunity for students, teachers, parents and the whole community to take a stand together against bullying and violence. This annual day provides a focus for schools who want to say Bullying. No way! and to strengthen their everyday messages that bullying and violence at school are not okay at any time.

The first National Day was on 18 March 2011 and is an initiative of all Australian Education Ministers.

<http://www.bullyingnoway.gov.au/national-day/>

Workplace Bullying

While National No Bullying Day is focused on school communities it is good timing to encourage workplaces to think about **Know Bull! Day** (Australia's National Workplace Anti-Bullying Day) and **Workplace Bullying Awareness Month** coming up in **June 2013**.

<http://www.know-bull.com/kbdays.html>



'Keep it Tame' is an unprecedented online campaign targeting Australian teenagers, drawing attention to the consequences of thoughtless and hurtful use of social media and empowering them to act with respect online.

Up to 80 per cent of Australians aged between 12 and 18 will be exposed to the interactive online campaign, which is backed by the nation's top 20 youth-focused websites and has been developed by young people, leading marketers and top academics.

Unique to the campaign is the application of an innovative digital tracking methodology which – in conjunction with a cohort study that will survey and interview young people over time – will measure its impact on behaviour change.

<http://keepittame.youngandwellcrc.org.au/>

working it out



*tasmania's gender and sexuality
support and education service*

The Working it Out's groups;

- **LGBTI Youth** (under 25) in partnership with Headspace Hobart,
- **Allsorts** (youth group North) &
- The **Rainbow group** (over 25)

will all be up and running again in February. For more information contact Sue Newman on (03) 6231 1200 or visit www.workingitout.org.au.

Play by the Rules



Play by the Rules has worked with Pippa Grange (Director at Bluestone Edge and former General Manager, culture and leadership, with the AFL Players Association) to put together an article on Homophobia titled 'Breaking down the barriers within sport'.

Pippa's important piece (<http://www.playbytherules.net.au/latest-hot-topics/1282-homophobia>) explains the thinking behind some of the standard responses used to justify homophobic behavior in sport, the apathy towards addressing the issue, and also highlights the injurious effect these actions have on both individuals and sport in general.

Sport should be a leveller, not a divider – and homophobia has no place in sport or anywhere else in society.

As Pippa says "In the absence of conversation – even a conversation that dispels myths and stereotypes - there is seen to be no need for action" on the issue. There needs to be collective effort from all to bring about positive change.



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

Days to note in February

World Interfaith Harmony Week 2013. first week of February

World Interfaith Harmony Week was proclaimed by the General Assembly in resolution A/RES/65/5 adopted on 20 October 2010. In the resolution, the General Assembly, points out that mutual understanding and interreligious dialogue constitute important dimensions of a culture of peace and establishes World Interfaith Harmony Week as a way to promote harmony between all people regardless of their faith

For more about World Interfaith Harmony Week:

<http://www.un.org/en/events/interfaithharmonyweek/>

World day of Social Justice Monday 20 February

The United Nations (UN) World Day of Social Justice promotes poverty

eradication, full employment and social integration.

<http://www.timeanddate.com/holidays/un/world-social-justice-day>

**International Mother Language Day
Tuesday 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.timeanddate.com/holidays/un/international-mother-language-day>

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