



## Message from the Commissioner



The first year of my tenure as Commissioner has flown by. The progress of the Anti-Discrimination Commission (ADC) during that time may be gauged by reading our 2002-2003 Annual Report which has now been tabled in Parliament.

As can be seen, we continue to meet our targets and my talented and committed staff deserve praise in that regard. We have also completed the 2002-2003 Annual Report of the Community Visitor Program – a program under the *Mental and Related Services Act* operated by ADC. The CVP is designed to safeguard the rights and health of community members whose mental health problems limit their capacity to access existing complaint mechanisms.

These Reports are available on the ADC and CVP websites or from our Darwin and Alice Springs offices.

Whilst a significant proportion of our daily work is complaint driven, the ADC continues to take every opportunity to be pro-active.

We operate a very active Education and Training Division (which now boasts two full-time officers – a 100% increase since our last newsletter in June 2003).

We provide advice to the Attorney General; we provide advice and respond to enquiries from all levels of the public and private sector; we respond to current issues of concern through the media or relevant agencies; we put the ADC view to various committees of which we are a member, and provide informed comment on a variety of initiatives such as impending legislation, government employment strategies and parliamentary enquiries (federal and state).

### Complaints about Treatment by Security Guards or Shop Staff

From time to time we receive enquiries about the activities of shop-staff or management or security guards at our shopping centres. Moving people on or evicting them from shopping centres may be unlawful and discriminatory if the action taken is unjustified and based on age, race, breastfeeding, or some other attribute under the *Anti-Discrimination Act* (the Act). Similarly, shop-staff who conduct bag searches or follow customers around the premises may be infringing the Act in certain circumstances. If you, or your children, or your acquaintances, require advice in this area do not hesitate to call our office.

### Current projects of interest:

- The review of the Anti-Discrimination Act which is currently underway and which will culminate in a discussion paper to be widely circulated. This will enable the public to comment on proposed amendments.
- Our strategy for information delivery and awareness-raising in outlying areas of the NT has produced an information video which is currently being translated into the 14 most widely spoken indigenous languages in the NT. The video, featuring indigenous actors, will be shown out bush and is designed to help people understand their rights and responsibilities.
- Our push for an additional and more accessible shopfront office in Casuarina will shortly be considered by Cabinet as part of the latest Department of Justice umbrella Cabinet submission.

### Conciliation Conference Reporting

As you will see later in this newsletter, we continue our policy of reporting on the outcomes of conciliated complaints. The overwhelming majority of accepted complaints are resolved through conciliation. Conciliation sessions are confidential

*continued on next page...*

## Contents

Message from the Commissioner .....	Page 1	Winners of the ADC Logo Competition .....	Page 2
Welcome to Simon Wiese .....	Page 2	Recently Conciliated Complaints .....	Page 3
The Anti-Discrimination Commission .....	Page 2	Discrimination in Accommodation .....	Page 4

...continued from front page

to encourage parties to partake in frank discussions and to share information not disclosed outside the conciliation conference.

Reporting on conciliated complaints does not infringe the policy against “disclosure outside the conciliation conference” because the complaint reports are all “de-personalised”, to ensure parties’ privacy. The fundamental imperative for reporting conciliated outcomes is to promote recognition and acceptance of our processes in the community. The Conciliated Complaints section of our last newsletter received considerable positive community feedback.

### The Year Ahead

The year ahead will hopefully see legislative change and some improvement in our resource and staff funding levels. This will enhance our ability to ensure that those from disadvantaged groups (ie non-English speaking backgrounds, indigenous, disabled and women) have the same opportunities as the rest of society.

**Tony Fitzgerald**  
Commissioner

## Welcome to Simon Wiese

### We welcome our new conciliator, Simon Wiese.



After Jacqui Bourke departed in April this year, Terry Lisson battled on by herself for several weeks until we fortunately secured the services of Leigh Barnaba on loan for six months from the ADC of Queensland. Leigh did a marvellous job and has opened our eyes to the possibility of additional interstate job rotations in the future.

Simon’s arrival is timely indeed. He is an experienced negotiator and mediator who was born in Darwin and completed his schooling here. He obtained a Bachelor of Arts (BA) in Perth in 1993 and was employed by the NT Education Department shortly afterwards.

Simon has worked in human resource management and industrial relations roles with the Office of the Commissioner for Public Employment, NT Correctional Services and Department of Justice.

He has been involved in negotiating enterprise bargaining and other industrial agreements as well as investigating and resolving employee complaints and grievances.

In addition to ADC complaint handling, Simon will coordinate the various operations of the Community Visitor Program.

## WINNERS OF THE LOGO COMPETITION

**Congratulations to: Amanda Kay from the Darwin High School and Priscilla Campbell from the Araluen Christian School in Alice Springs.**

They each receive a Winner’s Certificate, Certificate of Participation and gift vouchers to the value of \$150. In addition, the winners’ school libraries receive library books of their choice with an anti-discrimination theme.

We received many outstanding entries from students throughout the Northern Territory and we take this opportunity to congratulate and thank all participants.

Certificates of Participation were also sent to all students who sent in entries.

## Anti-Discrimination Commission

### What types of discrimination do we deal with?

The prohibited grounds of discrimination and the areas they cover are as follows:

**Grounds:** Race · Sex · Sexuality · Age · Marital status · Pregnancy · Parenthood · Breastfeeding · Impairment Trade union or employer association activity · Religious belief or activity · Political opinion, affiliation or activity Irrelevant medical record · Irrelevant criminal record · Association with a person who has, or is believed to have, an attribute referred to in this section.

**Areas:** Education · Work · Accommodation · Goods, services and facilities · Clubs; and Insurance and superannuation

### Helpline for Managers and Supervisors

The Anti-Discrimination Commission assists supervisors in dealing with discrimination or harassment in the workplace. Our staff will help you to effectively deal with your own complaints and grievances. Unresolved complaints result in time wasting, mistakes, sickness, turnover of staff in resignations and transfers and even legal costs due to litigation. Call our managers and supervisors helpline: **NT FREE CALL 1800 501 288**



## RACE

An Aboriginal woman alleged that a security guard had subjected her to racial discrimination and harassment on the basis of her race. She had purchased some wine and asked the security guard to watch it for her while she shopped for groceries. Upon her return a few minutes later she found her wine was missing and she alleged that, when she complained about this to the same security guard, he then forcibly removed her from the premises and called her a “f@#! nigger”.

The security guard denied insulting her and said that he had removed her from the premises because she abused him over the missing wine. Witnesses were unable to confirm what had been said between the parties.

The security guard’s employer was contacted by the ADC. The store manager expressed concern over the incident, stating that the company had an active EEO policy and would not tolerate any racial discrimination by employees. The store agreed to speak to the security company and the guard involved in the incident, and to have them receive advice and training about discrimination and harassment issues. The store also apologised to the Complainant, and replaced her wine and gave her a gift as a token of goodwill.

The complaint was resolved within one week of it being received and the parties were very pleased with the outcome.

## SEEKING UNNECESSARY INFORMATION

A Complainant alleged that the Respondent’s ‘Application for Employment Form’ asked unnecessary questions upon which discrimination might be based. The form asked very invasive questions about personal health issues and also about such things as whether the applicant belonged to a union, had ever taken industrial action against a former employer, the names of all medication the applicant was taking, how often the applicant drank alcohol etc.

The ADC contacted the Respondent, who had not been aware that it might be unlawful to ask these kinds of questions on an employment application form. When it was explained that section 26 of the Act prohibits asking another person to “supply information on which unlawful discrimination might be based” the Respondent was willing to amend the form to remove questions which might be in breach of the Act. This amendment was done in consultation with the ADC and the Respondent agreed to use only the amended application form from that point onward. The Respondent also offered an apology to the Complainant.

The matter was thus quickly and amicably resolved to the satisfaction of both parties.

## IMPAIRMENT

The Complainant worked as a labourer/gardener for the Respondent on a three-month temporary contract. Near the end of this period a similar position at a higher level became available. The Complainant applied for this position, and as his supervisor and work mates had said his work performance was good and he was the only applicant, he believed the interview was a formality and the job was his. During the interview he was asked questions about a previous injury which might affect his ability to do the job. When he didn’t get the job he became convinced that the reason was because of his impairment.

At conciliation the parties discussed the Complainant’s work performance and performance at interview and the Complainant was made aware that the position had been given to a person with better training and skills. However, the Respondent acknowledged that the matter had been badly handled and that the Complainant had reason to believe his injury had been a factor in the decision not to hire him.

The following settlement was reached:

- The sum of \$2500.00 was paid to the Complainant
- An apology was given to the Complainant by the Respondent for the way the matter had been handled and the distress caused to the Complainant
- The Complainant also apologised for some of his actions towards the Respondent after he learned he did not receive the position
- The Respondent acknowledged that the Complainant had been a good worker and agreed to reconsider him for a position at an appropriate level and to do so without regard to the difficulties that had occurred between them.



# Discrimination in Accommodation

Discrimination occurs whenever a landlord, real estate agent or owner makes a decision based on assumptions, beliefs or prejudice about a person's race, sex, sexuality, age, marital status, pregnancy, parenthood, irrelevant criminal record etc. This can be when an application to rent, or to extend the rental period is refused or different terms and conditions are applied to applications, rental period or evictions; a higher rent or purchase price is charged, or; a client's direction to contravene the *NT Anti-Discrimination Act 1992* (the Act) is obeyed.

The Act does not force property managers to make unwise commercial decisions. All decisions may be made by applying ordinary commercial criteria, ie. a person's ability to meet the required payments, and if renting a property to maintain that property.

Property managers need to explain rights and responsibilities contained in the Act to vendors and landlords at the earliest opportunity, preferably at the first consultation.

They need to ensure staff treat all clients fairly, provide clear non-discriminatory written procedures for approving or refusing applications and phrase tenancy application forms carefully. Questions about personal characteristics or lifestyles may lead people to believe that this information has been used as a basis for refusing their application.

## Frequently asked questions:

### **Can landlords decide who they rent to?**

Yes, provided they select according to economic criteria such as:

- Can the applicant prove an ability to pay the rent?
- Can the applicant prove their capacity to maintain the property?

Decisions based on prejudices and stereotypes such as race, disability, sex, sexuality etc. may be unlawful discrimination.

### **What happens if the landlord tells the real estate agent not to rent to Aboriginal people, homosexuals or young single males?**

The agent should advise the landlord that this is discrimination and to advertise this way is a separate prohibited conduct. Landlords who exclude unfairly, may miss out on the best tenant and risk a complaint under the Act.

### **I want to put an advertisement in the paper for my flat and want to say, "suitable for married couples, no kids, no pets and non smoking" What can I do legally?**

Even by saying "suitable" or "preferred" you are actually stating who you want to rent to. This would be discrimination on the basis of marital status, or parenthood. You are permitted to exclude pets or smoking in your flat.

### **The real estate agent is saying that because I am under 18, they won't rent to me until I have provided a written adult guarantor. Why do I need this as I have a permanent job?**

The *NT Residential Tenancy Act* says that if you are over the age of 16 you may enter into a tenancy agreement. Ring the Anti-Discrimination Commission or Consumer Affairs. This may be discrimination.

### **I went to PAWA to get the power put into my name and they said I had to have a written guarantor as well.**

Not any more. PAWA has revised its policy so that under 18's are now eligible to enter into electrical supply contracts. PAWA cannot discriminate in providing essential services. In June 2003 ADC and PAWA developed a revised policy (see "Fair Go" edition 1).

### **I want to share my two bedroom flat to help pay the rent and I only want to live with a particular person. Can I do this?**

Yes, you may share your own living space with whoever you wish. A specific exemption in the Act covers this issue.

### **Is it really worth complaining?**

This is a difficult question to answer. It has to be an individual decision. If you don't address issues of discrimination and harassment they usually persist. If you complain you might be victimised (which is prohibited conduct under the Act). There are time constraints, but our conciliators assist parties to resolve their differences as quickly as possible (resolution of complaints takes three months on average).

## Examples of conciliated outcomes are:

EEO training in the organisation (so everyone knows their rights and responsibilities), a public apology, a free meal at a restaurant, a change to the organisation's policies and procedures to prevent future discrimination, and/or an agreement to pay compensation.

**FOR FURTHER INFORMATION OR ADVICE REGARDING THE COMMISSION OR A COMPLAINT, CONTACT:**

Northern Territory Anti-Discrimination Commission

Darwin: 7th Floor, 9-11 Cavenagh St, Darwin • Postal Address: LMB 22, GPO Darwin NT 0801

Phone: (08) 8999 1444 • Free call: 1800 813 846 • Fax: (08) 8981 3812 • TTY: (08) 8999 1466

Alice Springs: Ground Floor Centre Point Building, 54 Hartley Street, Alice Springs (08) 8951 5818

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