



Message from the Commissioner

In this issue I want to take the time to remind readers of the important role performed by the Anti-Discrimination Commission (ADC) in educating citizens of the NT about their rights and responsibilities under the NT *Anti-Discrimination Act* ("the Act").

Community education improves community understanding of discrimination, equal opportunity and harassment issues, challenges the numerous myths and stereotypes surrounding these issues that exist in the general community, and demonstrates the way in which ADC manages such issues.

Through community education we strive to provide NT citizens, in a proactive way, with the skills to recognise and avoid unlawful and discriminatory treatment, or to personally tackle such treatment should it affect them in any way.

Community education, delivered by our trainers, takes place in workplaces, in council chambers, in local halls, at remote outstations, in schools, in government agencies or in private firms. The programs on offer are tailored to suit the requirements of any audience.

A proactive approach is also evident in the way we manage enquiries, complaints and disputes about discrimination and harassment.

Our telephone enquiry service (freecall 1800 813 846) provides practical down to earth assistance every day to scores of NT private and corporate citizens on a large variety of issues and concerns – most of which are headed off before acquiring formal complaint status. Our 'Helpline for Managers and Supervisors' (freecall 1800 501 288) assists management in preventing or dealing with discrimination and harassment quickly and effectively.

Approximately 95% of the formal complaints that we receive about discrimination and/or harassment are resolved at conciliation. Our conciliation model works because without delay it enables people in dispute to look one another in the eye, have their say, be listened to, and then work out their own solutions in a safe and confidential environment managed by our neutral conciliators.



Even though dispute resolution through conciliation is a managed exercise, it is informal and proactive to the extent that it avoids the need for a formal public hearing of an unresolved complaint.

ADC strives to make a difference to the quality of life of those who seek our assistance. As community educators we promote an understanding by every citizen of his or her rights, and an observance of his or her responsibilities, under the Act. It is essential for a free and fair society that we continue to do so.

Tony Fitzgerald
Commissioner

Demystifying our complaint process

What you need to know about the process of lodging a complaint with the Anti-Discrimination Commission

If you feel you have been discriminated against because of your race, age, sex, sexuality, disability, religious beliefs, political beliefs, irrelevant criminal record etc, then you should contact the Anti Discrimination Commission (ADC) by phone, email, letter or personally. You can also access information on the ADC website at www.adc.nt.gov.au. ADC staff will respond to your enquiry within 24 hours with general advice.

If, after receiving this advice, you believe you have suffered unlawful discrimination, you can fill in an ADC complaint form or make a written complaint. You need to remember that complaints must be made within six months of the alleged discrimination. If you need an interpreter at any time during this process, on 24 hours notice, the ADC can make one available to you.

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Once the ADC has received your written complaint, it must decide whether the complaint is covered by the *Anti Discrimination Act* ('the Act'). If the complaint does not have enough evidence of unlawful discrimination, or is trivial or vexatious, the complaint will be rejected. Under the Act the decision to accept or reject your complaint must be made by the ADC within 60 days, but ADC policy requires a decision within two or three weeks.

When a complaint is accepted the *respondent* (that is the person/group/company whose behaviour is alleged to have been discriminatory) is advised in writing about the allegations made by you, the *complainant*. The respondent is given a chance to respond to the complaint, telling its side of the story.

At any point, or as soon as you and the respondent wish, an ADC conciliator is available by telephone or personally to assist you and the respondent to settle the complaint by impartially providing advice, suggesting possible solutions and holding meetings. If at any stage you need help, talk to an ADC conciliator.

If you are unable to resolve the complaint, then the ADC fully investigates the matter and decides if there is enough evidence to proceed to formal conciliation—a confidential process in which you and the respondent meet in the presence of our conciliator and attempt to find a mutually acceptable settlement. If you reach an agreement through conciliation, then ADC assists by reducing it to writing. Your complaint will usually be resolved within six months (ADC average resolution time is three months).

If your complaint cannot be resolved, and providing it has substance, then it moves to a public hearing before the Anti-Discrimination Commissioner. This hearing is similar to, but less formal than, a court hearing. If your allegation of discrimination is found proven, orders which may be made by the Commissioner include reinstatement to employment, compensation for lost earnings, damages and injunctions.

In the last 18 months approximately 95% of all the complaints accepted by the ADC have been resolved at conciliation. Only four complaints have proceeded to hearing in that time.

Finally, it is important to remember that at the various stages of complaint processing the ADC adopts a neutral position and does not represent complainant or respondent.

What is The Community Visitor Program?

The Community Visitor Program is established under Part 14 of the *Mental Health and Related Services Act (NT) 1998*. The program is independent of mental health services, and acts as one mechanism to ensure that a quality service is available to people with mental health related problems. It also acts to ensure that the human rights of people with mental illness are respected.

The Program is located in the NT Anti-Discrimination Commission to ensure that it remains independent of mental health services.

Any person receiving treatment under *the Mental Health Act* can access the Community Visitor Program.

There are two arms to the program. A Community Visitor Panel is required to visit each approved treatment facility (for example, Cowdy Ward) and each approved treatment agency (for example, Darwin Urban Mental Health Service) at least once every 6 months. During this visit, the Panel will enquire into matters such as the adequacy of services available to consumers; the adequacy of treatment, accommodation and information about rights and complaints procedures.

A report is written by the Panel and forwarded to the Principal Community Visitor and then to the person-in-charge of the approved treatment facility or approved treatment agency visited.

The panel has three members, a legal practitioner, a medical practitioner and a community member who has a special interest or expertise in mental illness or mental disturbance and who is able to represent the interests of consumer organisations.

The second arm of the program is comprised of community visitors. Community visitors can visit mental health wards such as Cowdy Ward and the Mental Health Unit in Alice Springs, either by just calling in to the ward or in response to requests and/or complaints from consumers. They can also visit persons receiving treatment at an approved treatment agency such as a community mental health team.

Under the Mental Health Act, a community visitor must respond to a request for a visit within 48 hours. During any visit, the visitor can assist consumers by supporting them in talking to staff, assisting with the resolution of complaints, assisting the consumer to make a complaint or assisting with appeals of any decisions made under *the Mental Health Act*.

Tony Fitzgerald, the Anti-Discrimination Commissioner, is appointed as the Principal Community Visitor. Terry Lisson, Simon Wiese and Judy Clisby are appointed as Community Visitors and visit primarily in the Top End. Ruth Morley has been appointed Community Visitor in Alice Springs. The community visitors panel in Alice Springs is comprised of Dr Arman Yazdani, Victoria Shiel and Geoff Harris as the medical practitioner, legal practitioner and community member respectively. Geoff Harris is appointed Chair of the panel. At this stage, Dr Sarah Giles is the medical practitioner member of the Darwin based panel. The two other positions have recently been advertised.

More information about the program is available at the Community Visitor Program website at: www.cvp.nt.gov.au. All Community Visitors can be contacted by: email: cvpprogramadc@nt.gov.au • phone: 8999 1451 • free call: 1800 021 919.



CONCILIATED COMPLAINTS

Parenthood and Seeking Unnecessary Information

The Complainant applied unsuccessfully for a job as administrative assistant. She alleged that when she asked one of the interviewers (a personal friend of hers) why she hadn't been appointed she was told that the interview panel had concerns as to whether her family responsibilities would permit her to do after hours work as required from time to time.

The chair of the interview panel was contacted by the ADC and when interviewed was adamant that the selection had been merit based and that the Complainant's family responsibilities were not a consideration. He maintained that the only question asked regarding family responsibilities was a general one asking if the person would be able to work after hours, and that it was specifically designed this way because they were aware of requirements of Anti-Discrimination law.

The Respondent offered to meet with the Complainant directly, or for her to speak to the panel about her allegations. After this meeting the Complainant indicated that she was now satisfied that the outcome of the selection process had been based on merit. However she also felt very satisfied that, as a result of her complaint, the Respondent now better understood its obligations not to ask questions upon which discrimination could be based. Accordingly the Complainant agreed that the complaint should be closed on the basis a conciliated resolution had been achieved.

Pregnancy and Failure to Accommodate a Special Need Arising from Parenthood

The Complainant was away from work on maternity leave when a re-structuring of the office meant that the supervisor's position for which she was the personal assistant was transferred to another city. When her supervisor refused the transfer he was paid a redundancy. The Complainant alleged that if she had not been on maternity leave she would have been offered the chance to transfer to that city or also been offered a redundancy. The Respondent argued that a position existed for her in the same office she had been in, which was virtually the same duties and paid the same money, and that she would not have been offered a transfer to Darwin as that option was only available for senior positions that could not be easily filled in Darwin.

At a conciliation conference, the parties reached an agreement that acknowledged that the matter could have been better handled and that, even though she was away on maternity leave, the Complainant should have been advised of the details of the restructuring and the positions which were becoming vacant in Darwin, so that she could apply for them if she wished. The Respondent offered to adjust the Complainant's work duties to suit her wishes if that would encourage her to return to work. However, the Complainant decided that she did not want to go back to work in the same office. A final settlement was reached on the following terms:

- the Complainant was provided with a positive letter of reference
- workplace policy was changed to ensure that in the future all employees away on sick leave or maternity leave would be advised of inter-departmental vacancies
- the Respondent paid the Complainant the sum of \$3500.00 to compensate her for any hurt or distress she suffered due to the matters raised in her complaint.

Race

The Complainant was employed for many years to perform a specific job. When the Respondent employer restructured its operations it required that all employees become multi-skilled. As a consequence of the restructure the Complainant was one of a small number of staff selected for redundancy.

The Complainant alleged that he was made redundant because of his race. However, he was unable to provide sufficient evidence that the decision to select him was made due to his race.

The Respondent provided evidence that all employees were subjected to the same selection criteria and the four employees with the poorest scores, including the Complainant, were selected for redundancy.

The Respondent also provided evidence that other employees of the same race as the Complainant were not made redundant.

The Commission found that there was no evidence that created a link between the Respondent's decision and the Complainant's race.

The Complaint was discontinued under section 102 of the Act as lacking in substance.



Judy Clisby: Community Visitor Program Manager

Judy and her partner moved to Darwin at the beginning of last year after visiting the Northern Territory briefly a few years earlier. Judy has a background working in neighbourhood organisations in Mt Gambier and Adelaide, during which time she developed a keen interest in mental health. She enrolled in a social work degree, and in her final year in 1995 undertook some research into the rights of people with mental health problems.

As a result, Judy became convinced that a program such as the Community Visitors Program is a vital and necessary tool to protect the human rights of people with mental illness. Accordingly, while doing a Parliamentary Internship in that same year, she researched and reported on the possibility of instituting a Community Visitors Program in South Australia.

Since then, Judy has worked primarily as a social worker in a community mental health team, with the exception of a brief stint in the Public Methadone Program in Drug and Alcohol Services SA, and Centrelink since moving to the NT.



Recent Decision 13 April 2004

(Full Decision available at our website)

Chris Blackham-Davidson & Toni Davidson v Kenneth Joils

The Complainants, a mother and her son, alleged unlawful discrimination by the Respondent at a crowded taxi rank at Darwin Airport on 6 October 2003. The son Chris Blackham-Davidson (CB-D) has permanent severe to profound hearing loss and requires the assistance of a hearing (or guide) dog. The Respondent taxi driver (R) refused to allow CB-D to travel in his taxi if accompanied by the dog.

The *Anti-Discrimination Act* makes it unlawful to treat a person less favourably because that person has a guide dog. It is also unlawful to discriminate a person "associated" with a person possessed of an impairment. The mother, Toni Davidson (TD), was on crutches, dependent upon CB-D, and also refused transport by R.

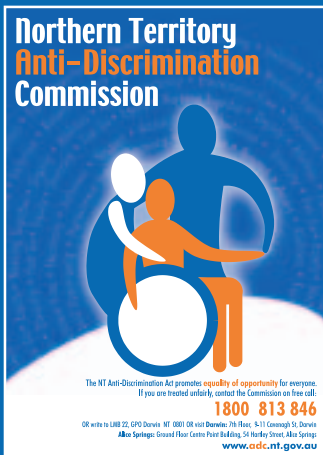
R was fined \$110 for "refusing a hiring involving a hearing dog" in breach of the Commercial Passenger (Misc) Regulations. Prior to the refusal of service, CB-D showed R the dog's written certification and explained R's obligation under the Act.

The Complainants were initially only interested in receiving an apology from R, but the apology was qualified and unacceptable. R's contention was that the Complainants were motivated by greed rather than principle. CB-D alleged that he was publicly humiliated, embarrassed and inconvenienced.

The Commissioner found R's action to be prohibited conduct under the Act and that the public nature of CB-D's humiliation aggravated his suffering.

The parties accepted the Commissioner's invitation to conciliate the question of damages, and after being provided with an Anti-Discrimination Commission conciliator and several current relevant decisions from interstate jurisdictions, were successful in reaching a conciliated settlement.

The order of the Commission is that by consent the Respondent pay to each complainant the sum of \$750 as compensation for inconvenience, embarrassment and humiliation caused by the prohibited conduct.



Introducing New ADC Poster

Posters are available in A4 and A3 size, please contact the Commission if you wish to receive a copy of our poster.



Play by the Rules is a very useful website for anyone involved in sport and recreation clubs and associations. The aim is to provide

- accessible and relevant information on harassment, discrimination and child protection to all participants in the sport and recreation industry at an individual club and association level.
- coaches, umpires, administrators and participants with the knowledge and skills to prevent, recognise and respond to harassment, discrimination and child abuse by providing Member protection policies, codes of conduct and training
- a risk management tool for sport and recreation clubs and associations to manage undesirable and unlawful behaviour.

The Office of Sports and Recreation and Anti-Discrimination Commission staff have been working closely together for the past 18 months to promote harassment free sport at all levels right across the Territory.

Our trainer Sue Rhodes is now the accredited training provider for all Harassment Free Sports courses and has just completed another Member Protection Officers training weekend. Other courses are planned for Jabiru and Alice Springs later in the year.

The Member Protection Officer is the first point of contact in a club for any complaints or concerns around harassment and abuse in sports. The MPO provides confidential information and support for the person alleging the harassment. Over 90% of complaints are effectively resolved at this level if the person is competent and adequately trained.

FOR FURTHER INFORMATION OR ADVICE, TO REQUEST TRAINING OR TO BE ADDED TO THE MAILING LIST 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

Website: www.adc.nt.gov.au • E-Mail: administrationadc@nt.gov.au