



Message from the Commissioner



Over recent years, calls for the adoption in the workplace of flexible arrangements to better reflect a “work-life balance” have become increasingly vocal. That is, as the desire by workers to better manage their work and family responsibilities increases, and/or if workers experience difficulty in effectively managing their work and family responsibilities, public and private sector bosses are receiving requests for part-time work, flexible work hours, ‘work from home’ arrangements, shift work, job sharing, break-times and leave arrangements.

This does not mean that society is placing less value on the importance of employment and “getting the job done”. Rather it is a recognition of our need to devote quality time to the family we care about and life outside work.

Variations to ‘traditional’ work arrangements, such as those described above, which are negotiated between employer and employee can enable families to care for their children, adult children to care for older family members, and carers to care for someone with a disability or the elderly.

Workplace flexibility may also assist society to meet the workplace challenges presented by increases in the number of single parent and double income families, part-time and casual workers, and women entering the workforce.

Balancing work and family priorities is a challenge facing both employers and employees. The challenge for employers is to strike a balance between building a successful agency/business and effectively managing and supporting their workforce.

Readers will be pleased to know that the NT *Anti-Discrimination Act* (“the Act”) provides some legislative support for the flexible workplace arrangements needed to achieve work-life balance.

Firstly, the Act makes it unlawful to discriminate against a person because of the person’s marital status, pregnancy, parenthood, breastfeeding or the person’s association with a person who possesses any of these ‘attributes’. The first four above-named attributes are clearly linked to “responsibility to family” – so it is unlawful to discriminate against someone because they have these family responsibilities as a parent. Also, the Act prohibits discrimination against someone who has responsibilities as a carer by prohibiting discrimination against a person because of that person’s age or impairment and then extending protection to the carer as a person ‘associated’ with an elderly person or person with an impairment.

Secondly, the Act provides that an employer shall not unreasonably refuse to accommodate a special need that another person has because of an attribute. In the work-life balance context this means that employers must not unreasonably refuse to accommodate the responsibilities of employees possessed of the “parental or carer attributes” described above.

Employers are not compelled to agree to requests for changed work arrangements but must reasonably entertain them based on an informal cost/benefit analysis of the impact of the request on the workplace as a whole.

Up until the present more women than men seek and take up flexible work arrangements - for family reasons usually because family care has been the traditional province of women.

However more and more modern men, who now want a bigger share of domestic duties and increased time with their children, are requesting flexible work arrangements.

Unfortunately the anecdotal evidence is that some men who would prefer flexible working conditions for family reasons feel constrained from applying - because under the prevailing conservative work culture they are deemed to be “soft”, or “letting the team down”, or “less blokey” for compromising their traditional breadwinner status.

Of course in an ideal world, entitlement to work-life balance should be available to everyone – not just those with family or carer responsibilities.

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There are undoubted health benefits in working to live, rather than the other way around. Be that as it may, my jurisdiction in the work-life balance sphere is limited by the Act.

Nevertheless ADC wants to work more closely with the public and private sectors to inform and educate employees about their legal right to seek flexible work conditions, and to ensure employers are aware of their legal obligation to reasonably consider flexible workplace requests.

At the same time, ADC wants to assist workplaces to progress (through education) towards a modern culture that accepts and supports shared family and carer responsibilities for male and female wage earners. Workplace commitment to work-life balance is not only a useful step towards gender equality, but will reap productivity dividends through improved staff morale, higher staff retention rates, better service delivery and reduced industrial disputation.

Tony Fitzgerald, Anti-Discrimination Commissioner

Farewell Melanie Campbell, one of our longest serving staff members.

Melanie commenced at the ADC as an administrative trainee in February 1999 and at the end of her traineeship in February 2000, continued her employment in the ADC's Conciliation Policy and Law Section. Melanie is a highly valued member of staff who will be incredibly hard to replace. The ADC thanks Mel for 9 years of dedicated service and wishes her the very best on her transfer to the Department of Health and Families.



Federal Sex Discrimination Commissioner's Listening Tour Report

In November 2007 the Federal Sex Discrimination Commissioner Elizabeth Broderick began a "national Listening Tour" designed to measure how far Australians think our community has come on the journey towards gender equality, and to highlight areas in which we should focus our efforts in the future.

As part of the listening tour Ms Broderick visited more than 90 cities, regional and remote communities across every state and territory, and met with more than 1000 people.

The Anti-Discrimination Commission (ADC) hosted the Darwin leg of the Tour.

The Australian Human Rights Commission (AHRC) has now released the report of the Listening Tour findings, "Gender equality: What matters to Australian women and men: The Listening Tour Community Report". The report can be downloaded from the AHRC's website at: <http://www.hreoc.gov.au/listeningtour/launch/index.html>

The Listening Tour received extensive community comment on a range of issues. In keeping with the workplace theme of this newsletter we have obtained permission from the AHRC to include extracts from the Report featuring feedback provided by NT participants on the issue of flexible work practices:



Flexible work practices

"When I came back to work I wasn't able to fit breastfeeding into my work schedule. Employers need to take on the responsibility of understanding what it is to be a parent."

(Darwin community consultation participant)

Listening Tour participants told of the need for employers to create flexible work practices and then embrace and promote them at the highest levels.

These flexible policies must be put into practice across an organisation in order to be effective. If, for instance, flexible arrangements depend on supportive individual managers, then they can be at risk when management changes.

There must also be a commitment to redesign jobs. Current work structures often favour an 'ideal worker': male, without any visible caring responsibilities and able to work for more than the usual full time hours in a week.

Participants identified a need to shift organisational culture to make flexible work mainstream. Some male participants said that while flexible work policies were often available, unsupportive workplace cultures meant they did not take them up.

Many participants said that unless women and men take up flexible work in equal numbers, the male primary breadwinner model will remain unchallenged and unchanged.

The use of telecommunications and new technologies could help, but some employers may not acknowledge that staff may be more effective if they work in a way that accommodates the responsibilities they have outside the workplace. Technology can also hinder work-family balance if employer expectations about employee availability are unreasonable.

A Darwin-based community organisation was unable to offer staff competitive remuneration, however they allowed people to work from home through remote access. This has made a positive difference in recruiting and retaining skilled staff.

Employers and employees told the Commissioner that when flexible work arrangements are negotiated to meet the interests of each party, then it works effectively.

Most employers said that family friendly policies were a good strategy to attract and retain staff. As one Adelaide-based employer noted:

"We've just picked up a staff member who we think will be very good, because she couldn't work four days a week in another job ... The smart businesses will pick up these really talented women."

The ADC congratulates the AHRC on the Listening Tour initiative and Report. We urge organisations to foster flexible work practices. ADC staff are available to assist in the development of policies and practices that benefit businesses and employees alike.

DID YOU KNOW that it is unlawful to be dismissed, demoted or treated in a less favourable manner at work because you belong to a Union?



International Human Rights Day

Wednesday 10 December 2008, 4:30pm to 6:00pm

The Universal Declaration of Human Rights was proclaimed and adopted by the United Nations General Assembly sixty years ago.

Since its adoption in 1948, the Declaration has been a source of inspiration for national and international efforts to promote and protect human rights and freedoms. In 1950 all States and interested organisations were invited by the General Assembly to observe 10 December as Human Rights Day.

2008 marks the 60th Anniversary of the Declaration, with celebrations occurring throughout the world to mark the occasion. The Anti-Discrimination Commission, in conjunction with the Multicultural Council NT, invite you and your colleagues to celebrate with us on Wednesday 10 December between 4.30pm – 6pm at the Darwin Wharf Precinct Function Centre. Drinks and finger food will be provided.

Former Administrator Ted Egan will be guest speaker. He has broad experience, and a keen interest in, human rights issues. Ted will also announce the winners of the MCNT 2008 Harmony Calendar Poster competition.

For further details or to reserve a place contact Karyn 8999 1461 or Karyn.jessop@nt.gov.au before 3 December as places are limited.

NT Working Women's Centre is a Work/Life balance advocate

The NT Working Women's Centre (WWC) provides free and confidential information, advice and referral for NT women about work related issues such as: pay, working conditions, unfair dismissal, superannuation, discrimination, harassment, balancing work and family, occupational health and safety and workplace bullying. Women can contact WWC on the free call number. Services are provided throughout the NT and staff visit regional centres and some remote communities. The WWC also provides free group training sessions to women on topics such as: Women's Rights at Work, Enterprise Bargaining, Discrimination, Bullying, Negotiating with Employers, Workplace Relations legislation, occupational health and safety. In addition, WWC identifies work related issues for women in the NT, and provides policy advice to governments and other agencies, and comment to the media.



2007/2008 Annual Reports

The ADC and Community Visitor Program Annual Reports are now available on our websites www.adc.nt.gov.au and www.cvp.nt.gov.au. If you wish to receive a copy please contact the ADC.

Equal Opportunity for Small Business

During October Business Month the Northern Territory Government promotes/hosts business events that address the key issues faced by NT local business.

This year's title, "Advance Your Business Opportunities" offered programs with four key themes: Innovation and Technology, Lifestyle Management, Recruitment and Retention and The Environment/Green Business.

The ADC, in conjunction with the Chamber of Commerce, presented a workshop in the 'Recruitment and Retention' stream, called "Catch and Keep with Reward and Respect". The workshop was designed to inform people about the benefits of preventing discrimination in small business.

Discussions with workshop participants focussed on the benefits equal opportunity delivers to small business and the low costs and high returns of building a positive work environment and putting effective strategies in place. Numerous benefits to business were identified, including: increased productivity, reduced absenteeism and staff turnover, and increased staff morale.

A workplace free of discrimination and bullying has more time to focus on business and increasing competitiveness.

Discrimination may occur in the ways staff are recruited or dismissed, the way customers/clients are dealt with, the way business products/services are advertised, in the offering of conditions of employment/benefits, and in the way staff are selected for recruitment, promotion, transfer, retrenchment or dismissal.

A number of workshop participants questioned whether all discrimination is unlawful. It was explained that unlawful discrimination occurs when people are treated unfairly or receive less favourable treatment because of a particular characteristic or attribute. However unless the attribute is one of the fourteen (eg. race, sex, age, sexuality, disability) listed under the *Anti Discrimination Act*, the discrimination is not unlawful. For instance, if a smoker is discriminated against because he/she smokes, the ADC has no jurisdiction to receive a complaint because smoking is not an attribute under the Act.

The ADC, in a joint venture with the NT Chamber of Commerce, has produced a booklet called "Preventing Discrimination... It's Good for Business! Your Rights and Responsibilities in Small Business". The booklet is available on the ADC website www.adc.nt.gov.au or upon request from the Commission.

The Australian Human Rights Commission has produced a free DVD called "Good Practice Good Business" which contains a great deal of the information business owners require in developing their policies and procedures. This booklet can be ordered from Australian Human Rights Commission website <http://www.hreoc.gov.au/>

The ADC and the Chamber of Commerce both assist with policy development and this service is available for your small business. Please contact the ADC if you require assistance.



ADC's Surya Silva (second from right), and NT Chamber of Commerce Training Manager Steve Saint (third from right) and Snr Workplace Relations Advisor Jacki Garland (right, front row) with OBM attendees.



Conciliated Complaints

Victimisation and Work

The Complainant alleged victimisation in the area of work. He claims he was treated in a less favourable manner in the workplace and following a particular incident with a fellow colleague, he advised that he would complain to the ADC if an apology was not forthcoming. The Complainant was dismissed from his employment the following day (in 2008).

The Respondent advised that the reason the Complainant was dismissed from his position was because he was “unable to effectively work within the team.”

It was agreed that the Complainant sent an email to his co-worker requesting an apology and that he advised he would be pursuing a complaint with the ADC should he not receive the apology.

Conflicting evidence provided by the parties could not establish whether or not the Complainant's employment was terminated prior to the email being sent as different documents recorded his dismissal as at three different dates.

The complaint was resolved by way of conciliation following negotiations between the parties. The complainant was awarded \$5500 in general damages. No admission of liability was recorded.

Impairment – Mental Illness

The Complainant was summarily dismissed from his work after an incident of erratic behaviour when charged with the care of vulnerable clients in 2008.

The Complainant claimed that the incident was the last of a series of erratic episodes, all of which had come to the attention of the Respondent employer. Five days after the incident the Complainant was diagnosed with a mental illness.

The Complainant alleged that in terminating his employment, the Respondent discriminated against him on the basis of this mental illness.

The Respondent stated that the employment of any employee who had behaved in the same way as the Complainant would have been terminated. In other words the Respondent stated that termination took place because of the Complainant's behaviour not because of his impairment.

The parties both accepted that at the time of the incident the Complainant was unable to perform the inherent requirements of his job. (One of the exceptions in the Anti-Discrimination Act allows an employer to discriminate against a worker on the basis of the worker's inability to perform the inherent requirements of the work). On this basis it is unlikely that the complaint would have been successful in a claim of direct discrimination.

In the second part of his complaint the Complainant alleged that the Respondent had failed to accommodate a special need he had as a result of his mental illness.

Whilst it was accepted that the Complainant was not diagnosed with a mental illness until after he was dismissed it was submitted by the Complainant that, based on his recent erratic behaviour and the unusual nature of the final incident, the employer should have investigated the Complainant's psychological, emotional and mental health before summarily terminating his employment.

There was no formal determination of this complaint, however the complaint was resolved with the Respondent paying the Complainant compensation equal to the value of the sick leave that he would have been entitled to use had more reasonable accommodation of his mental illness been made at the outset.

Medical Condition

In 2008 the Complainant advised that she is an insulin dependant diabetic and that her pregnancy was described as ‘high risk’ by her GP. The Complainant explained that her role requires her to work a 24/7 rotating roster. She says she asked her employer to regulate her roster to either permanent night shifts or permanent day shifts for the duration of her pregnancy so that she may better manage her medical condition. The Complainant says her employer initially agreed to the adjustment and she was placed on regular night shifts. Then, without consultation, she claims she was returned to a rotating roster.

Parties to the dispute were invited to attend a conciliation conference to discuss the resolution of the dispute. The Respondent explained that the night shift attracted an additional penalty rate so was favoured by many staff for financial reasons. The Respondent says it received complaints from staff who perceived the adjustment as ‘unfair’ so after three months the Complainant was returned to a rotating roster. The Respondent agrees she was returned without consultation.

The Respondent offered an apology for the miscommunication and financial compensation for three days lost wages. It was also agreed that the Complainant could return to work on a regular day shift for the duration of the pregnancy. The resolution was reached without any admission of liability and no finding of discrimination was made by the ADC.

Traditional Credit Union wins diversity awards

Congratulations to Darwin-based Traditional Credit Union (TCU) which has won two categories at the national Diversity@Work Awards presented on 13 November in Melbourne by Sir Bob Geldof.

TCU was winner in the Indigenous Australians (Small to Medium) category and in the Diversity & Inclusion Champion (Small to Medium) category. The Diversity@Work Awards recognise leading practice in the area of diversity and inclusion.

TCU provides personalised quality financial services for Aboriginal people in remote communities in the Top End of the Northern Territory. TCU has a staff of 65 and is a major provider of employment and training for Aboriginal people. More than 80 per cent of TCU staff are indigenous and TCU's board is made up of five indigenous members and four non-indigenous members.

TCU is Australia's only Aboriginal-owned banking institution and is the only Authorised Deposit-taking Institution (ADI) based in the NT. TCU has 13 branches.

As an ADI, TCU is subject to the same strict regulatory framework that applies to banks. ADIs are subject to intense supervision and strict prudential standards on capital, liquidity, risk management and governance. TCU's deposits are covered by the Federal Government's deposit guarantee.

In August this year, TCU won Reconciliation Australia's Indigenous Governance Award for an organisation established for more than 10 years.

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

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