



Message from the Commissioner



Last year the ADC received an interesting application for exemption from the provisions of the *Anti-Discrimination Act NT* (“the Act”). I now summarise the case for our readers because it deals with fundamental issues of racial discrimination which are in the public interest.

In March 2007 Raytheon Australia Pty Ltd (Raytheon), a wholly owned subsidiary of the Raytheon Company Incorporated in the USA, applied to the Anti-Discrimination Commissioner for exemption from the provisions of the Act to enable it to discriminate against current and prospective employees and contract workers of Raytheon on the basis of nationality and national origin.

Raytheon has various defence-related contracts with the Commonwealth of Australia through the Department of Defence (ADF). The performance of the defence contracts requires access to information and technology originating in the USA and controlled and administered by US Government Departments and US legislation (“US-controlled materials”).

Permission to access the US-controlled materials is granted by the US Government only if Raytheon agrees to enter into, and comply with, licences required by US legislation (“licence agreements”).

The US legislation decrees that persons of certain nationality and/or national origin are a security risk, and are not permitted to access the US-controlled materials.

Accordingly the licence agreements prohibit the transfer of the US-controlled materials to persons who are deemed a security risk, not because of their history or behaviour, but because of their nationality or national origin.

So before Raytheon can perform its defence contracts with the Commonwealth of Australia, it must comply with US legislation which requires it (Raytheon) to ensure that current or prospective Raytheon employees deemed by the US to be a security risk because of their nationality/national origin are prevented from accessing US-controlled materials.

In order to restrict the access of certain nationals to the US-controlled materials Raytheon must require all of its existing and prospective employees to divulge their place of birth and nationality, and must then treat them differently on the basis of the details provided.

Differential treatment, or discrimination, based on race is prohibited under the Act. Thus Raytheon sought exemption from the operation of the Act. Unfortunately Raytheon is unable to comply with both its contractual obligations to ADF and the Act. Raytheon’s operations extend to the Pine Gap Joint Defence Facility near Alice Springs and the Patrol Boat Base in Darwin.

Raytheon’s application for exemption was about to be refused, but before the written decision was released Raytheon sought and was granted further time to make additional submissions. Raytheon then withdrew its application for exemption.

I have decided to release the decision in furtherance of my statutory duties to promote understanding and acceptance of, and compliance with the Act, and to promote the recognition and acceptance of non-discriminatory attitudes.

In my view the decision is notable as it analyses whether it is in the public interest to allow economic arguments raised by Raytheon in a Territory context to override fundamental protections against racial discrimination contained in the Act.

The effect of the decision is to reinforce the principle that a clear purpose of the Act is to protect persons from unfair racial discrimination, and that suitability for employment should depend on ability to perform the particular duties of a job rather than nationality/national origin.

The full text of the Decision is available on the ADC website: <http://www.nt.gov.au/justice/adcdocs/decisions/2007/exemptionraytheonanors.pdf>. Raytheon, and various other companies performing defence-related contracts, have been granted similar exemption applications by Equal Opportunity or Anti-Discrimination Tribunals in all other mainland Australian jurisdictions except ACT, where its application was also refused.

Tony Fitzgerald

Anti-Discrimination Commissioner

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New Staff



Rachael Dunn has recently taken up a six month contract with the Commission as one of our conciliation officers.

Rachael comes to us from the Human Rights and Equal Opportunity Commission, which is based in Sydney and administers similar legislation to that of this Commission, however within a federal jurisdiction. Rachael is no stranger to the Top End, having lived and studied in Broome for a number of years. She says she jumped at the opportunity for a sea change when the chance to live and work in the NT arose.

Rachael has an undergraduate degree in Aboriginal studies and Business and will soon complete her Master's degree in Alternative Dispute Resolution. Rachael has more than 6 years experience in the area of conciliation, discrimination law and human rights and is excited about the challenges that lie ahead in the NT.

International Human Rights Day

On 10 December 2007 the ADC hosted a celebration of International Human Rights Day at the NT Supreme Court Foyer in Darwin. The date was also notable as the beginning of the year marking the 60th anniversary of the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights.

The function was launched by Dr Chris Burns MLA, and was a huge success with approximately 300 people attending.

Thanks to our guest speakers Dr Ngaire Brown, Vice President of the UN Association of Australia NT Division, and Ms Lava Kohaupt, Director of the Melaleuca Refugee Centre, Darwin. Thanks also to our sponsors, Chief Minister Paul Henderson MLA, Minister for Justice Dr Chris Burns MLA, Airnorth, Reconciliation Australia and Mr John Anictomatis.

Highlights of the evening were inspired live performances by dance troupes 'One Mob Different Country' from the Darwin Correctional Centre, and the celebrated 'Chooky Dancers' (of 'YouTube' fame) from Galiwin'ku and Milingimbi. (Photograph right)



International Women's Day

8 March was an international day of celebration in honour of the significant economic, social, cultural, educational and political achievements of women.

This year the ADC and the Multicultural Council of the Northern Territory co-hosted an evening of entertainment and enjoyment with cultural performances, dancing and guest speakers to honour the achievements of women both globally and locally. (Full report and photos in next edition of "Fairgo")

School leavers and their rights

"Streetsmart" is an urban handbook for school leavers and is an initiative of the Police and Citizens Youth Club. The handbook is a comprehensive guide for young people beginning the next phase of their lives. The Commission was approached to participate in the joint venture with organisations focussing on youth.

The handbook will be distributed to all year 11 students with 3950 copies being circulated through 39 schools across the Territory and will be available later this year.

Reinstatement of ADA

The legislative package which enabled the Federal Govt to invade the NT in July last year included a provision exempting the invasion from the operation of the Anti-Discrimination Act NT.

This is tantamount to an admission that the invasion is discriminatory which is what we have said from the outset. We have suggested to the Minister for ATSI Affairs that the exemption should be lifted but have received no response as yet. The Act enables Territorians to lodge, and the ADC to receive and investigate, complaints about discrimination.

Why should indigenous Territorians be treated differently?



Community Survey

In September 2007 ADC conducted a comprehensive online Community Awareness Survey, the purpose of which was to assess the level of NT public awareness on issues of discrimination, human rights and equal opportunity.

We wanted to find out what NT residents thought about these issues, and their level of understanding of the provisions of the *Anti-Discrimination Act* ("the Act"). (The Act does not focus on human rights as such, but its core values reflect human rights.)

It was hoped that the information received would assist the ADC in deciding which areas to target in its public education and training programs.

Also, we hoped that the existence and promotion of the survey would raise the profile of the ADC and its activities, and would raise public awareness of discrimination and equal opportunity issues.

The survey was conducted over a period of two weeks and comprised nine questions with multiple choice answer options, and it was delivered to approximately 18,000 people by email (mainly) or hard copy. Answers were mainly received through an email link to the ADC website. A statistically significant 2044 responses (1% of the NT's population) were received and analysed.

Respondents were predominantly from the NT Public Sector (87%), aged between 22 and 59 years (88%), and from the Darwin Area (58%), (Alice Springs 17%, Darwin rural 11% and Katherine 5%). These survey population demographics are roughly representative of the NTPS, but not the NT general population.

Interesting survey results included: 15% of all respondents had never heard of the Act, and were unaware of the existence of disadvantaged groups in the NT; there was considerable confusion about which attributes could form the basis for making complaints under the Act (eg age, sex, race, etc); there was difference of opinion over the extent to which groups such as young people, homosexuals, men, women, people with disabilities, aboriginals, culturally and linguistically diverse (CALD), the aged were disadvantaged; and while 95% of respondents think it appropriate to have legislation dealing with discrimination, equal opportunity and human rights, 61% believe that positive discrimination in favour of disadvantaged groups is inappropriate.

These results indicate that we need to push our message further into the private sector, and to continue to devise public education strategies which raise awareness of how the Act operates the role of ADC, and the existence of disadvantage within our community. On the subject of disadvantage we need to especially promote understanding of an underlying principle of the Act that positive discrimination (ie unequal treatment to assist disadvantaged groups) is lawful and appropriate until the disadvantage is eliminated.

An unexpected result was that 70% of respondents rate the concern held by other people about discrimination, equal opportunity and human rights as lower than their own (although this supports findings from other, similar studies). Also 70% of respondents were "concerned" (very concerned/quite concerned) about these issues. It goes without saying that community solidarity and support is required to resist discrimination and to strengthen acceptance of human rights and equality of opportunity, so if respondents do not have an accurate picture of how highly the community rates these issues, then public awareness raising strategies are needed to garner community support.

Introducing the new Community Visitor Program logo



The new CVP Logo captures the spirit of the Territory through its use of the Jabiru against a background of strong orange hues.

The hands which support the Jabiru pair belong to people from different racial backgrounds, reflecting the multicultural flavour of the Northern Territory. The hands support the birds, which at the same time are free to fly. In this way, the human rights flavour of the CVP is encapsulated, along with its advocacy and support functions. The font underneath the picture is designed to accentuate the accessibility of the program.

The logo is very much the result of a team effort. It is based on a photo of two Jabirus in a nest in Yellow Waters, Kakadu National Park taken by the program Manager, Judy Clisby. Melanie Campbell, renowned for her creativity, saw the potential for a new logo for the CVP. Claire Pallant Design is responsible for the concept ideas and its final production.

Training Program

Training Program from February – June is available from website. Hard copies are available on request. Half day training on "Protecting Human Rights in Australia" (a new program designed to raise awareness of human rights principles in a democratic society) is scheduled for Thursday 1st May in Darwin.

Sex Discrimination Commissioner to visit Darwin

The Federal Sex Discrimination Commissioner, Elizabeth Broderick, has been conducting a national "Listening Tour" and will be in Darwin on Tuesday 25 March.

The national Listening Tour began officially in SA in late November. The Tour will run until April when every state and territory will have been visited, including every capital city and a number of regional and remote areas. The objectives of the Tour are to seek community and stakeholder feedback on three broad themes:

- Economic independence for women
- Work and family balance across the life cycle
- Freedom from discrimination, harassment and violence

The Tour findings will be used to develop a work plan for the next 3-5 years of the Commissioner's term.

Contact the Commission for further details of this event.



Racism Really Does Hurt – Our Health

Evidence shows that our health is influenced by social factors. The link between social inequality and health, with lifestyle factors influencing health outcomes, has been well documented. We know that poorer socio-economic backgrounds are associated with smoking, a less healthy diet and less regular exercise. We also know that Indigenous Territorians, amongst the poorest in Australia, experience appalling health outcomes in comparison to other Australians.

There is now evidence that the experience of chronic stress is linked to shorter life expectancy. High levels of stress are associated with mental health distress, high blood pressure, renal problems and heart problems.

There is also growing evidence that the experience of racism contributes to stress.

Anecdotal evidence from the Anti-Discrimination Commission supports this contention. The ADC has recently received two complaints from Indigenous people who reported an experience of discrimination in the provision of goods and services in Darwin. Both people described their response to the discrimination as feeling constantly angry, losing sleep and feeling highly anxious when they needed to access the same, or similar goods and services. A single experience of racism resulted in both people exhibiting early signs of mental health distress.

Their experience is validated by a growing body of evidence that links the physiological response to stress to poorer health outcomes. In an article entitled "How Racism Hurts—Literally" printed in the Boston Globe 15/7/07, Marilyn Drexler notes that well off African Americans experience poorer health outcomes than poorer Americans of Anglo descent. Drexler describes how the experience of racism may have a direct negative effect on health. She writes:

'Racism, other research suggests, acts as a classic chronic stressor, setting off the same physiological train wreck as job strain or marital conflict: higher blood pressure, elevated heart rate, increases in the stress hormone cortisol, suppressed immunity. Chronic stress is also known to encourage unhealthy behaviours, such as smoking and eating too much, that themselves raise the risk of disease.'

Racism hurts, in many ways. It contributes to the social inequalities that may result in poorer health outcomes and life expectancy for Indigenous people. Direct experiences of racism can affect psychological health and cause social inhibition by lowering self respect and self esteem. We are now beginning to realise that racism can affect physical well being through the effects of chronic stress.

Conciliated Complaints

Pregnancy

A female office employee took twelve months maternity leave following the birth of her child. She advised her employer in advance that she may wish to return to work much sooner than the full twelve months leave she was entitled to take.

When the employee applied to return to work part-time three months before the end of her maternity leave, her employer advised this couldn't be facilitated due to the down turn in work. The employee was told she could not return until her full period of maternity leave was completed.

The Commission assisted the parties to consider flexible return to work options and consequently the employer offered the complainant a choice of several options to return to work part-time.

The Complainant was satisfied with the arrangements proposed and returned to work immediately.

Race

An Indigenous football team returning to their community after a game in 2007 stopped in at nearby town to celebrate their victory. On entering the local hotel the team members were told that aboriginal people were not being served because of a break-in at another local business the night before.

The team explained that they had been more than 100 kilometres away from the town the night before and that they were just passing through. The barman explained that as the break-in was committed by aboriginal persons no aboriginals would receive service at the hotel.

The Anti-Discrimination Commission investigated the complaint and found that since the incident complained of had occurred, new owners had taken over the hotel.

Following discussions with the Commission the former owner apologised for the incident and the new owners reprimanded the staff member involved in the incident.

The new owners assured the complainants that they were welcome at the hotel in the future and offered them a discount on their next visit.

Impairment

A government worker who uses a wheelchair attended a staff training course at a Darwin conference venue in late 2007. On arrival the worker felt that the access ramp to the building was unsafe and not up to the required Australian standard.

The worker also discovered that the venue did not have disabled toilets and the facilities that were made available to her were not suitable as she was not able to enter or exit the bathroom without assistance from staff.

The Anti-Discrimination Commission investigated the complaint and found that the building was very old and scheduled for demolition in the near future. The Commission agreed that in the circumstances it may be unreasonable for the owner to make expensive and considerable adjustments to ensure the building was fully accessible to people with disabilities.

The venue agreed to change its booking procedures to ensure that accessibility issues are discussed with every organisation booking the venue for training or conferences.

In addition the Anti-Discrimination Commissioner asked all NT Government Departments to ensure that they only use training and conference venues that are accessible to all employees.

The Complainant was satisfied with these outcomes, along with a donation from the building owner to the Disabled Sports Association of the NT.

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

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