



fair GO

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

March 2006 Edition 9



Message from the Commissioner

Most of our readers probably realise that all the powers and functions of the NT Anti-Discrimination Commission (ADC) are derived from the *NT Anti-Discrimination Act* (the Act).

This means for instance, that we may only accept complaints which fall within prohibited grounds of discrimination specified under the Act.

We usually refer complaints that are not within our jurisdiction to the Community Justice Centre (CJC) — an NT Government initiative which is co-located with us. The CJC delivers mediation and other dispute management services which help people to resolve their own disputes without recourse to the costly legal system. Also, the CJC provides impartial mediators, and the service is free, confidential, speedy, easy to use and suitable for a wide range of disputes. The 'flyer' in this newsletter provides information about CJC activities.

The following example illustrates when and how a referral to CJC would arise. Imagine that a complaint of discrimination is received by ADC from an employee who was refused permission by his employer to attend a first aid course because he was overweight.

We explain to the employee that it is not unlawful under the Act to discriminate on the ground of "physical features" (ie "physical features" is not an attribute on the basis of which discrimination

is prohibited under the Act). Nevertheless the employee still takes issue with his employer because some other employees taking part in the training are also overweight.

We then refer the employee to CJC because the complaint does not fall within our jurisdiction and CJC is not subject to jurisdictional constraints.

Our referrals to the CJC mean that we are able to assist in resolving some disputes not even covered by our Act. Dispute resolution contributes to community harmony, the promotion of which is a major underlying theme of our Act.

Tony Fitzgerald
Commissioner



Painting by Class 1-2 from Howard Springs Primary School.

On Thursday, 8 December 2005 in the foyer of the Supreme Court in Darwin, the Darwin Community Legal Service (DCLS) officially opened the 11th 'Rights on Show' human rights art exhibition and presented awards to various prize winning artists in each category. The ADC sponsors one of the major prizes. The official opening was performed by Ms Barbara McCarthy MLA. The theme of this year's award was 'Sport and Physical Education'.

The winner of the children's category prize was Class 1-2 from Howard Springs Primary School with a huge poster/painting in crayon and pencil entitled 'Celebrating Sport, Physical Education and the Rights of Children'.

Howard Springs Primary School agreed to sell the painting to ADC. The work then became a farewell gift for Dr Sev Ozdowski OAM, whose five year term as Federal Human Rights Commissioner ceased on 7 December 2005, in recognition of his tireless efforts in

continued next page...

Contents

Message from the Commissioner	Page 1	Conciliated Complaints	Page 3
'Rights on Show' Human Rights Arts Exhibition ...	Page 1	Early Conciliation — A Large Agency's Approach to Resolving Complaints	Page 4
Community Visitor Program	Page 2	Race Discrimination is No Joke	Page 4
Community Visitor Program — Consultation	Page 3		

...continued from previous page



Class 1-2 Howard Springs with the Anti-Discrimination Commissioner.

convincing the Federal government to observe the United Nations Convention on the Rights of Children (CROC) and in securing the release from detention of the children of asylum seekers.

Dr Ozdowski has since informed us that he may lend the painting to the Polish Government for display at an exhibition in Warsaw of the works of Polish schoolchildren to commemorate CROC.

During the award-giving ceremony Caitlin Perry, Coordinator of DCLS, announced that the continued existence of the Award may be in jeopardy because of a lack of funds. The human rights art awards are one of the most important events on the NT human rights calendar. It would be a shame indeed if it were discontinued for want of funding.

COMMUNITY VISITOR PROGRAM (CVP)

Advocating for Consumers Receiving Treatment Under the Mental Health Act

Section 105 (b) of the *Mental Health and Related Services Act (NT) 1998* (the Act) states that a community visitor is "to assist persons receiving treatment under this Act to make applications under this Act relating to complaints, reviews or appeals and, where appropriate, to present those applications".

Why Advocate?

Sometimes, a person who is an inpatient in a mental health ward believes that issues of significance to him or her are not receiving adequate attention from staff. Often, staff recognise the importance of these issues and attend to them, and in these situations the community visitor is able to provide reassurance. When this is not the case, the community visitor will advocate for the consumer.

Worrying about personal issues may have a considerable impact on the quality of the consumer's stay in hospital, and the CVP therefore sees its advocacy role as extremely important. All issues raised by consumers are seen as serious and followed up with the appropriate staff (with the consumer's permission).

What is meant by the Term 'Advocacy'?

The CVP distinguishes between direct and indirect advocacy. When directly advocating for a consumer, the community visitor speaks to appropriate staff on behalf of a consumer to ensure that the consumer's views are heard. Indirect advocacy involves supporting a consumer to advocate on their own behalf, often resulting in an improved sense of self efficacy.

Indirect advocacy involves a number of processes, including:

- Providing any relevant information to the consumer;
- Discussing the issue with the consumer to clarify thinking and argument;
- Deciding who the most appropriate person to speak with would be; and
- Rehearsing the situation.

Examples of Direct Advocacy

- A consumer approached the community visitor stating that she did not wish to return to her previous accommodation in a regional area after her stay in hospital. The consumer stated that she had raised this issue with her doctor and nursing staff and had been told they were unable to organise a change in accommodation. The community visitor approached the Senior Nurse on duty and outlined the arguments presented by the consumer and some options to be considered as part of her discharge planning. The next week, the community visitor was informed that the consumer would be moving to alternative accommodation when discharged from hospital.
- The CVP was contacted by a consumer who stated that he was unhappy with his medication and that he did not believe that the medication he was given was the same medication prescribed by his doctor. The consumer requested that a community visitor visit him in the TEMHS Inpatient Unit. The community visitor in these situations always informs the consumer that the prescription of medication is a medical decision. In this instance, the community visitor spoke to the consumer's nurse who, in the presence of the community visitor, sat down with the consumer and explained what medication he was taking. In response to the community visitor's advocacy, the nurse agreed that in future the consumer's medication would be taken out of its packaging in front of him.

Examples of Indirect Advocacy

- A consumer approached the community visitor with concerns about the meals in Cowdy Ward. The consumer has a medical problem which is managed through a low fat diet. Although the consumer had informed staff about this, he felt that the food being served was far higher in fat than the food he ate at home. The consumer also stated that he did not wish the community visitor to approach nursing staff on his behalf. The community visitor informed the consumer that salad meals are delivered to the ward. After discussion with the community visitor, the consumer decided to approach his nurse and the person who served the meal with a request for salads to be ordered for him.
- While visiting the TEMHS Inpatient Unit, the community visitor was approached by a consumer who wished to make a complaint about an incident that took place in Cowdy Ward. The consumer and the community visitor discussed the incident, and information was provided about the internal complaints mechanism and the options for complaining to the Community Visitor Program or the Health and Community Services Complaints Commission. The consumer elected to complain in writing using the internal complaints process. The community visitor assisted by explaining the various sections of the complaints form and helping the consumer to describe the behaviour that he found offensive and about which he wished to complain.



COMMUNITY VISITOR PROGRAM CONSULTATION

The Community Visitor Program (CVP) and the Department of Health and Community Services Mental Health Program are undertaking a consultation with government, community services and mental health consumers and carers regarding the future operations of the Community Visitor Program. This consultation provides an opportunity to evaluate the effectiveness of the program and to discuss how it could operate in the future.

Organisations who have had some contact with the CVP will find an Issues Paper and Questionnaire enclosed with this newsletter.

The Issues Paper begins with a very brief description of the CVP. The functions and target groups of this, and other similar groups operating throughout Australia, are summarised in two tables. The paper is concluded with a brief outline of pertinent issues.

People who would like to comment and who have not received a questionnaire, or who would like to discuss the issues prior to filling in the questionnaire, are invited to contact the CVP by phoning 8999 1444 or on our freecall number: 1800 021 919.

The consultation will be completed by 30th April this year. We are therefore requesting that the completed questionnaire is returned to the Community Visitor Program, LMB 22, GPO Darwin 0801, by 7th April, 2006.

Conciliated Complaints

Race

A group of aboriginal children complained that they were banned from a shop for allegedly 'running amok' in the store earlier in the day. The children protested that they had been at school at the time incidents of bad behaviour had occurred earlier in the day. The children believed they had been mistakenly confused with another group of children because of their aboriginal race.

The Anti-Discrimination Commission organised two conciliation meetings, one for the parents of the children and subsequently a conference including the children and the managers of the shop.

In the course of the conciliation conferences the store manager acknowledged that a staff member had incorrectly identified the children as those causing problems earlier in the day. The manager apologised for this mistake and the way the children were treated.

The shop also advised that it had retrained its staff following the incident and also agreed to introduce cross-cultural training for its staff.

The complainants were satisfied that their complaint was resolved by the apology and other measures taken by the shop managers.

Impairment and Assistance Dog

A woman with a severe vision impairment tried to catch a taxi from a taxi rank in Darwin. She said that when she attempted to enter the first taxi at the rank the driver refused to allow her guide dog into the taxi and drove off.

The complainant caught another taxi home but was subsequently reluctant to use taxis because she was afraid that she would run into the same driver.

It is unlawful for a taxi driver to refuse to transport a guide dog upon provision of proof by the dog owner of the dog's credentials.

The Anti Discrimination Commission arranged a conciliation meeting between the woman and the taxi driver. The driver did not agree that he had refused to take the fare because of the Complainant's guide dog but he apologised for upsetting the complainant on the day in question.

The Complainant was satisfied by the driver's apology and his agreement to participate in one-on-one training with the Commission. The complaint was resolved after the driver completed the training.

Impairment/Reasonable Accommodation of a Special Need

A woman was advised by staff at the childcare centre attended by her disabled son that the boy would not be permitted to attend the Christmas school outing the next day because the bus chartered for the trip was not accessible to him. In the past the centre had used the same bus and also arranged and paid for an accessible taxi for her son. However, the childcare centre had recently been taken over by a larger agency and the manager (who did not work in the centre) had advised staff that they were not to spend any extra money on meeting the needs of this disabled child. The mother, the child and the staff were all very upset that this one child would not attend the eagerly anticipated Christmas outing.

An ADC conciliator rang the manager and discussed the complaint and the requirements under the Anti-Discrimination Act to make reasonable accommodation for special needs. The manager was initially resistant — saying such things as "we've taken over this centre to make a profit" and "why should we pay the extra cost of a taxi for just one child?" and "well if we have to do it we will charge each parent more to cover the additional cost of this one boy." However, after learning about reasonable accommodation, and the factors considered in deciding what is reasonable (for example, the actual cost involved, the nature of the benefit, the small amount of disruption caused by making the accommodation etc), as well as discussing the possible outcomes if a complaint was to proceed, the manager agreed to meet the cost of an accessible taxi. His meant the boy could attend outings with the other children.



Early Conciliation – A Large Agency’s Approach to Resolving Complaints

The Department of Employment Education and Training (DEET)

DEET is one of the largest agencies in the NT Public Sector. The Department’s vision is to support lifelong learning for all Territorians, to prepare and skill a workforce capable of keeping pace with the changing labour market and to ensure that Territory workplaces are as safe for workers as possible.

Despite the nature of its core business, its size and its extensive client base DEET experiences a low number of discrimination complaints. In recent years DEET has been particularly successful in resolving those complaints through informal conciliation.

The Anti Discrimination Commission (ADC) has a good rapport with DEET and acknowledges the Department’s best practice approach to complaint handling.

DEET’s record is particularly impressive considering that complaints relating to children usually involve more stress and emotion than that associated with other complaints.

For this edition of ‘Fair Go’ ADC asks DEET Director of Legal Services, Craig Drury, about his Department’s approach to complaint resolution.

Q: What is DEET’s general philosophy in responding to complaints?

Whether or not a complaint discloses actual discrimination, DEET is concerned that there is a complainant, be it an employee, a client, or 3rd party, who feels strongly enough about a dispute with DEET to complain to the ADC. DEET believes that, wherever possible, the emphasis should be on resolving with the complainant, as expeditiously and with as little formality as possible, the issue(s) and concerns which gave rise to the complaint.

In the department’s experience resolution is best achieved through a voluntary conciliation at the outset, rather than by formally ‘defending’ the complaint. A defensive (and invariably ‘adversarial’ formal response) tends to aggravate the situation, thereby making settlement more difficult.

DEET’s priority is accordingly to resolve complaints expeditiously without further damaging, and preferably enhancing, the relationship with the complainant.

Q: What are the benefits of seeking an early resolution through conciliation as opposed to taking a formal approach?

Both parties benefit because complaints are usually resolved far more quickly while at the same time retaining or re-establishing a good relationship between the complainant and DEET.

Q: What factors do you take into account in deciding how to approach a complaint?

DEET adopts the above approach as a matter of course,

Q: Are there risks for organisations in following the conciliation approach?

There are virtually no risks associated with seeking to resolve complaints early and quickly as opposed to following the more formal process of answering complaints in writing, etc.

Provided the parties agree that the preliminary conciliation is on a ‘without prejudice’ basis then if the conciliation is unsuccessful, neither party may use information gained or things said during the conciliation to their later advantage. There is therefore no risk to an organisation of compromising its position if a formal response is required later.

A willingness to conciliate should not be interpreted as a sign of weakness or an ‘admission’ that the agency is at fault. On the contrary, a willingness to conciliate means that the agency is keen to resolve the complainant’s concerns if at all possible. Conciliation with the complainant is usually the best way to achieve this.

Q: Is conciliation inappropriate in some situations?

Usually not from the outset, but it may become apparent later that conciliation will not succeed.

Also, a complainant may not agree to early conciliation.

There have also been occasions when a complaint has not resolved at the first attempt at conciliation but it has at a subsequent conciliation. It is accordingly important not to ‘give up’ too soon on the conciliation process.

Race Discrimination is No Joke...

A 1st grade class just came in from recess.

The teacher asked Jenny what she did at recess that day. Jenny replied, “I played in the sand box.”

The teacher said, “That’s good! Now, if you can go to the board and write the word ‘sand’ I’ll give you a cookie.” Jenny did it correctly and was given a cookie.

Next, the teacher called on Alex. “Alex, what did you do at recess?”

Alex said, “I played in the sand box with Jenny.”

The teacher replied, “Wonderful! If you can go write the word ‘box’ correctly on the board, I’ll give you a cookie.” He did, and she gave him a cookie.

Another little boy put up his hand and said “Teacher, teacher, what about me? The teacher looked at him and said “Oh, all right, Mohammed, what did you do at recess? “Well,” he responded, “I tried to play with Alex and Jenny in the sand box, but they threw rocks at me.”

The teacher said, “Threw rocks at you? That sounds like a case of blatant racial discrimination.” She thought for a moment, then said, “Now, if you can go to the board and correctly spell ‘blatant racial discrimination,’ I’ll give you a cookie too.”

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