



Message from the Commissioner

As we tuck into our breakfasts on International Women’s Day (Thursday, 8 March 2007) celebrating the advances that women have made in terms of their equality of opportunity, we should also take time to reflect upon the current status of working women.

We are aware that some commentators question whether women should continue to be treated as a disadvantaged group – and suggest that women have achieved substantial equality with men.

Restricting our analysis for the purposes of this article to women in the workforce, the actual situation of women and the statistics paint an entirely different picture.

Recent (February 2006) figures released by the Australian Bureau of Statistics (ABS) show that the average full-time working Australian woman currently earns 83.6 cents for every full-time ordinary time dollar (ie excluding overtime and penalties) earned by males on average. The figures show that the situation for women is worsening. In 2005 the gender pay gap stood at 85 cents to the dollar.

Factors which contribute to women’s lower pay include: time out of the workforce due to maternity leave and parenting demands; the high proportion of women employed in the lower paid occupations such as clerks and sales assistants; and the significantly greater (ABS figures from 2004) number of women employed as casuals and part-time workers.

While women continue to earn less than men they, rather than men, are more likely to relinquish or reduce their paid employment in order to meet unpaid family/caring obligations.

Lower rates of pay, absence from the workforce, and a higher proportion of women in lower paid positions means that employer contributions to women’s superannuation funds are lower, and that women are less able to contribute to superannuation. In other words, wage differentials are not only inequitable, but have long term implications for women upon retirement.

In order to progress pay equity for women, Government and the private sector need to consider implementation of the following work/life balance initiatives:

- paid time off for men and women to care for children who are ill
- longer entitlement to paid parental leave for women and men
- alternative duties for pregnant workers
- increased options for return to work on a part-time basis after childbirth
- paid time off for both women and men to care for elderly parents.

At present, the existence of pay inequality exerts pressure on men to stay at work (rather than take on greater family responsibility) and women to leave because families cannot afford to lose the larger part of a double income.

These initiatives tend to relieve that pressure by assisting women and families to combine paid work and family responsibilities.

In the Territory there is some cause for optimism in the area of gender difference in occupation. In the NT Legislative Assembly 40% of the MLAs (10 of 25 members) are female as compared to the MHRs in the Federal House of Representatives which has only 36% females. Also of the 9 chief executive officers of NT Government departments 3 (33%) are women. This means that Territory women are well placed to initiate reform.

One important reform that may increase the opportunity for women to be appointed to all levels of the public sector, is the proposal to amend the *Public Sector Employment and Management Act* (PSEMA) to allow for recruitment to the public sector of members of disadvantaged groups (one such group being women) other than according to merit. At present public sector employers, unlike private sector employers, can only recruit employees on the basis of merit and cannot put into place any “positive discrimination” plans.

The proposed amendment to the PSEMA would provide public sector employers with a discretion in appropriate

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cases to make special measures appointments to recruit employees who may not have the best claim on merit but nonetheless have the ability to do the job or to reach the required standard with workplace support.

Public sector employers in all other Australian states, except Tasmania, have this discretion.

In conclusion, readers are reminded that the Anti-Discrimination Commission is still able in the post Work Choices Legislation era to receive complaints by women of unfavourable treatment and discrimination in the workplace. That is, the prohibition on discrimination continues despite the advent of Federal Work Choices Legislation – even in the area of unfair dismissal. Under the *NT Anti-Discrimination Act* it is still unlawful to discriminate against women on the grounds of sex, age, marital status, pregnancy, parenthood, breastfeeding and impairment. Moreover, under the Act it is unlawful for employers to unreasonably fail to accommodate the special needs of women who possess the above attributes.

Tony Fitzgerald

Anti-Discrimination Commissioner



(L to R) Fiona Roche & Jill McAloon

New Staff

Fiona Roche recently joined the Anti-Discrimination Commission as conciliator whilst Simon Wiese takes a well deserved break. Fiona has worked in the area of conflict resolution since 2004 and is an advocate of conciliation/mediation as a model for resolving conflict. Prior to 2004 Fiona had worked in the corporate services area and had recently returned to that role with the Darwin Port Corporation. Fiona said that her interests are in the human rights area and was very excited about joining the Commission.

Jill McAloon has worked in a variety of government departments including the Office of the Ombudsman; NT Police, Fire and Emergency Services, Department of Planning and Infrastructure, and Department of Justice. She has spent most of her working life in the criminal justice system as a police officer, prosecutor, investigator and court registrar. Jill has formal qualifications in alternative dispute resolution and is keen to gain practical experience in conciliation between parties.

Disability Discrimination – Depression in the Workplace

For many people, disability discrimination in the workplace conjures up images of wheelchair bound people unable to access a building. Without diminishing the important advances made in accommodating such physical disabilities, this article will focus on the emerging issue of mental health as a disability, and as a source of discrimination in the workplace.

Beyondblue – the national depression initiative estimates that more than one million people in Australia experience depression, anxiety or related substance use disorders each year, and depression is second only to heart-related illness in terms of the amount of disability it causes. It is therefore likely that most workers and organisations will encounter someone suffering from depression.

Picture a Monday morning in your office and two employees call in sick. One is the office 'jock' who injured himself in a football game at the weekend. He will return later in the week, complete with a splint on his broken leg, and receive a hero's welcome. Another employee telephones and says she has the 'flu'. She has been unwell all weekend with a major depressive episode and feels isolated, suicidal and desperate, but she is afraid to tell her employer about her illness. The longer she stays away from work, the harder it will be to return, but she just can't make herself get out from under the doona.

Few people would need to break their own leg to understand that fractures can be painful, yet there is often little understanding shown toward people whose minds are temporarily malfunctioning. When a usually productive, confident and conscientious worker becomes withdrawn, lethargic, loses weight, appears anxious, and starts taking time off work, they might be suffering from depression. The person might have been ill for some time and painfully aware that their work performance has deteriorated. If their depression is recognised and treated they will likely recover more quickly and avoid much needless suffering.

One of the most important reasons for dealing effectively with depression is the high risk of suicide. The Black Dog Institute estimates that 80 per cent of people who commit suicide are depressed. Depression can bring about feelings of hopelessness and worthlessness and make seemingly capable people doubt themselves and the value of their lives. Depression is not a sign of weakness or a 'character flaw' and people will often comment after recovering from depression that the illness was a signal that they needed to change unsatisfactory or stressful aspects of their lifestyle, and that dealing with depression developed strength of character.

In the *Northern Territory's Anti-Discrimination Act 1992* (the Act) depression is included under 'impairment', which includes any psychiatric or psychological disease or disorder, whether permanent or temporary. The Act prohibits discrimination based on impairment, and discrimination includes any distinction, restriction, exclusion or preference made on the basis of impairment that has the effect of nullifying or impairing equality of opportunity, and harassment on the basis of impairment.

The Act also requires employers to make reasonable accommodation for a special need that another person has because of their depressive illness. Changes to accommodate a depressed employee's 'special needs' will not necessarily be onerous and might include allowing time to attend medical appointments or counselling, flexible working hours and, importantly, demonstrating understanding about the employee's illness. An employee is likely to recover more quickly from depression if he or she can focus on treatment and not spend time worrying about their job and their reputation at work.

Anti-discrimination law applies to paid full time, part time, casual or contract work, including probation periods. Federal Workplace Relations laws do not permit discrimination – no matter how many employees are in the workplace. All stages of employment are covered – from job advertisements, applications and offers of employment, to promotions, training, transfers and dismissal. The Northern Territory Anti-Discrimination Commission can provide training and advice on discrimination issues and offer assistance with workplace policies and procedures.



Community Visitor Program (CVP)

Transport to hospital by Police

The CVP regularly receives complaints from consumers about transport to hospital in the caged section of a police vehicle. Consumers complain that it is degrading to be transported this way, and if police transport them from their home, extremely embarrassing in front of their neighbours and other people.

In 1993, Human Rights Commissioner Brian Burdekin, in his report on the Enquiry into the Human Rights of People with Mental Illness, recommended that the:

... ambulance service should be used wherever possible to transfer a person in an acute state of mental illness (who is unwilling to go by the usual means) to hospital. Police should be called upon as a last resort and, if genuinely required, unmarked police cars should be used, not divisional vans ('paddy wagons'). Police officers likely to be involved in these situations should receive appropriate training and should comply with a special code of practice (HREOC 1993:914).

The *Mental Health and Related Services Act NT 1998* (the Act) outlines in its basic principles for relating to involuntary admission (Section 10): *where the person needs to be taken to an approved treatment facility or into custody for assessment, the assistance of a member of the Police Force is to be sought **only as a last resort** and there is no other means of taking the person to the approved treatment facility or into custody* (my emphasis).

Despite the Act, in the NT people are still transported by police in the back of a caged vehicle. It is not known whether this occurs **routinely**. Recommendations from the Community Visitors Panel in October 2004 regarding transport to hospital by police and the need for the development of guidelines to ensure that consumers are transported using the least restrictive means have to date not met with a change in practice. In its Annual Report 2005-2006, the CVP noted the instance of a consumer who had contacted the program complaining about his experience of detention. He had been transported to the TEMHS Inpatient Facility in the cage of a police vehicle and detained to the Joan Ridley Unit (the secure unit). During his stay, correctional service officers were in the unit because a prisoner was in hospital at that time. This consumer was unaware that he had been treated in a hospital ward, believing that he had been in prison.

The Police Federation of Australia is on record as opposing transport this way. Its submission to the Senate Select Committee on Mental Health (2005), states: *the fact remains that these individuals should not be treated as offenders and as such it is inappropriate to be transporting them in police vehicles.*

There are occasions when transport by Police is necessary, and for Occupational Health and Safety reasons there may be times when the use of the cage may be necessary. In order to remain congruent with the principle of the least restrictive alternative, the CVP believes that the principle in the Act requires that the following hierarchy be followed in decision making regarding transport to hospital.

1. Own transport to hospital (as is more likely with early intervention and adherence to an early intervention plan)
2. Transport to hospital via mental health professional (case manager or member of the On Call team)
3. Transport to hospital via ambulance
4. Transport via ambulance with police presence
5. Transport to hospital in the back seat of a police vehicle (seated in the passenger side of the vehicle with a police officer behind the driver)
6. Transport to hospital in the caged section of the police vehicle.

The CVP knows that the mental health service will attempt to ensure that consumers are transported to hospital using the least restrictive means possible. However, there is limited access to ambulance transport for mental health consumers, and transport by police generally occurs in the caged section of the vehicle. This means that consumers who are too unwell to be transported to hospital by their case manager are likely to be transported in the cage of a police vehicle.

Having the option to use a hierarchy for decision making as above and having this documented in policy would ensure that transport in the cage of a police vehicle is only ever used as a last resort.

Jodie Whalan ADC Business Administration Apprentice



(L to R) Tony Fitzgerald, Jodi Whalan,
The Hon Syd Stirling

Hello, my name is Jodie and for the past twelve months I have had the privilege of working with the wonderful staff at the Anti-Discrimination Commission, Community Justice Centre and Office of the Information Commissioner as an apprentice studying Business Administration.

Being legally blind and having never worked in an office environment for any significant length of time I was not sure what to expect or if I would be able to complete tasks successfully. As it turned out there was no task the staff could throw at me that I wasn't able to complete.

One of the most important aspects of working in this agency is dealing with people, both customers and other staff. The ADC receives enquiries and complaints from such a diverse range of people. I found this to be very challenging at times.

Everyone I've met and worked with this year has gone above and beyond to make sure I would be successful in everything I tried. They have been patient, understanding and best of all accepting. I always felt important and needed at work.

The apprenticeship has been a huge learning experience for me but also for everyone I work with. I am extremely grateful for all they have done and everything I have been taught. I know that the office skills, customer service skills and the strengths I have found in myself will help me take the next step in my career.

Thank you to all the staff for your knowledge and your help but thanks most of all for your friendship.



Conciliated Complaints

Re-assessment of fitness for duties

A man complained that he had been rejected for selection in a trainee position with a Commonwealth Government agency because a medical assessment had been given that because of lymphoedema (a condition causing swelling) in one of his legs he would be unable to perform the duties required. The complainant argued that his condition had not interfered with performance of similar duties previously. The complaint was resolved with an agreement for specialist examination to determine the complainant's fitness for the required duties, including with any reasonable adjustments identified as required and as possible without unjustifiable hardship; for the complainant to be employed in order of merit if assessed as fit for duty; and for compensation of \$2000 to be paid.

Opportunities for blind public servant

A Commonwealth public servant who is blind complained that he had been discriminated against when applying for a more senior position, in that the process involved an online application form and tests which were not accessible in all their parts, so that he was disadvantaged in applying for the position and was unsuccessful. The matter was resolved when the employer agreed to pay \$12,000 compensation; review its recruitment process to ensure accessibility and consult with Vision Australia in the course of this review; and deal appropriately with applications for higher duties from the employee.

Return to work for bar manager

A man who is hepatitis C positive complained that when he had a nosebleed at work he was given a written warning and threatened with dismissal after 15 years employment. The matter was settled with payment of \$550 compensation and an agreement that the man could return to work with provision being made for flexible use of sick leave if required.

Accommodating deafness in the workplace

A Commonwealth public servant complained that his deafness was not being adequately accommodated in his employment. The complaint was resolved with an agreement to arrange interpreters where available for team meetings and provide notes of meetings and to provide supervisors with information on accommodating deafness and hearing loss.

Part time employment to accommodate carer responsibilities

A man employed as an employment consultant complained that he had been discriminated against when he was refused permission to reduce his working hours from 9-5 to 9-3 to care for his wife who has cerebral palsy and assist her with child care commitments. The employer had been unwilling to agree because of its small size and implications for meeting its duties to staff and clients. However, the matter was resolved when the employer agreed to a reduction in hours two days a week, and further reductions if part time staff could be recruited.

Reasonable adjustment in safety equipment

A woman whose foot had been injured in an accident complained that a Commonwealth agency had withdrawn a job offer to her when it formed the view that she would be unable to wear safety boots which were required for the job. The matter was settled when the woman was offered a job and the respondent indicated that the initial withdrawal of the job offer had been an error due to failure to follow the organisation's process for considering needs for adaptive equipment.

Latest Decisions

Latest Decisions including a decision on the awarding of costs in a "no cost" jurisdiction, for 2007 are now available from website: www.adc.nt.gov.au



**"Preventing Discrimination...It's Good For Business!
Your Rights and Responsibilities in Small Business"**

is now available from our Website. Hard copies are available on request.

Discrimination is No Joke



"All the other women in the office are suing you for sexual harassment. Since you haven't sexually harassed me, I'm suing you for discrimination."

Training May – June 2007

Darwin

Introduction to Anti-Discrimination Law Wed 23 May : 9am-12.30pm

Prevention of Harassment & Bullying Tue 22 May : 9am-12noon

Disability – "It's Your Business Too" Awareness Seminar Wed 6 June : 9am-12noon

Katherine

Prevention of Harassment & Bullying Tue 10 May : 9am-12noon

Disability – "It's Your Business Too" Awareness Seminar Fri 11 May : 9am-12noon

On site training is available to meet your needs. If you wish to enquire about training or registration for training please contact the Commission on 8999 1444.

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

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