

# *In respect of rights*



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## Message from the Anti-Discrimination Commissioner



It has been disturbing to read and hear of race-related abuse and violence happening in Tasmania in recent weeks. While we have much to celebrate here in Tasmania with a community that, in the main, has shown a wonderful capacity to embrace new

members and greater diversity, we clearly still need to be vigilant in identifying and taking appropriate action against racism.

We can celebrate what it is to be part of the Australian community and what it is to be part of the Tasmanian community without claiming a singular Australian or Tasmanian identity. We can celebrate without using language such as 'unAustralian' and without claiming that anyone or thing that is different from our experience of Australia or Tasmania is not part of that celebration.

Indeed, we can celebrate much more by celebrating what each and every one of us brings to the cultural, social and economic mix of our communities, by celebrating the diversity that we have while recognising that we share our humanity and our connection to this place.

Race-related abuse and violence is unlawful in Tasmania, both under the Anti-Discrimination Act and, depending on the actions involved, under criminal law. It not only causes physical harm to the people at whom it is directed, but it also shapes the way others see us as a community. It also causes deep and enduring emotional harm. The

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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.

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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@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 appointment if you need assistance or the services of an interpreter.

#### Invitation to all readers

Readers who have particular topics they wish to know more about or items to include in the next issue are encouraged to contact the Editor.

Any comments and feedback

old schoolyard ditty, 'Sticks and stones may break my bones, but names will never hurt me', is rubbish. Names do hurt, and they hurt in real and enduring ways. They can undermine, in a single utterance, the positive effects of being made to feel welcome as a newcomer into our community.

As one young Humanitarian entrant from Sudan via Uganda, Rodi Kenyi, said (as reported in the Tasmanian Centre for Global Learning's Living in Between Project Report (2011)): 'Racism is like a spear wounding you. One racist remark can cancel out 100 friendly things people do. I am told to ignore it, walk away but that does not stop the feeling that I will never fit in, never belong here.'

We do need to think before we speak and act, to consider whether we will be causing harm to another by our words or actions. That is part of living in and being part of a community.

**Robin Banks**  
**Anti-Discrimination Commissioner**

**Anti-**

## From the OADC

Last month in *In respect of rights* we covered the values, stakeholders and objectives of the OADC, this month we have an overview of our plans for 2012 and beyond.

At the 2011 OADC planning day, staff members identified a number of internal and external priorities for 2011–12. Staff also looked at ways the OADC can enhance information, education and promotional activities including identifying priority groups for outreach, improve its internal communications, influence positive community change, improve on current complaint processes and establish internal programs for staff development.

Here are the OADC's project priorities for 2011-12.

- Develop and implement **new approach to complaints:** Transition from a procedural model to a model that involves early resolution and active investigation. In 2010-12, the OADC saw a significant increase (39%) in complaints of discrimination and prohibited conduct. To respond to this increased complaint level, improve the experience and outcomes for people involved in complaints and have the capacity to focus on prevention and systemic issues, the OADC is reviewing its complaint handling processes and improving and streamlining those processes.
- Enhance the strategic use of the **incident reporting process** and data through providing de-identified report data to key stakeholders and working with those stakeholders to identify and

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

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pursue prevention strategies as well as improved responses to victims.

- Develop **exemption guidance materials**. The OADC is researching and will develop public guidance materials on the exemption granting powers under the Act to assist potential applicants to understand the purpose and scope of the power and information needed to support an application.
- Review **complaint form**: The OADC is reviewing the current form that may be used to make a complaint of discrimination or prohibited conduct.
- Increase **diversity of training activities and methodology**.
- Update all information **brochure content**.
- Improve **website content and accessibility**.
- Working with schools/educators to develop appropriate resources and **educational material for staff and students**.
- Develop **more printed educational materials** for distribution at events, expos, seminars, training, etc.
- Update **Contact Officer prompt cards**.
- Develop **guidelines and template materials for workplace anti-discrimination/grievance and social networking policies**.
- Develop **guidelines on Event and Venue Accessibility and Inclusive Language policy** development.
- Develop and conduct **targeted training** in partnership with Migrant Resource Centre (South) for Football Federation Tasmania.
- Redesign of OADC *Tas-Discrimination News* **monthly newsletter and relaunch** with Campaign Monitor.
- Continue and build relationship with **Play By The Rules**, a National partnership project to raise awareness of discrimination and harassment prevention in sport and recreation.
- Develop **Reconciliation Action Plan**.
- Target **priority groups for community education and training**.
- Improve **access to representation**. The OADC will be seeking to improve support to and representation of parties in the complaint process through ongoing engagement with legal practitioners, Tasmanian community legal centres and advocacy organisations.
- Develop **Respondent booklet**: an information booklet consolidating information about OADC complaint processes for respondents (a similar booklet for complainants is planned for 2012-13).

All OADC staff members are working hard to achieve the above priorities with our 2012 training day fast approaching.

## **FAQs**

### **Workplace Support / Contact Officers**

### **What is a Workplace Support / Contact Officer?**

- Workplace Support / Contact Officers are members of staff of organisations who are trained to give other staff support and confidential information about their options to deal with work-related discrimination, harassment, bullying or other workplace concerns.

### **Why such a long name?**

- Many workplaces are familiar with the titles, 'Contact Officer' or 'Contact Person'. Some use the titles, 'Workplace Diversity Officer' or 'Equity and Diversity Officer'. Sporting organisations often use the title, 'Member Protection Information Officer'.
- The OADC previously used the title 'Contact Officer' but feels that this may not clearly describe the role to people in the workplace so the new title Workplace Support / Contact Officer is being used to better reflect the support aspect of the role.

### **Do Workplace Support / Contact Officers get paid?**

- The Workplace Support / Contact Officer is not employed to be a Workplace Support / Contact Officer. Rather, it is an add-on role to the person's main position in their organisation and is not a paid role.

### **How do I know if my workplace has Workplace Support / Contact Officers?**

- Your workplace should display and/or make readily available the names and contact details of all Workplace Support / Contact Officers. Information about Workplace Support / Contact Officers should be part of staff induction and included in workplace discrimination and grievance policies.

### **Does my workplace have to have Workplace Support / Contact Officers?**

- There is no legal requirement for a workplace to have Workplace Support / Contact Officers. However, under section 104 of the *Anti-Discrimination Act 1998* (Tas) every workplace has an obligation to take reasonable steps to ensure there is no discrimination or prohibited conduct.
- Appointing and training Workplace Support / Contact Officers may be one of the ways to meet section 104 obligations.

### **Will the Workplace Support / Contact Officer fix my workplace concern for me?**

- The role of the Workplace Support / Contact Officer is to provide information and support.

- A Workplace Support / Contact Officer will not act or speak for any person involved in a workplace problem. They will not fix, mediate or investigate a complaint, however they will outline and explain strategies and options that are available for you to deal with your concerns.

**My workplace has more than one Workplace Support / Contact Officer, how do I know who to see?**

- A workplace should have enough Workplace Support / Contact Officers to support all employees.
- You do not have to see the Workplace Support / Contact Officer in your direct team, work area or division.
- You should choose a Workplace Support / Contact Officer who you feel comfortable to talk with.

**There has been a complaint made about me, can I talk to a Workplace Support / Contact Officer?**

- Workplace Support / Contact Officers will give information and support to any of the people involved in a work-related concern.

## **Legal News**

**Refusal to allow disabled woman on flight not illegal discrimination**

***King v Jetstar Airways Pty Ltd (No 2) [2012] FCA 8***

The complainant, Mrs Sheila King, booked a Jetstar flight using the airline's online booking service. She did not tick the box indicating she uses a wheelchair. When she called Jetstar to discuss her requirement for assistance boarding and disembarking from the aircraft due to her mobility impairment, she was told that she was not able to travel on that flight as there were already two people who use wheelchairs booked on that flight. The complainant was told that Jetstar had a limit of two wheelchair users per flight and the person she spoke to offered to book her on a different flight at no charge but she refused this offer. The complainant booked a flight with a different airline and sought a refund from Jetstar.

The complainant then alleged that Jetstar had unlawfully discriminated against her by refusing her carriage on the flight of her choice due to her use of a wheelchair.

The Federal Court found that Jetstar had discriminated against the complainant in the provision of a service. The service identified was the provision of airline travel on a particular flight. The refusal to provide that service was on the grounds of the complainant's

disability. However, Jetstar argued that it could rely on the defence of unjustifiable hardship, submitting that the discrimination was not unlawful as the cost of having a system that would enable it to carry an unlimited number of people who use wheelchairs on flights would be significant and prohibitive. The majority of the evidence on this point related to the time taken by staff to provide the required assistance to passengers using wheelchairs to board and disembark and the airline's business model. Based on Jetstar's mode of providing assistance, it was determined that the average time required to assist a passenger in the complainant's circumstance would be approximately 16 minutes in total. Where aircraft turnaround is 30 minutes it is not possible to assist more than two passengers before on-time performance is affected.

The Court held that the refusal to book more than two passengers requiring assistance because of their use of a wheelchair per flight was not unlawful discrimination because of unjustifiable hardship. To impose an obligation on Jetstar to accept bookings for an unlimited number of people who use wheelchairs on flights would result in an unjustifiable hardship.

As a result, Mrs King's complaint was dismissed and she was ordered to pay the legal costs of Jetstar, which had been capped at \$20,000 by the Court on the basis that the complaint was in the public interest.

<http://www.austlii.edu.au/au/cases/cth/FCA/2012/8.html>

## Conciliation Outcomes

**A complainant alleged discrimination on the basis of disability:** he took a period of leave for a medical condition and on his return to work he was not permitted to return to his previous duties.

The complaint was resolved through early dispute resolution by the complainant and his employer discussing and understanding the issue from each other's points of view.

The employer also agreed to pay the complainant \$8,500.00 in compensation.

**A complainant alleged sexual harassment:** her boss made inappropriate comments and ask her to have sex with him.

Through conciliation and without admitting liability, the boss agreed to pay the complainant \$15,000 and the workplace agreed to develop policies and procedures including discrimination and sexual harassment prevention policies, and for all staff of the business to

undertake anti-discrimination training.

## Training News

### Workplace Support / Contact Officers

Workplace Support / Contact Officers are an important resource for organisations and so, with this in mind, the OADC is looking at how it can not only support Workplace Support / Contact Officers to fulfill their role but also support managers to use their Workplace Support / Contact Officers to the advantage of their organisations.

The OADC website has a newly updated support document, *The role of the workplace support / contact officer*, and the OADC also has developed a template Workplace Support / Contact Officer brochure that has been e-mailed to all Workplace Support / Contact Officers that it has trained. This template is available on request.

In early March, the OADC will be facilitating the first of a series of Manager 'lunchbox' seminars on the topic, 'Using your Workplace Support / Contact Officers to help your organisation'.

### Latrobe Training sessions

It has been a couple of years since the OADC last trialled calendar training sessions outside of Hobart or Launceston, so we are pleased to invite participants to training sessions in Latrobe.

Thanks to Mersey Community Hospital, we have booked Training Room 2D on 11 and 12 April and will be delivering *Engaging diversity & discrimination, harassment & bullying* as well as *Discrimination free management and management practices*. To register go to [http://www.antidiscrimination.tas.gov.au/education\\_and\\_training](http://www.antidiscrimination.tas.gov.au/education_and_training)

## February and March Training Calendar

### Engaging Diversity & Discrimination, harassment & bullying

Tuesday 21 February

**Hobart**

9.30 - 11.30 am

Thursday 1 March

**Launceston**

1.00 - 3.00 pm

Cost per person: \$110.00 (pre GST)

**Manager lunchbox awareness session: 'Using your Workplace Support / Contact Officers to help your organisation'**

Tuesday 6 March

**Hobart**

12.00 noon - 1.00 pm

Cost per person: FREE

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

Monday 27 & Tuesday 28 February

**Hobart**

9.30 am - 4.30 pm both days

Cost per person: \$770.00 (pre GST)

**Workplace Support / Contact Officer Role**

Thursday 15 & Friday 16 March

**Launceston**

Monday 19 & Tuesday 20 March

**Hobart**

Day 1: 1.00 - 5.00 pm; Day 2: 9.00 am - 1.30 pm

Cost per person: \$440.00 (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**

### **Beyond maturity blues peer education sessions**

Beyond Blue and COTA Tas have teamed up to deliver free education sessions on anxiety and depression to community groups. Sessions are delivered by volunteers aged 50 years and over who are trained to talk to their peers about anxiety and depression. These discussions are a good opportunity to ask questions and learn more about these conditions from someone your own age. Sessions are available in other languages (Italian, Greek, Chinese and Vietnamese) presented by bi-lingual peer educators.

Already, almost 60,000 older people have attended the beyond maturity blues peer education sessions across Australia.

For enquiries about COTA's free information sessions or to book a session, please e-mail [janeb@cotatas.org.au](mailto:janeb@cotatas.org.au)

### **Older Tasmanians Mental Health and Wellbeing Forum**

The Mental Health Council of Tasmania (MHCT) and COTA Tas held a forum in October 2011 to enable older Tasmanians and their carers to share ideas on what they do to maintain positive mental health and wellbeing. Around 80 people attended the forum in held in Glenorchy. The forum heard from carers, older Tasmanians, service providers and COTA Tas Champions. Many ideas on how to stay positive and enjoy positive mental health were discussed, including: attending social activities, spending time with friends and family, prayer and meditation, volunteering and visiting people. The MHCT will compile a report that will outline what older Tasmanians do to stay connected to their community, and the barriers to them from staying socially connected and engaged in meaningful activities. This report will inform service providers on the need to improve mental health and wellbeing services for older Tasmanians. The full report will be available on the Cota Tas website mid February <http://www.cotatas.org.au/>.

## **National News**

### **Announcement of the People of Australia Ambassadors**

People of Australia Ambassadors are people who have been recognised for their contribution to the community.

The OADC congratulates two Tasmanians; Fayia Isaiah Lahai and Saijini Sumar, who were among a list of 40 People of Australia Ambassadors, selected from more than 400 applicants across Australia and announced by Prime Minister Julia Gillard in Canberra.

Fayia Isaiah Lahai and Saijini Sumar will represent the interests and opinions of Australia's multicultural community and strengthen the Government's multicultural policy.

<http://www.amc.gov.au/ambassadors/>

### **Grad Salary Stats Don't Add Up for Women**

Equal Opportunity for Women in the Workplace Agency (EOWA) Director, Helen Conway, is calling on employers to take a long, hard look at their remuneration practices following the release of figures

that show female graduates are paid up to 14.3 per cent less than their male counterparts.

'Graduate Careers Australia figures demonstrate that, from day one, female employees are behind the eight-ball across a range of industries when it comes to salaries, earning an average of \$2,000 less per year than males,' Ms Conway said.

'Businesses need to take a close look at their recruitment practices to stop this discrimination and ensure they attract and retain the best employees, regardless of gender.'

Ms Conway said discrimination may be embedded in recruitment practices and this could be identified by conducting a simple analysis of salaries by gender for equivalent positions.

'There should be greater transparency around salaries for graduate jobs. Graduates deserve to know that what they are being paid is fair and not influenced by gender,' she said.

EOWA recommends companies conduct regular remuneration audits to identify any pay gaps that may exist in their organisations.

EOWA is committed to helping businesses ensure all employees are paid equal remuneration for work of equal or comparable value. The Agency has a range of tools to help businesses establish whether they have a problem and adjust policies, processes and procedures that may incorporate gender bias.

'The gender pay gap continues to be a problem and this is unacceptable in 2012,' Ms Conway said.

'Making sure graduate salaries are equitable will begin to tackle this problem. Let's give all people a fair go right from the start.'

For more about EOWA and to access a range of resources, <http://www.eowa.gov.au>

### **Historic decision leads Australia a step closer to making equal remuneration for women a reality**

Elizabeth Broderick, Sex Discrimination Commissioner, has welcomed the decision by Fair Work Australia to award more than 200,000 social and community services sector workers, pay-rises of between 19 and 41 per cent.

Commissioner Broderick said: "This historic decision will make a real difference to these workers and their families. The first ever successful claim for an equal remuneration order in the national system also means a significant advance for equal pay for women." The decision confirms Fair Work Australia's interim decision last May,

which found that the Social and Community Services workers do not receive remuneration equal to that 'of employees of state and local governments who perform similar work, and that gender has been important in creating that pay gap'.

"The work of the social and community services sector is some of the most important and yet undervalued work in Australia. One of the primary reasons this work has been unrecognised until now is because it is predominately done by women," said Commissioner Broderick

"Equal remuneration for work of equal value is a human right, of which many women in Australia are deprived. Its absence has had significant adverse and economic consequences in Australia. Today's decision is a significant step in addressing that problem, to ensure that there is equal pay for women," said Commissioner Broderick.

Commissioner Broderick said "It will be important for all federal, State and Territory governments to make adequate funding available to ensure that the decision can be implemented without job losses or reduction of services."

"This case was the country's first equal pay test case under the new legislation. It demonstrates the value of an equal remuneration order under the Fair Work Act in ensuring that appropriate provisions are made for equal pay across sectors where there is gender pay inequality," said Commissioner Broderick.

She also said "importantly, the decision will also help the social and community services sector attract and keep qualified, valuable employees."

## **Community Information**

### **2012 National NAIDOC Poster Competition and Nominations for the 2012 National NAIDOC Awards now open!**

The theme for NAIDOC Week 2012 is 'Spirit of the Tent Embassy: 40 years on'.

Aboriginal and Torres Strait Islander artists are invited to submit an artwork to the 2012 National NAIDOC Poster Competition based on this year's theme. Entries close Friday 30 March 2012.

If you know an Aboriginal person or Torres Strait Islander who deserves recognition for their achievements then nominate them for a 2012 National NAIDOC Award. Nominations close Friday 27 April 2012.

Forms are available online at [www.naidoc.org.au](http://www.naidoc.org.au) or from your

nearest Indigenous Co-ordination Centre.

## Community Calendar

### **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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