



Message from the Commissioner



Disability Access to Buildings

Most of us are aware in general terms of the need to provide easy access to buildings for people with disabilities. The need arises for reasons of equity and human rights. Failure to provide access may render owners or occupiers of buildings vulnerable to disability discrimination complaints.

All states and territories except SA have legislation covering equitable access to buildings. In an effort to bring some consistency to the law in this area a draft disability standard on access to premises has been developed federally. Once settled this standard will be incorporated into the *Disability Discrimination Act* (Commonwealth) and the revised (National) Building Code of Australia.

The aim of the premises standard is to clearly define the level of access that must be provided to buildings by developers, owners, occupiers, operators in order to meet legislative requirements.

This will mean that developers, owners etc can operate with confidence that they will not be subject to a successful discrimination complaint if they comply with the standard. Also, it will ensure a more accessible environment for people with disabilities, young families and our ageing population.

It is likely that the premises standard and revised building code will only apply to new buildings and new work in existing buildings. Also, the new standard will be useful in complementing existing disability access law which is applied flexibly and requires the **reasonable** accommodation of special needs that do not cause unjustifiable hardship to owners, occupiers etc.

On 3 December 2005, International Day for People with Disabilities, the Commissioner for Public Employment (CPE) awarded disability access prizes to the best Darwin Mall business and the best NT Government building. The awards followed a disability access audit conducted by the disAbility Action Network and the Office of the CPE (OCPE).

The awards were extremely well received at a ceremony in Raintree Park, Darwin. Following on from this success the OCPE and the ADC have resolved to co-sponsor an annual building access award. Also, the OCPE and ADC will combine their efforts in the future to promote the benefits of easy access to buildings for people with disabilities. NT government owned and occupied buildings are a significant part of the building sector, so it is appropriate that such buildings should provide a best practice example to the community as a whole.

Given the inevitability of the adoption of the new premises standard in the NT, the joint ADC/OCPE Strategy, to be developed in conjunction with various NT government representatives in the human services and properties areas, will include access audits, information bulletins, and a best practice model.

Don't forget that the ADC provides free telephone or in person advice to anyone in the community in the area of disability access.

Unfair Dismissal Legislation

Recent interstate allegations that state-based anti-discrimination agencies are encouraging the fabrication, and soliciting the lodgement, of unfair dismissal claims are without foundation.

In the wake of recent amendments to the (Federal) *Workplace Relations Act* it is apparent that many employers and employees are confused about their responsibilities and rights in the area of unfair dismissal.

Some agencies, ADC included, decided it was prudent to remind the public that anti-discrimination law potentially covers a wide range of unfair dismissal scenarios (see "Fair Go", Christmas Edition 2005), that anti-discrimination law is not affected by the new Federal legislation, and that state agencies are still open for business.

We now reproduce for the information of readers the text of our notice placed in newspapers throughout the NT.

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NEW FEDERAL GOVERNMENT LAWS REGULATING WORKPLACE RELATIONS

Even though new laws now apply, the NT Anti-Discrimination Commission reminds public and private sector employers that the NT *Anti-Discrimination Act* still prohibits the dismissal of employees on grounds of:

- race;
- marital status;
- impairment;
- irrelevant medical record;
- association with a
- sex;
- pregnancy;
- religious belief or activity;
- irrelevant criminal record;
- person who has any of
- sexuality;
- parenthood;
- political opinion, affiliation
- trade union or employer
- the above attributes.
- age;
- breastfeeding;
- or activity;
- association activity;

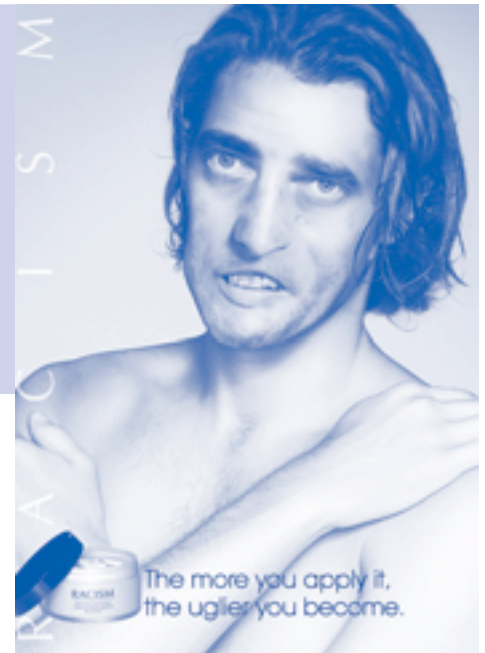
Companies with fewer than 100 employees are exempt from unfair dismissal laws. However, all businesses, regardless of their size, are still subject to anti-discrimination and equal opportunity law. Employees (including casuals, contract workers and part-time workers) who believe they have been unlawfully terminated in breach of the *Anti-Discrimination Act* may still complain to the Commission.

The Commission is an independent Statutory Authority. For impartial advice and information, assistance in resolving complaints, or to organise workplace training, ring.

Racism

Three Racism posters have been created for the United Nations by advertisers' Saatchi & Saatchi, who have kindly agreed to let the NT Anti-Discrimination Commission use them in this Newsletter.

This campaign started from a simple premise: if racism were a beauty product it would actually make you uglier. In order to externalise this inner ugliness, Saatchi & Saatchi used a variety of different faces in poses typical of beauty advertising. The features were then mixed and retouched to create faces that were ridiculously grotesque.



What's New in Education and Training?

Free Training

If you can get a group of ten or more people together the Commission is offering to run the "Introduction to Anti Discrimination Law"... **FREE**...

The course will address discrimination and harassment issues that are specific to your group, workplace or organisation. Register your Group's interest now.

July to December 2006 Training Program

The Training Program for July to December 2006 is now available. The program can be accessed from the website www.adc.nt.gov.au.



Look out for the new training packages for sporting organisations. Over the last year Sue Rhodes, our Director Public Education and Training, has met with representatives from all State and Territory Anti-Discrimination/Equal Opportunity Commissions and Offices of Sports and Recreation to update and revamp all the training packages available through the national Harassment Free Sports Strategy.

The new training packages:

- will be available in module format – recognising that people in sport are busy and often have trouble finding time to attend training;
- will include the latest changes in Equal Opportunity and Anti-Discrimination and also Child Protection Legislation in all states and territories; and
- have been renamed—the Member Protection Information Officers Training Course, Member Protection Management Training Course, and Complaint Handling Training.

If you are interested in how the Harassment Free Sports Strategy changes impact on your sport, or in becoming the Member Protection Information officer for your sport, ring Sue Rhodes at the Commission or Annette Duncan at the Office of Sports and Recreation (8982 2338).

Information Sheet on Criminal History Checks

If you require criminal history checks as part of your recruitment and selection process, or if you want to obtain the up-to-date information on your obligations and rights, contact the Commission for our newest information sheet on Criminal History Checks, or go onto our website and download your own copy.



Equality of Opportunity for Women????... Not Yet!

A man in his early sixties complained to the Commission that a government concession scheme providing benefits to older Territorians was discriminatory because women could access benefits from the age of 60 whilst men could not access the scheme until age 65.

The Scheme clearly operates differently in relation to men and women. However, not all forms of different treatment are unlawful discrimination. In investigating the complaint the Commission needed to consider whether the scheme was a special measure designed to promote equality of opportunity for a disadvantaged group of people, in this case women. If the scheme was such a special measure then it would be exempt from the application of the *Anti-Discrimination Act*, until such time as women achieve equality of opportunity.

On the other hand, if it was apparent that women had achieved equality of opportunity in relation to wages and economic independence, then the scheme would be prohibited by the *Anti-Discrimination Act*.

In researching the concession scheme it became apparent that when it was introduced in 1979 it was a special measure applied to women from the earlier age of 60 in an effort to overcome the historical economic disadvantage suffered by women as a result of gender-based differential wage rates.

It was possible that as a result of the 1972 National Wage and Equal Pay Case this historical disadvantage might have been overcome and that women reaching retirement age in 2006 might have achieved equality in wage outcomes such that the scheme should no longer apply.

The Commission considered Australian Bureau of Statistics figures which showed that average weekly total earnings for women between 1983 and 2005 had **not** reached equality with male earnings, although wages overall have increased. In fact in both the NT and Australia overall women's average weekly earnings have fallen further behind men's average weekly earnings over the past 22 years.

Another issue greatly impacting on the level of economic equality experienced by older women is superannuation. The Commission noted that studies of gender differences in retirement savings showed that:

1. While women are more likely now to have some superannuation income than in the past, there is a significantly lower number of women than men with access to any form of superannuation income, regardless of age; and
2. Those women who do have access to superannuation will, on average, have a much lower superannuation balance when they retire, regardless of their current age.

The lower superannuation balances of women reflect the lower average wages earned by women, as noted above, and the greater periods of time women spend out of the workforce or full-time work as a result of pregnancy and parenting responsibilities.

The evidence of lower average weekly earnings and significantly lower superannuation balances was sufficient to convince the Commission that, in general, women continue to have access to significantly less retirement income and savings than men.

The complaint to the Commission was discontinued on the basis that the beneficial application of the concession scheme for women is a special measure which is still necessary and not prohibited by the *Anti-Discrimination Act* because women have not yet achieved equality of opportunity in this area.

Discrimination on the Basis of Impairment and Failure to make Reasonable Accommodation – Conciliated

A man who had suffered an injury causing some brain and physical damage obtained a job in a small business. Following a workplace accident, concerns were raised by other workers that his level of impairment caused him to be a danger to himself and others. He was dismissed from his job and made a complaint alleging discrimination and failure to accommodate a special need.

The employer and the complainant met at a conciliation conference in which the employer told the worker how terrible he felt about having to terminate the employment. He explained that efforts had been made to find alternative work that the man could do safely but when that had proved impossible dismissal was the only option left. An occupational therapist also attended the meeting and confirmed the view that there was no work in that workplace that the complainant could safely undertake with his skills. This is because there were only two jobs in the factory (manager and administrative staff) that did not involve working on the factory floor.

The employer agreed to provide the complainant with a reference emphasising his strong work ethic and the skills that he did have, and also the employer offered an apology for the way the matter had been handled without sufficient explanation to the complainant.

The parties indicated that conciliation had resulted in a satisfactory outcome.

Sexual Harassment – Conciliated

A woman alleged that during a break in work a male employee made inappropriate sexual suggestions to her and touched her shirt. She was very distressed and made a complaint of sexual harassment against him and also alleged that her employer was vicariously liable for the conduct.

Immediately upon receiving the complaint the respondent apologised, saying that he realized his behaviour was “out of line” and that he felt terrible for having upset the complainant, whom he knew to be a nice person. He attended an ADC education and counselling session on sexual harassment and also provided the complainant with a written apology.

The employer contacted the ADC to discuss what it could do to prevent such conduct occurring in the workplace. It agreed to hold a workplace education and training session on discrimination and sexual harassment issues, and to provide all workers with written information and education materials.

The complainant was satisfied with this outcome.



African Sponsored Student



Anti-Discrimination Commission staff have joined together to sponsor an African student through CHES (Canadian Harambee Education Society). CHES is run by a group of retired teachers at no administration cost, with all contributions directed to the benefit of the sponsored students. The CHES program provides an opportunity for outstanding female students in Kenya and Tanzania to attend secondary school. Sponsorship is offered only to young girls, a particularly disadvantaged group in these countries.

Our student's name is Elicah Barasa and this is what she said to us in her letter:

“I am an orphan girl aged 15 years. I am the third born in my family. I have five brothers and four sisters. Our parents died many years ago and left us without a home.

Thank you very much to support me to get this education. Following this education I have learned many things, not only about subjects but also to know my Right as a Human Being. I thank you because the woman together with the girls in our society, I mean the Barbaig Society [in Tanzania], have no right to do anything to improve their own development without the permission of men. From your sponsorship and educations I have learned that women and girls do have Rights just like men. So this is why I say I shall never tire of saying thanks to you.”

Another graduate of the CHES program recently wrote to the society to describe how sponsorship has enabled her to know her rights and to tell how she was able to help another girl:

“Lastly, which is also very sensitive to my gender in the Kenyan society where females have little or no say over their rights, I have learned that we, as females, can speak up for our rights. I have learned this through a female magistrate, Mrs. Teresia Wekulo, who was invited to speak to us at the CHES workshop. I am very happy since I know I can stand firmly and tell someone that I have a right to own this, do this, and above all, a right to be educated. This has helped me so much since I saved a young girl who was being forced by the parents to undergo female circumcision. She did not undergo the painful ritual and to date she is proud to stand up for her rights.”

All of us at the Commission are hopeful that our small amount of assistance towards this good cause will lead to a greater level of equality of opportunity for women in Africa.

Discrimination is No Joke!

The coach of the NSW Waratahs Rugby Union team sends scouts around the world looking for new talent to help win the Super 14 Rugby title. One of the scouts informs him of a young Iraqi fullback, who he thinks will turn out to be a superstar. The coach flies to Baghdad to watch the youngster train, is suitably impressed, and arranges for his move to Sydney.

Two weeks later the Waratahs are 21-0 down to the Auckland Blues, with only 20 minutes left to play. The young Iraqi gets the nod, and on he goes. The lad is a sensation, scores 4 tries in 20 minutes and wins the game for the Waratahs.

The fans are delighted, the players and coaches are thrilled, and the media love the new star. When the player comes off the field, he phones his Mum to tell her about his first day in Australian Rugby.

“Hello Mum, guess what?” he says. “I played for 20 minutes today. We were 21-0 down, but I scored 4 tries and we won. Everyone loves me, the fans, the media, they all love me.”

“Wonderful,” says his Mum. “Let me tell you about my day. Your father got shot in the street, your sister and I were ambushed and beaten, and your brother has joined a gang of looters, all while you were having a great time.” The young lad is very upset. “What can I say, Mum, I’m SO sorry.”

“You should be sorry!” says his Mum. “It’s your fault we moved to Sydney in the first place”!!

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