

# In respect of rights



## TABLE OF CONTENTS

- [Message from the Anti-Discrimination Commissioner](#)
- [In respect of rights](#)
- [From the OADC](#)
- [Legal News](#)
- [Conciliation Outcomes](#)
- [Training News](#)
- [February Training Calendar](#)
- [Local News](#)
- [Human Rights Week 2011](#)
- [National News](#)
- [Community Information](#)
- [Community Calendar](#)
- [OADC location](#)

## Issue 1

January 2012

## Contact us

To make a complaint or get information, contact the office or visit the website. Please note the office is cannot give legal advice.

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### 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 abd ask for 1300 305 062

### E-mail

[antidiscrimination@justice.tas.gov.au](mailto:antidiscrimination@justice.tas.gov.au)

### Website

[www.antidiscrimination.tas.gov.au](http://www.antidiscrimination.tas.gov.au)

Please let the office know before an

## Message from the Anti-Discrimination Commissioner



Welcome to the first issue of the new look newsletter of my office, *In respect of rights*.

We came up with the new name through an internal competition (a real test of the copy writing and sub-editing skills in the office) and straw

poll. The new format reflects the need to ensure that the newsletter is accessible to all and I hope that we have succeeded in achieving this and that you will let us know if we haven't.

We hope that you share our view that the new name strongly reflects the values of this office and the importance of keeping rights front and centre in our work. All of our work is, of course, about the right to equality and non-discrimination; human rights that are universally recognised and strongly protected in the *Tasmanian Anti-Discrimination Act 1998*. The *Universal Declaration of Human Rights* calls on us all to respect the rights and freedoms of others and the international human rights framework calls on governments across the world to ensure the effective protection, promotion and fulfilment of human rights for all.

Central to the principle of human rights for all is that we all should enjoy those rights equally and without discrimination and that we all should be treated with respect that recognises the inherent dignity of each and every human being.

I am writing this as December and 2011 is drawing to a close. December is always a busy month in our office and a busy month for those involved in human rights work. It is the month in which International Human Rights Day is celebrated across the globe on 10 December. It is the month in which International Day of People with Disability is celebrated across the globe on 3 December and World AIDS Day is remembered on 1 December. Here in Tasmania, for the last 27 years, people have celebrated not only these important international days, but also Human Rights Week. Every year, Human Rights Week is a celebration of the progress made to the protection, promotion and fulfilment of human rights here in Tasmania and across the world. It is an opportunity to celebrate the dedicated work of locals to the work of human rights and to acknowledge the work still to be done. This year's International Human Rights Day focused on recognising human right defenders and this was, of course, our theme also.

On 2 December 2011, members of the Human Rights Week Organising Committee came together with a strong contingent from across the whole of the community to launch Human Rights Week 2011 and recognise through the Tasmanian Human Rights Awards the invaluable contribution made by dedicated local human rights defenders. Congratulations to all of this year's awards recipients: winners and commendees: Anna Crotty (Individual Human Rights Award winner), Amy Fogarty (Youth Human Rights Award winner), Tasmanian Centre for Global Learning (Community Organisation Human Rights Award winner), Jordan River Learning Federation, Gaeabrook Campus (Schools Human Rights Award winner). Grea

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 edition are encouraged to contact the Editor of this publication.

Any comments/feedback about the newsletter to ensure it is a useful resource and information-sharing tool for our readers are welcomed.

#### Newsletter editor

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...egress... (Angus Downie Print Journalism Award winner), Fayia Isaiiah Lahai (Culturally and Linguistically Diverse Community Focussed Activity Award winner), Aaron Everett (Individual Human Rights Award – High Commendation), Tasmanian Aboriginal Centre, (Community Organisation Human Rights Award – High Commendation), Cygnet Primary School and Riverside Primary School (Schools Human Rights Award - High Commendation), Rebecca Fitzgibbon and Emma Hope (Angus Downie Print Journalism Award – Commendation).

I know that I am speaking for all of the Human Rights Week Organising Committee when I extend thanks to all those who made the week such a success. This year particular thanks go to Australia's Governor General, Her Excellency Quentin Bryce, for making the time in her very busy schedule to meet with all of the Human Rights Award recipients on Friday 9 December, the eve of International Human Rights Day. Special thanks also to The Hon Cassie O'Connor for being our parliamentary host for the launch on 2 December and to Pen Tayler, who volunteered her time and photographic skills to record so much of the week. Pen's photos of some of the week's highlights are included later in this issue of *In respect of rights*.

I am looking forward to 2012 as a year in which my office continues its important work in promoting and protecting the right to equality and the right to non-discrimination and a year in which we will continue with others in the community to promote improved human rights protection for all in Tasmania.

I commend this first issue of *In respect of rights* to you and look forward to working with you this year.

**Robin Banks**

**Anti-Discrimination Commissioner**

## In respect of rights

*In respect of rights* is published to be an information, reference and education tool for and about discrimination law and the Tasmanian community and workplaces. Please feel free to copy any content from *In respect of rights* to share within your own networks, newsletters or bulletins. Please include acknowledgement of this office in your material as well as our website address [www.antidiscrimination.tas.gov.au](http://www.antidiscrimination.tas.gov.au). We would love to receive copies of your publications.

## From the OADC

To give a better understanding of the Office of the Anti-Discrimination Commissioner we have decided to use our January and February editions to cover an overview of the Commissioner's role, the duties and objectives of the OADC and our plans for 2012-13 as described in our business plan. Stay tuned for more in February

The Anti-Discrimination Commissioner's role is to perform a range of functions under the Anti-Discrimination Act 1998 (The Act). The Office is established to support the Commissioner in performing those functions.

### Values

The OADC seeks to act in accordance with the following values:

- equity as equal treatment, ensuring fair and just outcomes in complaint handling processes;
- a strong commitment to impartiality;
- high standards of professional service delivery;
- participation at all levels is encouraged and affirmed;
- maximising the potential of individual employees;
- encouraging and supporting staff development and multi-skilling; and
- building and fostering relationships with key stakeholders.

### Stakeholders

The work of the OADC involves engagement with the following sectors of the Tasmanian community:

- Tasmanian Parliament
- Government and local government
- Anti-Discrimination Tribunal
- Relevant peak advocacy groups
- Unions, trade and professional organisations
- Lawyers and community advocacy groups
- Schools and educational institutions
- Clubs and associations
- Community and not-for-profit organisations
- Industry and business
- Private citizens

### **Objectives**

The Office of the Anti-Discrimination Commissioner (OADC) aims to maintain processes and services that are transparent and based on procedural fairness and natural justice. The OADC aims to act at all times with impartiality and integrity.

The OADC seeks to provide an avenue for people who have been unlawfully discriminated against to resolve their complaint and to reach positive outcomes for both parties.

The OADC aims to promote the Act in a positive way, so that the principles and practices it embodies are accepted and readily understood. The Commissioner and staff in collaboration with key stakeholders continually seek to become informed about the wider issues and concerns of the Tasmanian community that have relevance to the Act, its operation and impact.

### **Next month: 2011-12 Projects**

### **OADC New staff member**

We welcome Leica Wagner as our Policy and Project Officer, Leica has come to the OADC from The Department of Premier and Cabinet until the end of 2012 and will be kept busy with projects such as the federal anti-discrimination law consolidation, defining and protecting gender diversity and our discrimination in insurance investigation

### **Facebook**

The Office of the Anti-Discrimination Commissioner now has a facebook page, we hope you enjoy our regular posts and updates.

### **Legal News**

#### **Discrimination Commissioner v RailCorp**

Mr Graeme Innes, the Disability Discrimination Commissioner, alleges that RailCorp has failed to consistently provide audible announcements on trains, in breach of the *Disability Discrimination Act 1992*.

Since 2007, RailCorp has been required under the *Disability Standards for Accessible Public Transport 2002* to ensure that audible station announcements are made on all trains.

Mr Innes, who has been blind since birth, has already lodged 36 complaints with the Australian Human Rights Commission regarding failures by RailCorp to have audible announcements on trains. Attempts by Mr Innes to resolve his complaints with RailCorp through the Commission have failed.

Mr Innes explains: "For a person who is blind or has low vision, such as myself, the major problem with catching trains is knowing what station you have reached.

"Missing the right stop means getting off at an unfamiliar station. Locating the right platform to catch a train back to the intended station is not just inconvenient - it can sometimes be extremely stressful, and is usually quite time-consuming."

Graeme Innes says: 'I am just asking RailCorp to treat me and other blind people in the same way as all other passengers – tell us where we are.'

## Women only gym classes

*Walker v Cormack* [2011] FCA 861

The complainant was a customer of a gymnasium conducted by the respondent and was a frequent participant in a class conducted at a particular time on a particular day of the week. The respondent decided to change the class at that time on that day of the week to a class for women only. When the complainant attended at the gymnasium, and attempted to participate in the class, the respondent refused to allow him to do so. The complainant contended that this refusal amounted to unlawful discrimination against him, on the ground that he was male.

The respondent relied on the defence that the designation of the class as a class only for women amounted to the taking of a special measure for the purpose of achieving substantive equality between men and women and that, by virtue of section 7D(2) of the *Sex Discrimination Act 1984* (Cth) there was no discrimination.

The complainant also alleged that the respondent had committed an act of victimisation against him by terminating his membership of the gymnasium.

The finding from the Federal Magistrates Court was that the class did not breach the Act and the termination of the complainant's membership was decided, and put into effect, in response to the applicant's inappropriate behaviour, and accordingly was not victimisation.

<http://www.austlii.edu.au/au/cases/cth/FMCA/2010/9.html>

<http://www.austlii.edu.au/au/cases/cth/FCA/2011/861.html>

## Conciliation Outcomes

**A complainant alleged prohibited conduct and discrimination in employment on the basis of pregnancy** when her shifts were reduced because she could not lift a heavy keg without assistance. With a denial of liability the complainant was paid \$1,200.

**A complainant alleged discrimination on the basis of disability and industrial activity and victimisation in employment.** As a result of the conciliation it was agreed that the complainant could apply for additional sick leave and meet with the respondent to review his situation, and receive \$7,500.

**A complainant alleged disability discrimination in the area of provision of goods and services** when he was asked to leave a hotel but was not given a reason why. He says he was neatly dressed, not intoxicated and not 'causing a ruckus'.

The complaint was resolved with an acknowledgement by the Manager that the bar person may have made an incorrect assumption about the complainant being intoxicated.

The respondent also apologised that the complainant had felt he had been discriminated against.

**A complainant alleged disability discrimination in the area of employment.** He alleged he was terminated from employment because he was having issues with his health and had to attend medical appointments.

The respondent said he was terminated because he couldn't carry out the inherent requirements of his job even after assistance with time management and organisational skills. The complaint was resolved with an apology and the payment of \$5,000.

## Training News

### LGBTI Train-the-Trainer session

Saturday & Sunday 3 & 4 December 2011

18 members and associates of the Tasmanian Council for Sexual & Gender Diverse People Inc (TCSGDP) undertook two days of training facilitated by Roz Smart, one of two training officers for the Tasmanian Office of the Anti-Discrimination Commissioner.

The intent of the training program was to equip participants with the tools to conduct organisational discrimination, harassment & bullying education programs, specialising in GLBTI and diversity. This is especially relevant to TCSGDP members in their different areas of LGBTI advocacy including education, policing, tourism, health and social connection.

The course, which included tuition, in-depth discussions and role-plays, covered such topics as an overview of the *Anti-Discrimination Act 1998*; awareness of GLBTI cultural diversity including supporting cases and statistics; how stereotypes can lead to prejudice and discrimination; harassment (including bullying) + GLBTI awareness, sexual harassment, other prohibited conduct including victimisation and incitement to hatred; and anti-Discrimination for advocates.

The TCS&GDP is keen for their members and associates to undertake further OADC training programs in new areas of operation including Tasmania's north and north-west, where member organisations such as the Coming Out Proud Program (COPP), Outright Youth and League of Gentlefellows are in the process of establishing.

For further information regarding the TCS&GDP Inc. and its member organisations, go to <http://www.logtas.org>.

TCS&GDP wishes to thank the Tasmanian Office of the Anti-Discrimination Commissioner and the Hobart City Council for an excellent weekend's training.



Members and associates of the Tasmanian Council for Sexual & Gender Diverse People Inc (TCSGDP) participating in LGBTI Train-the-Trainer



### Contact Officer/Person Networking Sessions

Last month our training team together with the Commissioner facilitated contact officer networking meetings in Hobart and Launceston. The meetings are offered every six months as a forum for contact people in different organisations to exchange ideas, experiences and information with others in a similar role. Louise, Robin and Roz value the meetings as an opportunity to provide updates to legislation and to find out how we can better support contact officers within their organisations.

The December meetings facilitated some fabulous conversations including; 'is contact officer the correct term?', the differences of small vs large organisations, designing a card to help contacts to self manage and re-designing the OADC pamphlet to a more practical and user friendly template pamphlet. We are now busy designing that template and producing a Contact Officer fact sheet with supporting

template and producing a Contact Officer fact sheet with supporting documents for managers.

Thanks to everyone that attended and we look forward to even more participants at our June 2012 sessions.

## February Training Calendar

### Engaging Diversity & Discrimination, harassment & bullying

- Tuesday 21 February
- Hobart
- 9.30-11.30am
- \$110.00 (pre GST)

### Train the Trainer, conduct your own Discrimination, harassment & bullying program in YOUR organisation

- Monday 27 & Tuesday 28 February
- Hobart
- 9.30am-4.30pm both days
- \$770.00 (pre GST)

For more detailed course information and registration forms follow this link

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

## Local News

### Workplace Standards new monthly newsletter

In 2012 Workplace Standards will be producing a monthly work health and safety newsletter to keep you up-to-date with work health and safety issues.

It will include the following:

- Information on the model WHS Act
- 'How to' advice on making your workplace safe
- Information on nationally harmonised legislation and publications
- Updates on safety issues, alerts and publications from the Regulator
- Registration information for seminars
- Prosecutions and other major enforcement activities

There will also be a section on WorkSafe that may include:

- WorkSafe campaign updates
- WorkSafe Month event registration and WorkSafe Awards entry details
- Information on upcoming events like Agfest
- New WorkSafe publications

You can subscribe to the newsletter at

[www.wst.tas.gov.au/resources/wst\\_subscription\\_page](http://www.wst.tas.gov.au/resources/wst_subscription_page)

## Human Rights Week 2011



Photos by Pen Tayler, who volunteered her time and photographic skills to record so much of the week.

More photos will be available for viewing at

[www.afairerworld.org/\\_HRWeek/](http://www.afairerworld.org/_HRWeek/)



Australia's Governor General, Her Excellency Quentin Bryce, with all of the Human Rights Award recipients.



Audience at the launch of Human Rights Week



Theresa Sainty delivers Welcome to Country at the launch of Human Rights Week



The Hon Cassie O'Connor and Helen Hortle (Tasmanian Centre for Global Learning) at the launch of Human Rights Week

## National News

### 'Something in Common' project

The Australian Human Rights Commission recently launched the 'Something in Common' project, which aims to build understanding and respect for human rights in Australia.

The [SomethinginCommon.gov.au](http://SomethinginCommon.gov.au) website explores the themes of freedom, respect, equality and defending human rights through actions and the sharing of stories.

<http://SomethinginCommon.gov.au>

<http://tellsomethingidontknow.gov.au> provides a series of human rights facts

### National Mental Health Commissioners appointed

In December 2011, the Minister for Mental Health and Ageing, The Hon Mark Butler, announced the appointment of the Mental Health Commissioners to Australia's first National Mental Health Commission.

'The appointment of the eight Commissioners, alongside the Chair, Professor Allan Fels AO and CEO, Ms Robyn Kruk AM, represents the next major milestone in national mental health reform,' Mr Butler said.

The eight Commissioners are:

- Mr Peter Bicknell (South Australia, current Chair of UnitingCare Australia);
- Ms Jackie Crowe (Victoria, Carer Consultant with Ballarat Health Services Area Mental Health Service);
- Dr Pat Dudgeon (Western Australia, Chair of Australian Indigenous Psychologists Association);
- Professor Ian Hickie AM (New South Wales, Executive Director of the Brain & Mind Research Institute);
- Mr Rob Knowles AO (Victoria, Chair of the Mental Health Council of Australia);
- Ms Janet Meagher AM (New South Wales, Divisional Manager of Inclusion for Psychiatric Rehabilitation Australia and founding member of NSW Mental Health Consumer Advisory Group);
- Ms Samantha Mostyn (New South Wales, Director of the Institute for Sustainable Solutions); and
- Professor Ian Webster AO (New South Wales, Emeritus Professor of Public Health and Community Medicine at the University of NSW).

Ms Robyn Kruk AM will also be an ex-officio Commissioner.

'Consumers, carers and mental health advocates have argued strongly for systemic reform that would instil greater accountability and transparency into the system. Australia's first National Mental Health Commission is aimed at doing just that,' Mr Butler said.

'The Commissioners will provide expert and independent advice to the Government on the performance of our mental health system and will monitor whether services are delivering lasting outcomes for people living with a mental illness, their carers and their families.

'One of the Commission's first priorities will be to deliver the first annual National Report Card on Mental Health and Suicide Prevention, delivering on a key election commitment of the Gillard Government.

'This will allow consumers and their families to tell if services are genuinely effective and meeting their needs.'

A charter outlining the full responsibilities and work of the Commission will be developed for release early in 2012. The Commission will commence formal activities from 1 January 2012.

## Community Information

### Hobart Women's Shelter now online

Minister Cassie O'Connor officially launched the Hobart Women's Shelter website in December 2011. The launch was well attended and included a performance of the newly formed Shelter choir called the Wisppers.

"We are trying to make our service as accessible as possible to any woman out there who may be in need of information and support," Executive Officer Sabine Wagner said. The website will provide another access point to our organisation and may help some of the 690 women and 682 children we have to turn away each year.

"Many women are isolated from their support networks and are told that what is happening to them is their fault. They often don't even know that what they experiencing maybe domestic / family violence."

"The website will provide a wide range of information and links, including a domestic violence quiz, fact sheets, videos, women's stories and male role models who are pro-active in ending gender based violence. The website will also have contact numbers for support services in Tasmania and Australia wide and a donation appeal to continue our shelter choir, Ms Wagner said.

The HWS annual report showed that during 2010/2011, the HWS accommodated 91 women and 157 children. 62 % were escaping domestic/family violence when entering the shelter. Thirty-one or 50% of women who escaped domestic violence / family violence, escaped their male partner, a further 18 women their male ex-partner. A small number of women escaped violence from their neighbours, brother, step dad or son.

The vast majority of women were abused by someone with either emotional or familial connections and 102 children belonged to families where abuse occurred.

The HWS has been operating since 1974 and houses women over 20 and women of any age with accompanying children who have experienced homelessness or domestic violence, for up to 6 weeks in ten safe houses in Southern Tasmania.

The safe houses are close to buses in the Hobart suburbs and accommodate one family unit, ranging in size between three to eight beds. They are fully furnished and include telephone and heating as well as enough food to last the first few days.

Your assistance with distributing the website would be greatly appreciated. Please follow the link

<http://www.hobartwomensshelter.org.au/#jbt4>

Sabine Wagner  
Executive Officer

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## Community Calendar

### Australia Day

26 January 2012

<http://www.australiaday.org.au/whatson/tas/>

### International Day of Commemoration in memory of the victims of the Holocaust

27 January 2012

<http://www.un.org/en/holocaustremembrance/2012/calendar2012.html>

### OADC location



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