

In respect of rights



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Issue 5

May 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.

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.

Message from the Anti-Discrimination Commissioner



Robin Banks gave a speech at yesterday's NDIS rally which *In respect of rights* feels is too important not to share.

Here it is:

'We are here to join the voices around Australia calling on all governments, on all politicians, to support the rights of people with disability in this country to live lives of dignity and opportunity, to support the NDIS.

People with disability have for too long been expected to put up with second best:

- Second best in terms of access and opportunities
- Second best in terms of how they are treated by others, by individuals, by organisations and by governments
- Second best in terms of level of support available to achieve independence

Second best is not okay.

Continuing to expect and achieve less than equal opportunity for people with disability breaches human rights, it is discrimination at a systemic and appalling level.

It is not what anyone in our communities across Australia should be expected to live with

A world in which anyone is expected to put up with second best is not the world I want to live in, it is not the world that anti-discrimination laws are designed to achieve, it is not the world anyone should have to live in, it must not be Australia.

Every day my office deals with people with disability who have been treated differently, who have faced barriers to their participation, who have been discriminated against because of their disability.

These people are those who are able to contact my office, who have the support to assert their rights, who understand that second best is not what they should have to put up with.

Discrimination law provides one way to challenge the unequal treatment of people with disability. But it is not enough. It is only one part of the change needed.

The NDIS is a once in a lifetime chance to change the picture, to change the lives of people with disability, to remove the almost constant discrimination and lack of opportunities that people with disability have been asked to live with in this country.

The NDIS cannot be seen as an optional extra.

It must be understood to be a priority, to be core business.

It is an opportunity for everyone, irrespective of politics, to say 'enough is enough'. to say that people with disability in this country deserve

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.

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is enough to say that people with disability in this country deserve equal status and equal opportunities, to say that we want people with disability to be part of every aspect of life in our country, not excluded by lack of support, by limited services, or by institutionalised responses.

It is vital that governments take up the challenge to work together to make the NDIS a reality.

I know it will take a little time to get it right, but we must expect forward movement and building momentum to achieve the NDIS, not in 50 years, not in 20 years, not in 10 years, not when budgets are in surplus.

Equality, equal opportunity and proper support for people with disability are not a luxury for the good times, they are an essential at all times.

The NDIS needs to be a priority for all governments now.

They must be working together to find the solutions, to show they mean it when they say they believe in equality for all.

Fourteen years ago the Tasmanian Government and Tasmanian Parliament showed, through passage of the Anti-Discrimination Act, that they believe that discrimination is not okay, that discrimination is a social ill and they made it unlawful, they showed that they believe that people with disability should enjoy equality of rights and equality of opportunity.

Five years ago, Australia demonstrated its commitment to the rights of people with disability through ratifying the United Nations Convention on the Rights of Persons with Disability, a convention that calls on all governments to be active in ensuring that people with disability have equal protection of rights and are properly supported to have equal opportunities.

The NDIS is a vital and timely mechanism for implementing those commitments.

Properly designed, funded and implemented it will remove many of the barriers that people with disability face.

It will enable people with disability to take their rightful place as equal participants in our Country's future.

It will ensure that the past history of neglect and exclusion of people with disability is just that ... past history.

Today is an opportunity for us all to remind governments that every Australian counts.

So, I ask you to tell our governments: 'who counts'?

Every Australian! That's who.

Thank you.'

Robin Banks

Anti-Discrimination Commissioner

From the OADC

Some New Faces

A number of new faces will be seen around the OADC over the next few months as we continue to offer internships to students from the University of Tasmania as well as work placements. Rachel Nichols, George Katos, Valentina Lazcano and Ashley Rihak are working with us for first semester (February – June 2012) to undertake research projects on the issues of women in leadership, discrimination on the basis of physical appearance, cyber-bullying and inherent occupational requirements.

Emillie Cook is a business administration student from Rosny College

who is participating in the Rosny College Vocational Placement Program as part of her college studies. She will be working with us 4 days a week

as part of her college studies. She will be working with us 1 day per week until the end of May to learn about how a small office of our size works from an administrative perspective.

Earlier in the year we had a law student from the University of Queensland, **Walter Leggett**, working on issues of standing in anti-discrimination law. Walter is continuing his work on this project while he completes his studies back in Brisbane.

Following is an introduction to the interns and a short summary of the projects they are working on.

Rachel Nichols

Rachel is in her fourth year of a combined Bachelor of Business – Bachelor of Science degree. She is working with us to look at ways of improving diversity in Tasmanian business leadership. Her work will contribute to a partnership project involving the OADC and the Tasmanian Chamber of Commerce and Industry aimed at developing strategies to encourage Tasmanian ASX listed companies and other business and government boards to adopt a diversity policy and improve the representation of women in senior management roles and on boards. This is a first step in increasing diversity in business leadership.

George Katos

George is a graduate of the University of Tasmania's Faculty of Law. He has been admitted to the Bar and is now undertaking a Graduate Diploma in Public Policy. He joins us this semester to undertake a project to identify approaches to addressing cyber-bullying and vilification on the internet and implications for discrimination law. New and emerging forms of communication and social media provide us with more opportunities to connect and express our views, but at the same time increase opportunities to engage in discriminatory behaviour. George will look at how cyber-bullying relates to the *Anti-Discrimination Act* and identify strategies to counter the use of electronic media as a vehicle for bullying and harassment.

Valentina Lazcano

Valentina is a graduate of the University of Tasmania's Faculty of Law, has been admitted to the Bar and is now undertaking a post-graduate degree. Valentina is researching discrimination based on appearance (tattoos, piercings, dress, appearance and body size, for example). Her research will analyse legislative protections and identify strategies for addressing discrimination on the basis of physical appearance or characteristics.

Ashley Rihak

Ashley is a third-year combined Arts-Law degree student. Ashley is researching issues related to discrimination in employment and the exceptions provided to unlawful discrimination on the basis of inherent requirements or genuine occupational requirements. He will look at how these concepts are applied in other jurisdictions, both in Australia and overseas and assist in the development of an approach and guidance document for use in Tasmania and other jurisdictions.

Agfest

Look out for us at Agfest, five of the OADC's staff will be taking turns at the OADC stall. Find **the Office of the Anti-Discriminator stall** just inside the main gates at **CWA15, CWA Grove**.

Come and have a chat to Craig, Louise, Jess, Leica or Katrina about your

discrimination rights and responsibilities.





Taxi Submission

The OADC has made a submission to Department of Infrastructure, Energy and Resources (Tasmania) in response to the Review of Wheelchair Accessible Taxi fares and subsidies. To read this and other submissions go to:

http://www.antidiscrimination.tas.gov.au/news_and_events/submission/

New Poster

We are launching the last of our 2012 poster and postcard series this month, our **equal** poster supports the International Day Against Homophobia theme. Follow the link to our website to view and print this and other posters and postcards

**We are not
all the same
but we are all
equal.**

Do you have a question or concern about discrimination because of sexual orientation or gender identity or about incitement? If you do, or if you'd like to make a complaint, contact us.

Enquiry Line	1300 305 062 or (03) 6255 4841
E-mail	antidiscrimination@justice.tas.gov.au
Web	antidiscrimination.tas.gov.au
Free SMS	0439 431 063
NRS TTY	133 677 & ask for 1300 305 062
NRS Speak & Listen	1300 565 727 & ask for 1300 305 062

Office of the Anti-Discrimination Commissioner

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

www.homophobiaday.org also has a great poster available 'sexual diversity in the workplace, It pays off!'

FAQs - Discrimination on the grounds of sexual orientation & transsexual status

If a student who is bisexual is called a 'lesbo' and a 'swinger' at the end of the year function, is this discrimination?

- The Tasmanian *Anti-Discrimination Act* prohibits discrimination on the basis of sexual orientation, which includes bisexuality and homosexuality.
- The Act prohibits discrimination on this basis when it occurs in education or education-related activities, such as an official end-of-year function organised by the education provider or the student body.
- Even if the comments were meant as jokes, it is not ok. Rather than funny, such jokes are likely to be offensive and hurtful, even if the person saying them didn't mean to offend. Often the person who is targeted will try to shrug off the comments, but they are still not okay.
- The Act says that it does not matter what the person discriminating or being offensive intends, it is still unlawful.
- Making offensive comments and calling people derogatory names because of their sexual orientation is against the law.

Is it discrimination if a restaurant owner asks a gay couple to stop public displays of affection but doesn't ask heterosexual couples to do the same?

- The Act prohibits discrimination on the basis of homosexuality.

- The Act makes it unlawful to discriminate in the provision of services, and restaurants provide services to people seeking refreshment.
- If same-sex couples are the only couples told to stop showing affection to one another, they are being treated less favourably than heterosexual couples and could make a discrimination complaint.

Is it discrimination if a landlord refuses to rent a one-bedroom apartment to a gay couple because the landlord doesn't want 'that sort of people' in their property?

- Accommodation is an area of activity covered by the Act, and this includes rental accommodation.
- If a landlord in this circumstance says, 'your type of people' or 'that sort of people' they are clearly making a derogatory reference to gay people.
- Refusing to rent a property to someone because they are gay is discrimination on the ground of sexual orientation.

What protections do people who are transsexual have and what exactly does transsexual mean under the *Anti-Discrimination Act*?

- The Act prohibits discrimination on the basis of transsexuality.
- Under the Act, transsexual means a person of one sex who (a) assumes the bodily characteristics of the other sex by medical or other means; or (b) identifies himself or herself as a member of the other sex; or (c) lives or seeks to live as a member of the other sex.
- If a person who is transsexual is treated less favourably in areas covered by the Act such as employment, education and training, accommodation or the provision of a service, this is against the law and they can make a discrimination complaint to the OADC.

Fact or fiction: Drag Queens are transsexual or gay?

- It is not automatically the case that drag queens, or people that dress up as the opposite sex are transsexual or gay.
- Some Drag Queens only dress up as women for artistic performances and when not performing they identify as their sex at birth.
- In their private life a Drag Queen may be heterosexual, bisexual or homosexual.
- It is also discrimination on the basis of transsexuality to treat someone less favourably because he or she is thought to be transsexual and is not.

I have heard there is a process involved at the Office of Births, Deaths and Marriages for people wanting to change sex. How does this work?

- People can legally change their birth certificate held by the Office of Births, Deaths and Marriages to reflect their new sex or gender.
- Any person who was born in Tasmania, who has undergone sex reassignment surgery and is not married, may apply to register a change of sex. An application is to be accompanied by (a) a statutory declaration from each of two medical practitioners verifying that the person has undergone sex reassignment surgery; and (b) any other document or information that the Registrar requires.
- Once a person's birth certificate is amended they are entitled to be treated in the same way as any other person of that sex/gender. For example a person could apply for a job that is legally gender specific, or attend a single-sex school.
- For more information about the registration process people can contact the Office of Births Deaths and Marriages.

What about a male whose biological sex at birth was female, but who dresses as a man, identifies as a man and feels male, but has not undergone any surgery or taken hormones. Is he protected under discrimination law on the basis of transsexuality?

- A person does not have to have had sex reassignment surgery, or have taken medication such as hormones, for the Act to protect them against discrimination.
- As long as the person identifies as a member of the other sex, or

lives or seeks to live as a member of the other sex they are protected from discrimination on the ground of transsexuality.

Joanna has undertaken sex reassignment surgery and applied to amend her birth certificate and change her name from John to Joanna. Is it discrimination if her employer prevents her from using the women's toilets and continues to refer to her by her previous name, John?

- Joanna has legally changed her sex to female so she should be able to use the women's toilets without any hassle.
- The employer's remarks to Joanna are insensitive. Even if the boss doesn't mean any harm, they are still treating her less favourably by using her former name.
- This is an example of discrimination on the basis of transsexuality that has occurred after a person has had sex reassignment surgery.

Under the Act, transsexuality comes under the attribute of sexual orientation. At the OADC we recognise that gender identity is separate from sexual orientation but that is currently sits under the Act.

Legal News

Marriage Equality

With marriage equality being such a hot debate issue and to keep with the IDAHO theme this month, rather than include a case summary we are using this segment to address Marriage Equality and the *Anti-Discrimination Act 1998*.

For a complaint of discrimination to be made to the OADC there needs to be:

- less favourable treatment or effect;
- on the basis of an attribute;
- in an area of activity.

While marital status is one of the attributes covered in the Act, same-sex marriage is not protected under the *Anti-Discrimination Act 1998* or Federal anti-discrimination legislation as section 24 of the Tasmanian Act states that 'a person may discriminate against another person if it is reasonably necessary to comply with (a) any law of this State or the Commonwealth ...' There is no federal anti-discrimination law that makes discrimination on the basis of sexual orientation unlawful.

However, the OADC made the following submission in 2009 and strongly believes that same-sex couples should not be discriminated against and ought to be afforded the same rights and benefits as those in heterosexual relationships.

'The OADC recognises the diversity of view in regard to Marriage Equality in Australia, however the view of the OADC in keeping with its ethos of eliminating discrimination in our community is that barriers to same sex marriage should be abolished. This abolishment will demonstrate Australia's belief and adherence to Articles 1,7 and 16 as set out in the Universal Declaration of Human Rights.'

and

'The foregoing points together with the overriding principle of eliminating discrimination in Australia should in this Office's view be the impetus for the change to the Marriage Act. The suggestion that Australians continue to believe that marriage is about a union between a man and a woman to the exclusion of all others is, it appears, not the majority view.[3] The states and to some extent the Commonwealth have accepted that people in same sex relationships exist...'

To see the whole submission go to

http://www.antidiscrimination.tas.gov.au/news_and_events/submission

Recent progress

According to Australian Marriage Equality, 276,437 people participated in the Federal House of Representatives' recent marriage equality survey with

the final result being 64% of respondents support gay marriage.

We, like many Tasmanians, wait to see what the next step will be from the Federal Government.

Conciliation Outcomes

Complaint of discrimination on the basis of industrial activity and offensive conduct on the basis of gender.

The complainant, a manager, alleged that she had been discriminated against because she spoke up about issues affecting her team. She also alleged she was bullied and harassed by another manager and her CEO. She alleged that she was the lowest paid manager, the other manager intervened in her area and she was not supported by her CEO when her relationship with the other manager broke down.

The complaint was resolved with an apology, a statement of employment, a review of policies and procedure, and a \$3,750 compensation payment.

Complaint of discrimination on the basis of an irrelevant criminal record.

The complainant was employed by a large company, his employment was terminated after the company received his police check.

The complaint was resolved by the respondent providing detailed reasons as to why the complainant's job was terminated, advice that a new procedure was being developed by the respondent about how adverse police checks are dealt with and compensation of just over \$16,000.

The complaint demonstrated the importance of people providing a fullsome response to their employer when asked for an explanation about the criminal record and a thorough understanding by both parties of the inherent requirements of the job. It also demonstrated that employers need to provide detailed reasons as to why a decision is made in relation to an adverse criminal record check.

National News

National Disability Insurance Scheme (NDIS)

The Prime Minister announced at the Every Australian Counts Make It Real rally in Sydney on 30 April 2012 that, from the middle of next year, people with disability, their families and carers in selected sites around the country will start to receive care and support through an NDIS.

This first stage of an NDIS will support 20,000 Australians with disability. It will initially involve 10,000 people with disability starting from mid-2013 and will expand to 20,000 people from the middle of 2014.

It will be important for all of us to watch the development of the NDIS over the coming months to ensure that it is properly designed to respond to people's needs, irrespective of the nature of their disability.

To read the Prime Minister's speech go to:

<http://www.ndis.gov.au/696/launching-the-ndis-sydney/>

Australia's Human Rights framework-education grants

APPLY NOW FOR AUSTRALIA'S HUMAN RIGHTS FRAMEWORK - EDUCATION GRANTS

The Australian Government is calling on community organisations to submit their projects and/or activities which will assist in the promotion and education of the Australia's Human Rights Framework.

Previous amounts funded have ranged from \$5,000 to \$40,000 in a year. Applications for funding within this range are encouraged. Projects should:

- promote a practical understanding of the human rights and responsibilities of individuals as members of a tolerant, inclusive society, and/or
- promote community awareness of, understanding of and engagement with the rights and freedoms recognised and declared under the seven core United Nations human rights treaties to which Australia is a party.

Australia is a party.

Applications will close at 5:00 pm AEST on Wednesday 9 May 2012.

You can learn more about Australia's Human Rights Framework – Education grants; obtain funding guidelines and applications at <http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiahumanrightsframework/Pages/default.aspx/>

Race Relations Round Table

Commissioners from the New Zealand and Australian Human Rights Commissions and Australian state and territory human rights agencies met in Alice Springs in the Northern Territory on 16 and 17 April 2012 for the Race Relations Round Table.

The Round Table provides an opportunity for the Commissioners and their agencies to discuss racial equality matters of mutual interest and concern to both countries. The 2012 Round Table had a particular focus on systemic discrimination and racism.

For more about the Race Relations Round Table discussions, read the Communique at <http://www.antidiscrimination.tas.gov.au/>

The Anti-Racism Strategy

In the April *In respect of rights*, the Commissioner urged all Tasmanians to get involved in the development of a National Anti-Racism Strategy for the country.

The National Anti-Racism Partnership wants to hear what you think works and about other successful strategies that have been used in the past. Tasmanians can contribute to the development of the Strategy by making a submission by 11 May or by completing the electronic survey at; www.humanrights.gov.au/antiracism/survey.html

May Training Calendar

Disability Awareness and preventing Discrimination, Harassment & Bullying

Hobart: Tuesday 15 May 2012, 9.30am-12.00pm

Launceston: Friday 18 May 2012, 9.30am-12.00pm

Discrimination free management & management practices

Launceston: Thursday 17 May 2012, 10.30am-5.00pm

Workplace Support / Contact Officer/Person Role

Hobart: Monday 28 May, 1.00-5.00pm & Tuesday 29 May 2012, 9.00am-1.30pm. *Must attend both days.

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

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

Local News

Review of the Tasmanian Government's Disability Framework for Action 2005-10: Have your say

On-line Survey

The Tasmanian Government's Disability Framework for Action 2005 -2010 was a whole-of-government, rights-based approach to disability. The Government is now reviewing the Framework to:

- report on what has been achieved by Government over the past five years;
- ensure Tasmanians with disability are involved in setting priorities for future action; and
- update Tasmania's disability policy to take into account the United Nations Convention on the Rights of People with Disabilities and the

National Disability Strategy.

A discussion paper has been prepared to help get feedback from the community and inform the review. An Easy Read version of the discussion paper is also available.

The discussion paper seeks feedback on a number of questions related to:

- how the Framework was implemented
- what it has achieved
- what still needs to be done
- what should be included in a future disability policy for Tasmania.

To download the discussion paper go to:

http://www.dpac.tas.gov.au/divisions/cddl/policy/our_policies/disability_framework_for_action/review

As part of the review, the Community Development Division in the Department of Premier and Cabinet is running an online survey.

People with disability, their families, and carers are encouraged to complete the survey. **The survey can be accessed via this link:**
<https://www.surveymonkey.com/s/DFAreview>

For more information, questions or issues, the Community Development Division can be contacted using the following details:

E-mail: disability@dpac.tas.gov.au

Phone: 1800 204 224 (Freecall) OR (03) 6232 7133

National Relay Service:

If you have a hearing or speech-language impairment, contact through the National Relay Service:

Telephone typewriter (TTY) users phone 133 677 then ask for (03) 6232 7133.

Speak and Listen users phone 1300 555 727 then ask for (03) 6232 7133

Internet relay users connect to the National Relay Service at www.relayservice.com.au then ask for (03) 6232 7133

The closing date for submissions and the online survey is 11 May 2012.

Community Diary



Working It Out invites you to celebrate

The 2012 IDAHO Breakfast

International Day Against Homophobia 17 May 2012

by getting your workplace to join them for breakfast 7-8:30am
at the Hobart Function and Conference Centre
1 Elizabeth Street Pier
with Robin Banks, Tasmania's Anti Discrimination Commissioner, and
Rodney Croome, Human Rights Activist.

A delicious time, place and food.

Get your workplace to show its commitment to ending employment discrimination against lesbian, gay, bisexual, and transgender employees. WIO believes that people should be judged by the work they do, not by their sexual orientation or gender identity.

RSVP to Sue at WIO: (03) 6231 1200

Pre-purchased Tickets: \$30pp (\$25 WIO members)

Proceeds from this event go towards LGBTI training in the workplace.

Tasmanian Centre for Global Learning and ruMAD

Fair Trade Fortnight (5-20 May) is an annual celebration of all things fair trade, in particular the life-changing difference that it can make for farmers, producers, their families and communities in developing countries.

For more information go to <http://www.afairerworld.org/>

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>

Days to Celebrate in May

National Volunteer Week (NWW) is the largest celebration of volunteers and volunteerism in Australia, and provides an opportunity to highlight the role of volunteers in our communities and to say 'thank you' to the more than 6.1 million Australians who volunteer

Australian volunteers are essential to society, and many charities would struggle to survive without the support of their volunteers. Australian volunteers contribute more than 700 million hours of community service to so many areas of society, including community health care, heritage and arts, environment conservation, emergency services, education, social justice and sports. NWW provides a platform to pay tribute to these volunteers who donate their time and energy to help others.

<http://www.volunteeringaustralia.org/News-and-Events/-National-Volunteer-Week.asp>

29 April - 5 May

Privacy Awareness Week

<http://www.privacyawarenessweek.org/>

From 1 May

National Breastfeeding Week

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

May 17

International Day Against Homophobia

www.homophobiaaday.org/

21 May

World day for Cultural Diversity for dialogue and development

<http://www.timeanddate.com/holidays/un/world-day-cultural-diversity-dialogue>

15 - 21 May

National Families Week

<http://www.familiesaustralia.org.au/familiesweek/index.htm>

26 May

National Sorry Day

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

27 May – 3 June 2011

National Reconciliation Week

<http://www.reconciliation.org.au/i-cms.jsp>

Commissioner in your material as well as our website address.
www.antidiscrimination.tas.gov.au. We would love to receive
copies of your publications.

Edit your subscription | Unsubscribe instantly

be an information, reference and
education tool for and about
discrimination law and the
Tasmanian community and
workplaces.