



# Message from the Commissioner



I would like to raise a few issues for readers to contemplate over the festive season.

### ADC Statistics

Firstly, a plug for us. As reported in previous newsletters the NT Anti-Discrimination Commission (ADC) is a member of the Australian Council of Human Rights Agencies (ACHRA) together with equivalent interstate Equal Opportunity and Anti-Discrimination Commissions.

ACHRA has commenced collecting nationally consistent data on enquiries and complaints made to discrimination agencies nation wide. The data should prove useful in analysis and planning. In order to account for disparities in population between states, raw data is converted to rates per million people.

In 2004/2005 NT and ACT recorded by far the highest number of enquiries nationwide (ACT 4615/million, NT 4015/million with next highest being Tasmania at 2151/million), and NT recorded by far the highest number of complaints (581/million with next highest being Tasmania on 334/million).

This means that our awareness raising and promotion activities, whilst capable of improvement, are starting to achieve results. Despite our high workload we still boast the fastest average complaint resolution time in the nation.

### Terrorism

In late October 2005 ACHRA issued a press release expressing concern about the potential for proposed national anti-terrorism legislation to breach human rights standards due to inadequate safeguards. ACHRA was concerned that the legislation might permit unfair targeting of minority groups within our community. The NT Chief Minister also expressed concern about some aspects of the proposed anti-terror legislation.

It is pleasing to see that the Federal Government's latest Anti-terrorism Bill now provides for independent judicial scrutiny of the merits of cases brought against terror suspects. This means that control and detention orders proposed under the new legislation may not be imposed until the quality of the evidence is independently reviewed by a court of law.

### Unfair Dismissal

Another Federal Government proposal which will impact upon the Northern Territory is the foreshadowed changes to the law governing unfair dismissals.

The proposed changes, which affect small businesses employing less than 100 staff, apply to just about every small business in the NT. The changes will allow dismissal of employees without just cause and prevent employees from lodging unfair dismissal claims with the Australian Industrial Relations Commission.

After the introduction of the new legislation complaints to the ADC are likely to increase because NT employees dismissed under the new measures on grounds that appear to be discriminatory may have no alternative means of redress.

Aggrieved employees may decide to approach ADC because the *Anti-Discrimination Act* potentially covers a wide range of workplace dismissal pretexts. That is the Act covers workplace discrimination based on characteristics such as sex, age, marital status, pregnancy, parenthood, breast feeding, impairment, carers' responsibilities, trade union activity and irrelevant medical record.

Generally speaking employees at the greatest risk are those whose unequal bargaining power makes it difficult to negotiate a fair workplace agreement with their employer. In specific terms this means that the vulnerable employees will be carers whose caring responsibilities compete with work demands, workers whose family/child caring responsibilities clash with work demands, pregnant women, older and younger workers, and workers who have disabilities or who suffer from illness.

We can but hope that the new measures do not detrimentally affect the laudable steps the federal government has taken towards work/life balance in the workplace.

I take this early opportunity to wish you a merry Christmas and prosperous New Year.

**Tony Fitzgerald**, Commissioner

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# COMMUNITY VISITOR PROGRAM (CVP)

The CVP is located in the Anti-Discrimination Commission (ADC) to ensure its independence from the Department of Health and Community Services.

Although the CVP works with people who are subject to treatment *under the Mental Health and Related Services Act (NT) 1998* (the Act), there is one provision that enables the program to provide an advocacy service within the ADC. S104(1)(f) of the Act states that a community visitor may inquire into and make recommendations relating to *...any other matter that a community visitor considers appropriate having regard to the principles and objectives of this Act*. One of the objects of the Act is *to affirm the right of people with mental illness to complain to independent complaint bodies established by or under other legislation (S 3 (p))*.

A person with impairment from an experience of mental illness, who has been subject to unfair treatment that is directly related to their impairment, may complain to the Anti-Discrimination Commission if this has occurred in the context of their work, accommodation, education, access to goods, services and facilities or insurance and superannuation.

It can be difficult for a person with an impairment related to a psychiatric or psychological illness or disorder to complete the complaint form required by the *Anti-Discrimination Act* and to follow through the subsequent complaints process. A person with social phobia for instance, would find it almost impossible to be involved in any conciliation or hearing process.

There have now been several cases where the Community Visitor, who remains independent of the complaint process within the ADC, supported the person by assisting with the completion of the complaints form. In one instance, the community visitor was present through a conciliation meeting to ensure that the complainant's view point was heard.

An (perhaps unintended) advantage of co-location of the CVP within the ADC is that people who may be subject to discrimination on the basis of their mental illness are able to feel safe and supported when making a complaint.

**The CVP's Annual Report is now available on its website at [www.cvp.nt.gov.au](http://www.cvp.nt.gov.au). Hard copies are available on request.**

## Mental Health Care



*Pictured (from left to right) are: Dr Sev Ozdowski, Federal Human Rights Commissioner and Acting Disability Discrimination Commissioner; Judy Clisby, Manager of the Community Visitor Program (NT); Avril Cox, Personal Assistant to the Commissioner; and Simon Wiese, Acting Director Conciliation, Policy and Law, Anti Discrimination Commission (NT).*

Dr Ozdowski visited the NT to launch a report of consultations conducted by the Mental Health Council of Australia and the Brain and Mind Research Institute of Australia in association with HREOC. The Report, entitled ***Not for Service: Experiences of Injustice and Despair in Mental Health Care in Australia***, while acknowledging the development of innovative primary health care programs to remote communities and enhanced support by the Government and the responsible Minister (an increase of \$12.7m recurrent funding in the NT over the past four years) also identifies the following NT issues (p 84):

- i) Lack of access to basic assessment and treatment services, even during periods of crisis;*
- ii) Tendency to rely heavily on police and other emergency and custodial services rather than providing mental health care;*
- iii) Lack of services for persons with comorbid (both) mental health and alcohol or other substance abuse disorders;*
- iv) Lack of focus on any prevention or early intervention programs;*
- v) Lack of appropriate medical, nursing and other staff to support service developments in services outside of Darwin;*
- vi) Lack of sufficient development of culturally appropriate treatment services for Indigenous persons, particularly within remote communities;*
- vii) Lack of attention to the close relationships between poor physical health and mental health problems, particularly in Indigenous persons;*
- viii) Lack of support for non-government organisations and for provision of housing and accommodation services;*
- ix) Lack of sufficient consultation with relevant consumer, carer, family and cultural groups; and*
- x) Less access to accepted forms of effective treatment.*



# Discrimination in the Area of Work – Exemptions

The Anti-Discrimination Commission (ADC) receives many enquiries from organisations and businesses seeking to employ people from specific backgrounds.

Whilst such employment practices will generally be prohibited by the *Anti-Discrimination Act* (the Act) there are a number of exemptions in the Act that make such discrimination lawful in certain circumstances.

Two of the more commonly used exemptions are outlined below.

## Genuine Occupational Qualification Exemption

The first area of exemption applies under section 35 of the Act which provides that a person may discriminate in the area of work if the discrimination is based on a genuine occupational qualification which the person is required to satisfy.

Examples of a genuine occupational qualification include requiring a person to be physically fit to perform a manual labouring job or the employment of an indigenous man to work as a nurse or health worker specifically in indigenous men's health.

As the name implies discrimination based on an occupational qualification must relate to a qualification which is essential to the performance of the job, also known as an inherent requirement of the job.

Where an employer seeks to rely on the genuine qualification exemption (in response to a complaint of discrimination) the onus will be on the employer to demonstrate that the qualification is essential to the performance of the job. As with any other complaint the complainant will have the onus of proving any alleged discrimination.

## Special Measures Exemption

The second area of exemption relates to section 57 of the Act which provides that a person may discriminate against another person in a program, plan or arrangement designed to promote equality of opportunity for a group of people who are disadvantaged or have a special need because of an attribute.

What this means in the area of work is that a person can decide to offer or advertise a job specifically to a person or persons from a disadvantaged group.

Where a discrimination complaint is made and an employer claims that the alleged discrimination is a special measure under section 57 the onus will be on the employer to prove that the identified group is in fact disadvantaged in employment and therefore any discrimination in favour of the group is lawful under the Act.

Some of the groups generally accepted as being disadvantaged in employment include people with impairments, people from non-English speaking backgrounds, aboriginal people, women, youth and the aged.

Special measures designed to assist disadvantaged groups only apply until equality of opportunity has been achieved.

## Case Summary

### Parenthood

The Complainant who had young children worked in a call centre that had always allowed her to work flexible hours that accommodated her parenting responsibilities.

The call centre introduced a new roster that required all staff to do occasional evening work which would not have allowed the Complainant to pick her children up from childcare.

The complainant said that she could not work the new roster and reluctantly agreed to work at a different branch with more flexible working hours.

Unfortunately the new branch was much further away from the Complainant's home and childcare centre making it difficult for her to pick her children up after work.

The parties participated in a conciliation conference and it was agreed that the respondent would create a new unit within the call centre that allowed for flexible working hours for staff with parenting and other responsibilities. The Respondent also agreed to ensure that all staff were notified that more flexible arrangements were available and apologised to the Complainant for any distress caused by the introduction of the new roster.

### Guide Dog

The Complainant, who had a hearing impairment, lived in a block of units with his dog.

The Complainant's neighbours complained to the body corporate manager that keeping a dog in the unit was a breach of the body corporate rules and the manager ordered the Complainant to remove the dog.

The Complainant refused to remove the dog which he said was a guide dog he needed to assist with his hearing and other impairments. The guide dog was not registered with or trained by any assistance dog organisation.

The body corporate took the Complainant to court seeking to have the dog evicted and the Complainant complained to the ADC.

The ADC sought leave to intervene in the Local Court to ensure that the Court was aware that under the *Anti-Discrimination Act* a person who treats another person less favourably because they have a guide dog is considered to be discriminating against the other person on the grounds of impairment.

Following the intervention of the ADC the Respondent dropped the court action and ceased its efforts to remove the guide dog. The Complainant was satisfied with this outcome and the complaint was resolved.

### Race

A woman employed as a "temp" complained that she was not successful in gaining ongoing employment with an organisation because she was Aboriginal. The parties agreed to early conciliation. At conciliation the woman was advised of the reasons why her ongoing application was not successful. She accepted that the employer's decision was not made on the basis of race. The woman used the opportunity to give feedback to the employer regarding its inadequate performance management systems.



### Pregnancy

A woman returned from maternity leave to discover that her employer had changed her shift worker status without consulting her. The woman complained to the ADC that she had been discriminated against on the basis of her pregnancy. The parties agreed to early conciliation. The woman was advised of organisational changes leading to the changes in her employment conditions. The complaint was resolved when the employer agreed to new working hours proposed by the woman.

### Parenthood – Casuarina Parenting Room Complaints Resolved

In May this year the ADC received several complaints about the parenting rooms at Casuarina Shopping Centre. The complaints received local and national media through the NT News and “A Current Affair” program, televised on channel 9.

While many parents were happy with the Centre’s initiative at starting the “Bubs Club” and the improved security, privacy and cleanliness created by the introduced system, the complainants had concerns about the mandatory \$5 donation and restricted access.

The parties agreed to early conciliation of the complaints. The complainants’ feedback as clients of the Centre was considered and some changes implemented.

The ADC is pleased to advise that all of the complaints have been withdrawn.

The ADC congratulates each of the complainants for taking a positive approach to resolving the complaints and Casuarina Shopping Centre management for its best practice approach to complaint handling. The parties’ willingness to enter into early conciliation has resulted in a flexible, fair and safe facility for the benefit of parents with young children.



The PLAY BY THE RULES Website was relaunched on 31st October at Parliament House. The Minister for Sport Delia Lawrie and the Anti-Discrimination Commissioner Tony Fitzgerald both spoke at the launch. They were introduced by Charlie King, our very own ABC sports Commentator, who also interviewed local sports identities Jan Palazzi, the Australian coach for Junior Lawn Bowls and the Executive Officer of Disability Sports Association, and Mark Motlop, Wanderers Football Club coach and former NT representative and SA League player. The launch was well attended by sporting representatives.

The Play By The Rules website [www.playbytherules.net.au](http://www.playbytherules.net.au) was developed in 2001 to provide information, resources and online learning on discrimination, harassment and child protection to

grass roots and community sport and recreation associations and clubs.

What began in 2001 between the South Australian Equal Opportunity Commission, Office of Recreation and Sport and the Australian Sports Commission is today supported by all anti-discrimination agencies and all departments for sport and recreation in every state and territory, the Australian Sports Commission and the Human Rights and Equal Opportunity Commission. Play By The Rules provides a positive approach for promoting the principles of equal opportunity through the highly popular medium of sport and recreation

The Play By The Rules (PBTR) message is that sport and recreation should be fun, safe, fair and respectful. For most people this is their experience but for some people sport is not enjoyable because of verbal and emotional abuse by coaches, other players and spectators or because of favouritism, bias and other harassment.

Everyone in sport (players, coaches, officials and administrators) has the right to be in an environment free of inappropriate behaviour. All participants, no matter what race, sex, age, sexuality or level of ability, are entitled to have fun, feel safe and respect each other whilst engaged in their sporting activities. We all have a responsibility to make sure that this happens, particularly where children are involved.

Addressing discrimination, harassment and child abuse in sport is a serious matter as well as a legal and ethical requirement. PBTR encourages us to be aware and positive, not reactionary and accusatory.

The Play By The Rules website provides for governing bodies (including associations), clubs and groups, coaches and officials, players and participants, parents and children.

- It is a resource for grass roots and community sport (so the information is easy to read and relevant).
- The information, resources and publications are free.
- Extensive and free online training is available and includes three new child protection courses.
- It is fantastic for busy volunteers who lack the time and resources to attend trainings and workshops.

With nearly 5 million hits and over 8,500 people registering for the online training since it began why don't you click on to [www.playbytherules.net.au](http://www.playbytherules.net.au) and see how it could help you or your club?

Involvement of the NT Anti-Discrimination Commission includes:

- Member of Play by the Rules National Management Committee and National Harassment Free Sports Strategy;
- Partnership with the NT Office of Sports and Recreation;
- Education and training packages for sporting organisations;
- Member Protection Information Officer (MPIO) training and network meetings;
- Assistance to sporting organisations and individuals with information, with resolving and or managing complaints; and
- Assistance with policy and procedures development.

The next MPIO courses have been advertised for Nhulunbuy in late March and Darwin in March/April 2006.

**If you are interested in finding out more about PBTR training contact Sue Rhodes Director, Public Education and Training ADC, or Annette Duncan Office of Sports and Recreation.**

**Annual Report:** The ADC's Annual Report is now available from the website [www.adc.nt.gov.au](http://www.adc.nt.gov.au). Hard copies are available on request.

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

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