



fair Go

Newsletter of the Northern Territory Anti-Discrimination Commission

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Back copies available from www.adc.nt.gov.au

Message from the Commissioner



This edition of 'Fair Go' features the general theme of accommodation in the NT. The right to adequate housing is a fundamental human right recognised in international conventions such as the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)*, to which Australia is a party.

Accommodation Problems in Central Australia

In March this year, it was reported in the press that an Alice Springs accommodation provider had asked a group of young Aboriginal women from Yuendumu to vacate its premises.

There was no suggestion that the Yuendumu group had misbehaved in any way. It appeared that the accommodation provider was fearful that the Yuendumu people would frighten other guests.

The provider's reported response in the circumstances was surprising given popular opinion that tourists want to meet Aboriginal people and have an 'Aboriginal experience'.

Unfortunately two unsavoury outcomes arose from the incident. The Yuendumu people felt they were treated unfairly, and (needless to say) several days of relentless media attention cast Alice Springs in a very unflattering light throughout Australia and overseas.

As most readers are by now aware, the ADC's statutory responsibilities under the NT *Anti-Discrimination Act* ("the Act") include not only the investigation and resolution of complaints, but the promotion and public acceptance of principles of non-discrimination and equal opportunity.

In April, the ADC conducted consultations with accommodation industry representatives in Alice Springs. The industry response was very encouraging. The consultations were designed to provide the industry with an opportunity to raise its issues and concerns, and included discussions about behaviour of industry and patrons, rights and responsibilities under the Act — and an assurance that the initiative was not an 'Alice witch hunt' but a reflection of ongoing similar complaints received about establishments from Tennant Creek, Three Ways, Katherine and Darwin. Similar consultations are planned for these towns too.

Forty-one independent industry representatives and Tourism Central Australia attended over two nights. They were addressed by NT Chamber of Commerce CEO Chris Young and myself. Proprietors in general were cooperative and enthusiastic about participating in an industry-wide initiative. They saw themselves as part of the solution.

The consultation is ongoing and will hopefully result in the creation of an industry-wide protocol setting out the legitimate expectations of accommodation providers about the behaviour of patrons. The plan is for the protocol to be widely disseminated by the industry throughout Alice Springs, in remote communities and amongst all local and foreign tourists, so that no patron, employee or business has any doubt about industry requirements.

One important issue discussed at the consultation was the need for accommodation providers to actually engage with prospective guests. That is, rather than impersonally excluding people by telephone who (say) are indigenous, it is fairer and better business practice to deal with prospective guests personally at reception. In this way, proprietors are well placed to explain protocols to everyone and treat people on their individual merits (as opposed to assuming over the phone that people will behave inappropriately based on some inaccurate stereotype).

According to reports received by the ADC other devices used by some NT accommodation outlets to exclude Aboriginal people include overcharging, provision of sub-standard accommodation, provision of poor quality linen, and straight-out refusal to accommodate.

Review of the Northern Territory Emergency Response (NTER)

Many readers will be aware that the federal government is presently conducting a Review of the NTER. The previous federal government decided to "intervene" in the NT in July 2007 and, one year on, a Review process is taking place.

The Review Board must report to government by the end of September 2008, and written submissions from the public were sought up until 15 August 2008.

The ADC lodged a submission, the complete version of which is available in hard copy on or our website www.adc.nt.gov.au.

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Recommendations of the ADC's submission include:

- restoration of the ADC's power to receive and resolve complaints about NTER (the NTER enabling legislation suspended the operation of the *Anti-Discrimination Act* [NT]);
- long term engagement (including remote staff placements) between government and remote communities;
- scrap the NTER and transform NTER initiatives from the short term to the long term;
- reform local government to enable it to contribute significantly to overcoming remote disadvantage.

Tony Fitzgerald, Anti-Discrimination Commissioner

Did you know? A person may discriminate against a person in deciding who is to reside in accommodation if the accommodation is part of the main home of the first person.

Housing and Support for People with Complex Needs

The Community Visitor Program (CVP) ensures that the human rights of mental health consumers are observed. The right to adequate housing is one of the most fundamental of all human rights. The Anti-Discrimination Commissioner also serves as the Principal Community Visitor (PCV) under the NT *Mental Health and Related Services Act*. One of the main issues that the PCV and the CVP have identified over recent times is the lack of suitable accommodation and support in the NT for young people with complex needs.

People have a right to safe and secure housing and there is considerable evidence to support the link between mental health and the availability of suitable housing (eg Elly Robinson and Ren Adams/Australian Family Relationships, Clearing House (2008) *Stress and the Mental Health and Wellbeing of Families*). Young people with complex issues that include mental illness and/or a combination of alcohol and other drug problems, intellectual disability, acquired brain injury and challenging behaviours are vulnerable. Yet they are amongst the people who find it hardest to access housing with the support necessary to enable them to live in the community.

The CVP is aware of a number of situations where young people have been admitted to psychiatric wards and remained there even when the mental illness aspect of their presentation has resolved. This is simply because the appropriate accommodation with support outside the hospital environment is not available. The example below illustrates the effect of lack of appropriate accommodation and support on the person with complex issues as well as the effect on others.

In the psychiatric inpatient unit in the Royal Darwin Hospital, a section has recently been developed specifically for flexible use for vulnerable people with mental illness who need to recover in a quiet and safe area. It has been used effectively to nurse young people as well as young mothers with new babies.

On more than one occasion, this area has been separated from the inpatient unit and used for young people with multiple issues who require a secure environment, when the primary issue is safety rather than mental illness.

While the CVP understands that the area was used in this way because there was no other secure facility in the Territory, it is an example of facilities designed to improve the therapeutic experience and well-being of people with mental illness being used for other purposes, to the exclusion of the people it was designed for.

The right to live in the community wherever possible has ample support in international and national policy and law. Principle 3 of the *Principles for the Protection of People with Mental Illness and the Improvement of Mental Health Care* (UN General Assembly 1991) states that "every person with a mental illness shall have the right to live and work, to the extent possible, in the community". This principle is echoed in the Part 2, Fundamental Principles of the NT *Mental Health and Related Services Act*.

In other jurisdictions, Health Departments are setting up distinct services for people with complex issues. These services operate across government departments. Dr Howard Bath, in the Executive Summary of his Report on the *Northern Territory Community Services High Risk Audit* (2007:13), recommended that a similar strategy be put in place in the Territory, with Family and Childrens Services, Aged and Disability Services, Alcohol and other Drugs Services and Mental Health Services working together to coordinate care for people at high risk of harm to themselves or others.

The issues surrounding accommodation and support are complex and there cannot be a "one size fits all" response. For this reason the CVP supports Bath's call for a cross-program strategy to provide appropriate services for people with complex needs. The CVP suggests however, that the strategy will only be effective, and in the end cost effective, if services are designed to meet the individual needs of young people requiring high level service delivery.

Over the past four years, the Mental Health Program in the NT has substantially increased funding to the non-government sector to provide accommodation and support services for people with mental illness. Young people with complex needs do not necessarily suffer mental illness however, and if the Mental Health Program were to attempt to fund services for this group of people without receiving additional funding themselves, it would be to the detriment of mental health services generally.

In order for people to live and work in the community, a range of accommodation types with individualised support packages needs to be developed as part of a whole-of-government strategy. These support packages should include a small-scale 'secure care' facility to provide a temporary containment and treatment option for young people at extreme risk; and a range of accommodation types that might include individual accommodation, cluster housing and small group facilities, all with varying levels of support. These accommodation and support packages need to be readily available to avoid lengthy or inappropriate use of psychiatric inpatient facilities.

Youth Careers Expos



Two recent NT Careers Expos attracted hundreds of young people seeking information about their work and job choices. The ADC took part.

The Darwin Expo was held on 7 August 2008 and the Nhulunbuy Expo on 20 August 2008. ADC information packs were given to more than 450 students, parents and teachers, with many people being introduced to the work of the ADC and the areas we cover, for the first time. A big thank you to the Expo organisers for a very successful event. We look forward to participating again next year.

ADC staffers Surya Silva (left) and Melanie Campbell at the ADC's Darwin Expo booth



Disability Awareness Week



The Happiness and Wellbeing Community Market filled Raintree Park with stalls, information, people, music, fun and enjoyment on 13 August 2008. The Commission was there, providing information for people with disabilities, staff, carers and interested general public taking part in the activities.

ADC's Somsong Albert at the ADC stand

Complaints Regarding Accommodation:

As regular readers are aware, the ADC is able to accept complaints of discrimination on the basis of any of the fifteen attributes listed under section 19 of the NT *Anti-Discrimination Act* ("the Act") (including race, sex, impairment) in the area of accommodation.

For the purposes of the Act, "accommodation" includes business premises, houses, flats, hostels, camp sites, mobile homes, caravans and building or construction sites.

An accommodation provider must not discriminate against an accommodation seeker based on an attribute such as race, sex, sexuality etc:

- by refusing to accept an application for accommodation;
- by refusing to supply, extend or renew accommodation;
- by treating the seeker less favourably when processing an application for accommodation; or
- by offering less favourable terms and conditions for the offer, renewal or extension of accommodation.

Also, where accommodation has already been provided, the accommodation provider must not discriminate on the basis of an attribute:

- in connection with any proposed variation of the terms and conditions for supply of accommodation;
- by failing or refusing to grant, or limiting access to any benefit connected with the accommodation;
- in evicting a person from the accommodation; or
- by treating a person less favourably in any way in connection with the accommodation.

(Some exemptions apply).

In addition to the prohibition on discrimination on the basis of an attribute in the area of accommodation, it is also unlawful for providers of accommodation to sexually harass someone; fail to accommodate a special need that someone has as a result of an attribute; seek unnecessary information on which unlawful discrimination might be based; or assist someone else to contravene the Act.

In 2007-08 the ADC received 14 complaints in the area of accommodation. Eleven of these involved allegations of discrimination on the basis of race.

If you think you have been discriminated against in the area of accommodation, you can contact the ADC for further information on freecall: 1800-813846.

Did you know? An educational authority that operates for students of a particular sex may provide accommodation wholly or mainly for students of that sex.

Publication of the Names of Complainants and Respondents:

There have been a number of recent instances in which persons involved with hearings or appeals under the *Anti-Discrimination Act* ("the Act") have later asked that the Commission remove their names from our website or other publications.

As a general rule, when the Commission receives a complaint, we will attempt to assist parties to resolve the complaint in a confidential manner. Under the Act conciliations of complaints must be held in private and the ADC policy is to keep conciliation proceedings confidential so as not to discourage parties from availing themselves of the conciliation process. Also, parties may opt to include confidentiality clauses in any settlement agreements that flow from the conciliation.

The Commission will not release information about a complaint that will identify parties, even though from time to time we will use de-identified accounts of conciliations in our publications to educate the public on the work we do — you can see several of these examples on the back page of this newsletter.

If a matter does not resolve it may go to hearing before the Commissioner. Hearings under the Act generally take place in public. This means that the details of the parties and the case itself will be in the public domain and may be reported on by media and the Commission.

Nothing said, done or written in conciliation proceedings prior to a hearing will be admissible at the hearing however. Those details remain confidential.

If people involved in hearings want their names or any other details kept from the public eye after the matter proceeds to hearing, they must apply to the Commissioner, or to the Local Court if the matter is on appeal. In deciding whether or not to exercise his discretion to withhold the names of people involved in a hearing, the Commissioner will consider whether this is necessary to protect the work security, privacy or any human right of the person; the interests of the community, as well as the intent of the Act in providing that hearings are generally to be conducted in public.

Unless the Commissioner directs otherwise, the Commission will publish hearing and appeal decisions in journals and on our website as these decisions provide guidance to the operation and interpretation of the Act.



Conciliated Complaints

Accommodation

An Aboriginal woman was offered the opportunity to rent or purchase an on-site caravan in a caravan park. She was advised that she would need references and later advised that her references were not adequate. She believed that she was being denied the right to live on the site because of her race.

The ADC contacted the park operators and discussed the concerns raised by the Complainant. They were adamant that race was not a factor in their decision and advised that they had many Aboriginal tenants. However, in discussions they came to understand why their conduct had been perceived by the Complainant as racist. They apologised for this and better explained their concerns with the references and their requirements for occupancy. Once the tenant complied with requirements she was able to occupy the site within a week of her complaint to the ADC.

All parties were happy with the outcome.

Accommodation

The Complainant was an Aboriginal woman from Arnhem Land who often travels to Darwin to work as an interpreter. Her employer arranged lodging at a Darwin motel and was quoted a special rate of \$210 per week. However, when the Complainant contacted the motel to confirm the booking and arranged key collection she was quoted a higher rate of \$380 per week. Her employer queried the higher rate with the motel and was told that motel policy was to charge Aboriginal guests more because they were “dirty” and left the rooms “in a mess”.

The distressed Complainant contacted the ADC on the same day. At conciliation the next week the motel proprietor claimed that customers choose which rate applies depending on whether they require daily cleaning. The proprietor however conceded that one of this staff may have said that motel policy was to charge Aboriginal customers a higher rate.

At the Complainant’s request the proprietor apologised and agreed that he and his staff would participate in anti-discrimination training conducted by the ADC. This way they would understand that it is unlawful and offensive to treat people differently because of their race. As a further gesture of good will the Complainant and her family were provided with free weekend motel accommodation in Darwin.

Accommodation

The Complainant, accompanied by a guide dog, was refused dormitory accommodation at a Darwin hostel. He was advised that “health reasons” prevented the dog sharing the dormitory with others and was offered single room accommodation at triple the dormitory rate.

Settlement was reached at conciliation on the following bases:

- an apology was offered to the Complainant;
- the Respondent agreed to acquaint staff with the law regarding assistance dogs (ie less favourable treatment of disabled persons because they have a guide dog is unlawful discrimination, and guide dogs are exempted from health legislation in public areas); and
- the Complainant received six nights free accommodation.

The complaint was resolved through conciliation in less than one month and both parties were delighted with the outcome.

Ramp access to unit*

A woman who has a physical disability complained that portable ramps which she used to gain access to her home unit had been removed. The complaint was resolved when the body corporate approved installation of a permanent ramp.

Captioned TUs in Hotels*

A woman who is deaf complained that the TV in her hotel room did not display captions. The complaint was resolved when the hotel agreed to ensure captioning on at least 25% of TVs within 12 months and to improve booking procedures to ensure that guests could request a room with captioned TV.

In another case, a woman who is deaf complained that her room in a guest house did not have captioning facilities on the television. The complaint was resolved when the respondent advised that televisions with text capability would be installed within 12 months in all rooms.

*(*Courtesy of Aust Human Rights Commission)*

Have a look at our television advertisements on the ADC website at www.adc.nt.gov.au for another example of unlawful discrimination in the area of accommodation.

Discrimination on the Basis of Impairment/Failure to Accommodate a Special Need

A male complainant alleged that his employer, a government department, had failed to reasonably accommodate his special need. The complainant suffered from various mental health issues including anxiety, depression and post traumatic stress disorder. He also alleged that the introduction of a Performance Management Program (‘PMP’) was discriminatory because of his illness.

After careful consideration, the ADC considered there was insufficient evidence to sustain the claim. The employer had more than accommodated the complainant’s impairment allowing him flexible hours of attendance and access to various leave entitlements. Also, it was the view of the ADC that the implementation of the PMP was reasonable in the circumstances. The complaint was dismissed.

Private Rental Accommodation in Western Australia

The ADC applauds the initiative of our counterparts at the Western Australia Equal Opportunity Commission (WAEOC) in investigating issues of discrimination in accommodation. WAEOC has just launched an inquiry into discrimination against minority racial groups in the private rental market in WA.

The inquiry will examine the possible causes of, and appropriate remedies for, race-based discrimination in the private rental housing market. The inquiry will encompass all sectors of the private rental industry where appropriate.

Further information about the WAEOC inquiry can be found at www.equalopportunity.wa.gov.au/housinginquiry.html.

Watch this space for updates on the inquiry outcomes and recommendations.

Did you know? An educational authority that operates in accordance with the doctrine of a particular religion may provide accommodation wholly or mainly for students of that religion.

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

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