



fair Go

Newsletter of the Northern Territory **Anti-Discrimination** Commission

Christmas Edition, December 2004

From the Commissioner



In previous issues I've alluded to the Anti-Discrimination Commission (ADC) awareness raising strategy in remote areas. Now I propose to describe the strategy in some detail.

The strategy was devised for several reasons:

- To raise awareness about issues of unfair discrimination and sexual harassment in remote NT;
- To increase the profile of the ADC in remote Northern Territory;
- The high proportion of Territorians – about a third of the population – who reside in remote Northern Territory;
- The ADC's core duty under the *Anti-Discrimination Act* ('the Act') is to promote equality of opportunity in the NT – and in particular to promote the recognition and acceptance of non discriminatory attitudes;
- In the past remote NT has not been the beneficiary of significant promotional effort.

Most remote Northern Territory residents are indigenous. We recognised that indigenous Territorians are more likely to encounter situations of unfair discrimination when they come to town rather than while residing in their own remote communities. We decided that a strategy of "capturing" people at home may assist them to deal with any situations arising during their town visits.

The ATSIC regional councils throughout the NT provided us with addresses and contact persons for every NT outlying community (including outstations of 30 or more permanent inhabitants). As part of the strategy we then write to many of these townships and communities explaining who we are, what we do and how we can help. The letter invites interested communities to invite us to visit at a time that suits as many people as possible so we may explain our operation.

Enclosed with the letter is an information video of 20 minutes duration which, in collaboration with the Aboriginal Interpreter Service, is being translated into the following 14 most commonly spoken NT indigenous languages:

Burarra, Kunwinjku, Modern Tiwi, Murrinh-patha, Anindilyakwa, Gupapuyngu, Kriol, Warlpiri, Alyawarra, Warumungu, Eastern Arrernte, Western Arrernte, Southern Arrernte, and Pitjantjatjara.

The video features Aboriginal actors in "unlawful discrimination" scenarios. The viewer is encouraged to contact the ADC for help to sort out any problems.

We have covered Top End as far south as Wadeye, Mataranka and Borrooloola. The Central Australian batch has not been sent because of interpreter unavailability, but will go when video translations are finished.

We are now beginning to receive and accept invitations to visit various remote communities and deliver our message. We hope to receive many more invitations.

During community meetings the audience is informed that we receive few complaints from remote area dwellers. We suspect this is because people are unaware discrimination is unlawful, people lack the confidence to make a complaint, people are unaware how quickly complaints can be sorted out or people don't know about the ADC.

At meetings we explain that ADC does not represent any of the parties to a dispute, but provides a forum and a process for the resolution of disputes. We explain that part of the process involves conciliation, the advantages of which are a safe environment in the presence of a neutral conciliator (and an additional person of choice for moral support if needed) with rules of discussion. We also point out that conciliation need not take place in the presence of the other party if that is too overwhelming, but may proceed in a number of ways facilitated by the conciliator – for instance "telephone" conciliation, or "shuttle" conciliation where the conciliator moves between the parties.

At meetings most people appear to agree that conciliation (or if that is unsuccessful, public hearing of the complaint), provides them with an opportunity to help themselves bring about change, and to agree that the opportunity will not arise unless they take the brave step of lodging a complaint. ADC can't do anything unless a complaint is received, but once a complaint is lodged we provide a safe environment for the investigation and determination of disputes.

We have been enthusiastically received out bush by councils, health clinics, schools, outstation resource centres, art centres and other groups. We generally encounter a low level of awareness about our role and activities, and a high level of interest.

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Some attendees have described exposure to unlawful discrimination. For those of us who have yet to experience discrimination (and remember that the Act prohibits discrimination based on race, sex, sexuality, age, marital status, impairment, religious belief, political affiliation and more), it is difficult to appreciate just how difficult life can be for a person disadvantaged by discrimination. Imagine how humiliating or infuriating it would be if you were refused some type of service because of your race (or some other attribute under the Act)!

Other components of the strategy include continuing public education and training in all regional centres for schoolteachers, students, trainees (teachers, police officers, Aboriginal Community police officers, health workers), interpreters, and apprentices; participation in indigenous employment forums in all regional centres; and, enlisting the support of the NT Police Commissioner in displaying our posters in all NT Police Stations.

In order to prevent racial discrimination and promote compliance with the Act we as a society need to change discriminatory attitudes and behaviours. The ADC's public education and training initiatives aim to achieve this result, but the ADC's remote strategy is also part of the equation because if people are aware of their rights then they are better able to remind others of their responsibilities.

The remote strategy is an application of the principle under the Act that society needs to treat equally those who are truly equal, and assist those – even to the extent of treating them unequally – who are disadvantaged until their disadvantage is overcome.

Merry Christmas and Happy New Year.

Tony Fitzgerald

Community Visitor Program

In the last newsletter, I talked about the community visitor program having two “arms”, Community Visitors and Community Visitors Panels. Today, I'm going to provide some examples of what these two aspects of the program have achieved.

1 The Community Visitors Panel in Alice Springs conducted its first inspection of the Mental Health Unit at the Hospital in March this year. The report from the panel noted *that there is a difficulty with inpatient access to a telephone. There was provision for a public phone to be installed, however this has not occurred. Current practice is to allow in-patients to use the 'walk-around' phone that is a Mental Health Unit work phone line. There are a number of difficulties with this, including the likelihood of pressure from Mental Health Unit staff for inpatients to keep the phone calls short to keep the line relatively free for business calls. Another important issue raised about the shared line was that not uncommonly a carer would call to inquire about their family member and the inquiry would be answered by an in-patient who had the phone at the time.* The panel recommended that a “dedicated line with a walk around phone” be installed for the use of patients in the ward. This has since been installed.

2 The Community Visitors Program received a phone call from a family member about the windows in her son's bedroom in Cowdy Ward. Curtain fittings had been installed some time ago that had been designed specifically to support only 3kg weight. The curtains in the ward were considerably heavier than this, and consequently kept falling from the hooks. The community visitor visited the ward, and noted that the curtains were only half hanging right throughout the ward, and that any attempt to either open or close them resulted in them falling down. Nursing staff were repeatedly having to rehang the curtains, a task which interfered with time that could have been spent on patient care and which posed an occupational health and safety risk. In some cases, the privacy of consumers within their own bedrooms had been compromised. In one bedroom, the curtains had been removed, and staff or consumers had maintained privacy by sticking pieces of A4 paper to the windows. This issue was brought to the attention of Top End Mental Health Services. All windows in the ward have now been frosted, and new curtains are being made.

These examples illustrate how the two aspects of the Community Visitors Program can work productively with Mental Health Services to achieve quality outcomes for consumers.

Judy Clisby, Community Visitor Program Manager

Annual Report: The 2003/2004 Annual Report is now available on our website: www.adc.nt.gov.au



If you are:

- an administrator or manager of a sporting club
- a coach or official
- an umpire or referee
- an ordinary club member
- a player or participant in sport or recreational activities
- a spectator.

Play by the Rules can help you to be a good sport.

So find yourself a computer and go to: www.playbytherules.net.au

Promoting safe and fair play in your club will help to:

- attract new members, and keep existing ones
- assure strongest commitment to the club and the game
- improve co-operation between members
- result in greater personal and team satisfaction.

Member Protection Officer (MPO) training courses are offered in all NT regional centres. Another successful course was held in Jabiru at the beginning of November. The MPO is the first point of contact in a club for any complaints or concerns around harassment and abuse in sports. MPO's provide confidential information and support for the person alleging the harassment and can provide you with more information about the Play by the Rules harassment free sports strategy.

MPO Refresher training was offered in Alice Springs, as well as the “Protecting Your Members” course. This course outlines sports clubs' obligations in the national harassment free sports strategy – including member Protection policies and complaint procedures, legislative requirements, and Play by the Rules training and information.

If you are interested in attending any of these training courses or would like pamphlets or wallet sized cards to hand out to your club players, officials and/or spectators please ring Sue Rhodes at the Anti-Discrimination Commission on 1800 813 846 or Office of Sports and Recreation on 1800 045 678.



SEEKING UNNECESSARY INFORMATION

Not all people are aware that it is prohibited conduct under the *Anti-Discrimination Act 1992* ('the Act') for a person to seek information upon which 'unlawful discrimination might be based'. Unlawful discrimination is unfavourable treatment, occurring in areas such as work, clubs, education or the provision of goods and services, because someone has one of the attributes set out in the Act, which include such things as race, sex, impairment, age, pregnancy, parenthood, sexuality, religion, union activity and irrelevant criminal record. The specific section in the Act states:

26. Unnecessary Information

- (1) A person shall not ask another person, whether orally or in writing, to supply information on which unlawful discrimination might be based.
- (2) Subsection (1) does not apply to a request that is necessary to comply with, or is specifically authorised by -
 - (a) a law of the Territory or the Commonwealth;
 - (b) an order of a court;
 - (c) a provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment;
 - (d) a provision of an industrial agreement; or
 - (e) an order of the Commissioner.
- (3) Subsection (1) does not apply if the person proves, on the balance of probabilities, that the information was reasonably required for a purpose that did not involve discrimination.

The prohibited conduct is in the mere seeking of unnecessary information on which discrimination "might" be based. For this reason, persons gathering information should give careful thought to exactly what information it is really necessary for them to have, and what this information will be used for. For instance, there is unlikely to be a genuine need for employers to know things such as the race, age, religion, sexual preferences, marital status or union involvement of employees, and it is easy to appreciate that having this information about an employee might lead to discrimination based on the employer's or co-worker's own personal prejudices.

There may be times when employers think information is required in order to determine if the person can perform a job. A common example of this is a perception that a person with a family might not be able to travel or work overtime when necessary. The best way to handle this concern, rather than asking "Do you have children?" would be to ask "Is there any reason why you would be unable to travel away from home overnight, or occasionally work overtime shifts?"

Of course there will also be situations in which employers do genuinely require information, and the Act recognises this by stating that it is not prohibited conduct to seek information if it is "reasonably required for a purpose that did not involve discrimination." An example of this type of situation might be a job which involves a significant amount of physical labour and heavy lifting and therefore cannot be performed by a person with a bad back or other physical limitations. However, in such situations, the best way to seek information would be to say something like, "This job involves a lot of heavy physical labour. Do you have any physical impairments which would limit your ability to perform the requirements of the job?"

The same sort of guidelines should be applied when considering the question of whether or not a potential employee should be required to provide a criminal history check. Best practice would be for an employer to consider what sort of criminal history (if any) would be relevant to the duties of a particular job, and to seek only this information. For example by saying something like: "This job requires managing the finances of the company and involves access to bank accounts, cheque books etc. Accordingly we require you to provide a criminal history check so that we can ascertain whether you have convictions for theft or fraud related offences. We will not consider any other criminal history you may have that is not relevant to the specific duties of this job."

In summary, what must be remembered is that the law prohibits asking for unnecessary information upon which discrimination might be based, and for that reason, careful thought should be given to questions which are asked and whether or not the information sought is reasonably required.

CASE STUDIES:

1 The Complainant sought employment assistance services from the Respondent employment agency. The agency's recruitment process required the Complainant to undertake a criminal history check.

When the Complainant's application was unsuccessful she alleged that the Respondent agency failed or refused to recommend her for interview for a position because of her irrelevant criminal record.

The Respondent said that the Complainant was not put forward for interview because she did not demonstrate a competitive level of skills and work experience required for the position, and denied that the Complainant's criminal history was an issue taken into consideration.

Through conciliation facilitated by the Anti-Discrimination Commission, the Parties reached an agreement to settle the complaint on the basis that the Respondent would accept the Complainant's application for the position the next time it arose and would provide the Complainant with pre-interview advice and coaching.

The Respondent also agreed to alter their recruitment forms to state that irrelevant criminal records would not be considered.

2 A Complainant alleged that the Respondent's 'Application for Employment Form' asked unnecessary questions upon which discrimination might be based. He provided a copy of the form which 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, and the names of all medication the applicant was taking.

The ADC contacted the Respondent, who agreed to amend the form to remove questions which might be in breach of the Act regarding seeking of unnecessary information. 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.





Sexual Harassment and the Festive Season

As we approach the festive season, when office parties are a common event, we need to remember that unlawful sexual harassment can extend to behaviour at work related social functions and after normal working hours.

Let's look at what conduct amounts to unlawful sexual harassment under the Northern Territory Anti-Discrimination Act. Firstly, the conduct must be an unwelcome act of physical intimacy, a demand or request for sexual favours, a remark with sexual connotations or any other unwelcome conduct of a sexual nature.

Secondly the conduct must not only be unwelcome, but also must be done with the intention of offending, humiliating or intimidating, or; done in circumstances where a reasonable person would have anticipated the possibility of offending, or; done in circumstances where a person would have reasonable grounds for believing that an objection to the conduct would result in disadvantage to that person.

Not all conduct of a sexual nature will amount to unlawful sexual harassment. Obviously mutual sexual attraction, advances that are invited and advances that are not invited but are welcome are not unlawful behaviour. In some workplaces a certain amount of banter of a sexual nature occurs. While this may not be in particularly good taste, if it is not directed at anyone it may not amount to sexual harassment. In one complaint of sexual harassment by a male against a female employee, it was found that there was frequent sexual banter in the workplace, and the female employee could not have known that the Complainant found such banter from a female offensive, although acceptable from the males.

Our statistics show that ten percent of all complaints received by the Commission are sexual harassment complaints. Sexual harassment laws have been in place in Australia for twenty years now and for over ten years in the Northern Territory. Our experience over that time is that workplaces that do not have good policies and effective grievance procedures for dealing with sexual harassment are those that face the greatest difficulties when complaints arise.

We have noticed that, as a result of raised awareness of workplace rights and responsibilities, more organisations making use of ADC's "Managers and Supervisors' Helpline" (free call 1800 501 288) and the training services to assist them in implementing preventative strategies and in developing effective policies and grievance procedures. Our training sessions on bullying, harassment and sexual harassment are also heavily booked.

Example Sexual Harassment Complaints

1 A complaint was made by a female sales representative against a male supervisor after he slapped her on her bottom. She also alleged that he told her to wear shorter skirts, demanded a kiss and told sexually suggestive and inappropriate jokes. It was conceded by the business that it had no discrimination or sexual harassment policy and there had been no training for the staff on these issues.

The case was settled by the supervisor apologising to the complainant, a payment of \$3000 being made to the complainant to compensate her for her distress and an agreement by the business to implement an equal employment policy and provide training for staff on discrimination issues.

2 A woman lodged a complaint of sexual harassment, alleging that a man made comments to her in a car park after he had left a work social club function.

The woman was not an employee of the company. She initially made a complaint to the company, where it was investigated and the individual identified. The man admitted making the comments, but denied that they were directed at the woman.

The company argued it was not vicariously liable for the man's actions as it had not required that the man attend the function, it was not held during work hours or on the company's premises.

The woman argued that the people attending wore shirts with the company logo on them, the tent where the function was held had the company name on it, and the function was booked under the company name.

The parties settled the complaint, without any admission of liability, by payment of \$1,000, a written apology from the man and an undertaking from the company about policy development.

Sexual harassment is not acceptable behaviour. At the end of the day commonsense dictates what conduct is acceptable and appropriate in the workplace.

When in doubt, don't do it.

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