



## Message from the Commissioner

### Governments have a responsibility to respect and protect human rights.

One of the ways the NT Government has discharged its responsibility is to enact (in 1992) the *NT Anti-Discrimination Act* ("the Act"), which is designed to promote and defend certain human rights and which is based on conventions derived from the UN Universal Declaration of Human Rights (adopted by UN members in 1948).

One object of the Act is to: "... promote recognition and acceptance within the community of the principle of ... equality of opportunity ... " (Act, section 3).

Equality of opportunity is a basic human right; the principle is the same for all people everywhere, and; it applies regardless of wealth, sex, sexuality, race, place of abode and/or regardless of many other characteristics.

Current activities of the Anti-Discrimination Commission which are designed to promote and deliver equality of opportunity include:

1. Participation on a committee convened by the Commissioner for Public Employment to assist in the implementation of the "Willing and Able Employment Strategy for People with a Disability" which is designed to increase the number of people with disabilities employed in the public sector. Following recommendations made by the committee a private recruitment service - Disability Works Australia NT ("DWA") - has been contracted by government to provide recruitment services for people with disabilities to all agencies. DWA also advises on any reasonable adjustments selection panels need to make when interviewing a person with a disability, and can arrange work place modifications or on-the-job support (including awareness raising sessions for managers and staff).
2. The ADC has been working with teachers and students at CDU and public and private primary and secondary schools to reinforce the importance of human rights education within the NT Curriculum Framework (a document all NT schools are required to use). In the coming weeks ADC will trial a pilot program at Dripstone High School illustrating the links between equality of opportunity and strategies for dealing with harassment and bullying. Also, the ADC is developing a student's and teacher's page with information about human rights and ideas for planning lessons.
3. Following a number of enquiries and informal complaints about the inappropriate behaviour of NT taxi drivers and their passengers, the ADC has worked with the Taxi Council and the Commercial Passenger Vehicle Board to ensure inclusion of discrimination and harassment training in all Commercial Passenger Vehicle Driver training modules for drivers. The packages include equal opportunity and discrimination awareness; customer service; reasonable accommodation of special needs of pregnant mums and people with disabilities, young children, guide dogs, and carers; creation of a culture of respect within the industry, and; work place induction procedures. Successful completion of the courses is an essential pre-requisite for grant of taxi licences. Also, the ADC is assisting in the upgrading of the Commercial Passenger Vehicle Codes of Conduct to cover discrimination, harassment and equal opportunity. Breaches of the code in this area may result in training conducted by the ADC for the individual concerned.
4. The ADC is actively involved in "October Business Month 2005" offering seminars for businesses throughout the NT on best practice recruitment and promotion procedures, appropriate workplace behaviour, customer relations, accommodating special needs of employees, and the role of conciliation in the resolution of discrimination and harassment based disputes within and external to the workplace. These activities are aimed at creating a culture of equal opportunity for workers and consumers.
5. The right to appropriate housing is a fundamental human right. The ADC works with Territory Housing to formulate strategies designed to: prevent decisions about accommodation being made on discriminatory grounds; accommodate special needs of clients; and address personal biases of staff.
6. In August 2005 I addressed the "Improving Policing for Women" Conference in Darwin. My address had an equality of opportunity theme and touched on issues of gender discrimination within the Police Force, cultural change in the workplace, negative attitudes and stereotypes and encouraging a climate of reliance, interdependency and teamwork between police officers.

Tony Fitzgerald, Commissioner

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## NEW STAFF



**Kathryn Ganley**  
Conciliator

Kathryn has joined the Conciliation, Policy and Law Unit whilst Terry Lisson is on leave.

As Conciliator, Kathryn's role includes conciliation/investigation of complaints; drafting decisions; acting as Solicitor in appeal and judicial review proceedings; providing advice to the Commissioner, public/private sector organisations, individuals and staff on anti-discrimination law, policy and practice; and acting as a Community Visitor and Legal Representative on the Community Visitor Panel pursuant to the *Mental Health and Related Services Act*.

Kathryn holds a Bachelor of Laws degree and has a graduate certificate in Public Sector Management. Prior to joining the public service in 2000 Kathryn was employed as a litigation solicitor in private practice for approximately five years.

Kathryn was born and raised in the Territory and has a strong personal and professional affiliation with the Territory community.

Kathryn is a strong advocate of alternate dispute resolution processes and has undertaken formal mediation training at NTU and Bond University. She has gained significant Mediation/Conciliation and complaint resolution experience through employment with the Health and Community Services Complaints Commission and Ombudsman's Office. She has also been engaged as Mediator with the Community Justice Centre; and as a coach with LEADR.

Kathryn is on a six month transfer from the Health and Community Services Complaints Commission/Ombudsman's Office.

## COMMUNITY VISITOR PROGRAM (CUP)

In August 2005 Judy Clisby, Manager of the Community Visitor Program and Jenny Devlin Solicitor Northern Territory Legal Aid Commission (NTLAC) made a joint submission to the Senate Select Committee on Mental Health. Issues emphasised in the submission include the need for suitable supported accommodation in the Northern Territory.

Excerpts from the submission addressing accommodation issues are included below:

"There is limited funding available to provide non-clinical psychosocial rehabilitation at home through outreach and community training programmes operated by Team Health, a community based mental health organisation. In Darwin, TEAM Health also operates two 5-bed facilities comprising a total of ten beds. These are the only facilities in Darwin that provide supported accommodation specifically for consumers with a mental illness. One of these facilities, staffed 24 hours/day, provides a 3 month psychosocial rehabilitation program for clients, after which the client is placed in alternative accommodation. Available services are not able to provide sufficiently for the breadth of the rehabilitative or compensatory needs of consumers who experience disability associated with their mental illness, nor to provide sufficiently for those clients who require intensive rehabilitation and support to meet the goal of recovery.

There are no long stay rehabilitation facilities in the Northern Territory for people who, due to the severity of their illness, require 24 hour support and/or training over an extended period of time. If a person requires a long-term admission to hospital, he or she is likely either to remain in an acute care setting or to be transferred interstate away from community ties. Plans to introduce "step up and step down facilities" in Darwin and Alice Springs, and currently in the process of being implemented, may alleviate this situation to some extent.

### Co-morbid Acquired Brain Injury and Mental Illness

In the Northern Territory, people who experience acquired brain injury associated with solvent abuse, and who experience co-morbid psychosis can require specialist accommodation aimed at restoring skills where possible and managing behaviour. These services are not available. TheAs stated earlier in this submission, the authors are aware of situations where consumers are left to be managed within the family environment, thereby causing high levels of stress. There needs to be suitable accommodation services in place to break the cycle of consumers being admitted to an inpatient facility for respite care cycle. Those consumers without family support are particularly vulnerable, at risk of harm within the general community and at risk of imprisonment.

It is likely that the incidence of acquired brain injury related to solvent abuse and its related problems is likely to increase, and planning and funding needs to occur now. Specific services with expertise in the management of people with co-morbid conditions will be required to ensure that the burden on families does not become too unbearable, or that the people affected do not suffer unnecessary incarceration."

## Early Resolution of Complaint

An Aboriginal complainant lodged a complaint about an educational facility which had presented a paper that was derogatory towards Indigenous people.

After speaking to the Complainant about her concerns and the Commission's processes the complainant requested that her complaint be stayed to enable her to approach the organisation directly regarding her concerns. The Complainant subsequently contacted the Anti-Discrimination Commission to advise that the educational facility had acknowledged its error and agreed to introduce new processes so the situation did not recur. As a consequence the complainant withdrew her complaint.

This case is an example of conciliated outcomes that parties can reach between themselves through assistance and early intervention from the Commission.



## Ngarra (Chamber of Law) Ceremony at Galiwinku, Elcho Island



Above: Pat McIntyre (on right), official envoy of the Dhurili Njaymil clan nation (Galiwinku), delivers a message stick of invitation to Tony Fitzgerald and Karen Dey (Director Community Justice Centre) to attend the Ngarrra (Chamber of Law) at Galiwinku.



Left: Djiniyini Gondarra (back row, on right), Dhurili Njaymil clan elder and senior lawman, hands a written introduction to Dhurili Njaymil clan laws to Chief Justice Brian Martin (back row, 3rd from right, face painted).

On Saturday, 3rd September 2005 representatives of the mainstream NT legal system (namely the Attorney-General's nominee, the Chief Justice, other Supreme Court judges, the Chief Magistrate, the Ombudsman, lawyers, court officials, police, the Anti-Discrimination Commissioner) visited Galiwinku to attend the culmination of the Ngarrra (Chamber of Law) of the Dhurili Njaymil clan. Invited visitors witnessed the conclusion of the sittings of the local traditional Yolngu parliament that had commenced several months earlier. During that time clan lawmen had been deliberating about local parliamentary and judicial matters in the context of local traditional law. The ceremonial aspects of the event witnessed by the visitors included an assent by local clanspeople to the operation of local traditional law, and a formal presentation to the Chief Justice of an "introduction to local traditional law" which had been reduced to writing and translated into English by local interpreters.

Dhurili Njaymil clan elders are hopeful that this unique and historic occasion will pave the way for conversations between representatives of the Yolngu and Westminster systems of law about the rule of law, the importance of strong laws for a healthy society, and the administration of Yolngu and balanda (European) justice.

## CONCILIATED COMPLAINTS

### Race Discrimination

The indigenous complainants attended a licensed bar with their non-indigenous friend.

The group entered the bar together and the complainant's non-indigenous friend went ahead to the bar. The complainants were then approached by a staff member and told to leave because they did not meet the dress standard.

The complainant's non-indigenous friend heard what had happened and spoke to the staff member involved. The staff member then allowed the complainants back into the bar.

The complainants were upset and humiliated by the actions of the staff and said that they were removed from the bar because of their Aboriginal race and if they had not been with their non-indigenous friend they would not have been allowed back in the bar.

Following conciliation facilitated by the Commission the respondent provided both verbal and written apologies and agreed that its management and staff would undertake Anti-Discrimination training at the next opportunity.

### Disability Discrimination

A mother complained on behalf of her daughter who she believed had been discriminated against by her school on the basis of her impairment.

The complainant's daughter had some minor intellectual impairment and displayed extreme hyperactivity and behavioural disorders.

The complainant advised that her daughter was regularly bullied by other students who knew how to make her react and that this bullying and harassment was not dealt with by the school.

The complainant also said that when her daughter reacted angrily to the bullying and harassment the school and staff had no strategies to manage her and were addressing her behaviour without taking into account the medical conditions that caused the behaviour.

Eventually the complainant's daughter was suspended because the school considered her behaviour was highly disruptive and endangered other students and staff. After the suspension the complainant moved her daughter to another school.

At a conciliation conference facilitated by the Anti-Discrimination Commission the respondent acknowledged that on some occasions individual staff members who did not understand the student's circumstances acted inappropriately.

The respondent also advised that as a result of the issues raised by the complainant the school had introduced new policies and practices to deal with bullying and harassment in the schoolyard and these strategies were having a positive impact.

The respondent apologised to the complainant and her daughter and acknowledged that despite the respondent's best efforts, situations involving the complainant's daughter were not always addressed as well as the respondent would have hoped.

The complaint was resolved when the respondent provided a written apology to the complainant and her daughter.



## WHAT'S NEWS IN TRAINING IN DARWIN AND THE REGIONS – Specialised training proving very popular!!

ADC is offering new “Disability – It’s Your Business Too” seminars to any organisation in the Northern Territory. This is a joint initiative with the Regional Disability Liaison Officer, Elizabeth Reid who is based at the Charles Darwin University.

This is for you if:

- You employ people with disabilities;
- You provide services to people with disabilities;
- You want to know what the law says about disability discrimination; or
- You want to know how to reasonably accommodate special needs.

We offer these sessions to complement the commencement of the NT Public Sector *Willing and Able Strategy for employing people with a disability*.

The strategy includes:

- The pilot program where an applicant with a disability who meets the essential criteria for a job will automatically be interviewed for that position; and
- Disability Works Australia in the NT. DWA is a recruitment service which will suitably link employers with people with disabilities.

These strategies will only work if people on selection panels focus on the applicant’s ability to do the duties of the job and not on what panels perceive the applicant can’t do because of a disability. Accordingly there needs to be an attitudinal change within workplaces that stereotyping people with disabilities is inappropriate. Workplaces need to understand discrimination law and the legal requirement to reasonably accommodate the special needs of a person with a disability.

Organisations are encouraged to undertake disability awareness-raising sessions that address the myths around disabilities, provide an opportunity to ask all the questions that they are too scared to ask, and allow participation in activities involving reasonable accommodation of special needs.

An additional seminar – “The Conciliation process – hear it from people who have conciliated” arose because the Anti-Discrimination Commission and the Chamber of Commerce wanted to provide the business community with hands-on information about how Anti-Discrimination complaints can be resolved through conciliation. The seminars will be conducted as part of October Business Month and will provide an opportunity to hear first-hand accounts from business people who have been involved in the conciliation process. Participants will have the opportunity to ask questions of participants in the process as well as conciliators from the Anti-Discrimination Commission.”

As well as the training offered in the Commission’s training program, our trainers have recently provided specially developed training to Perkins Shipping Pty Ltd, Bechtel Australia Pty Ltd, BAE Systems in Harts Range and Mt Everard and Origin Energy in Alice Springs. These workplace training sessions concentrated on employers’ vicarious liability obligations, and employees’ and managers’ rights and responsibilities under the NT Anti-Discrimination Act 1992. All of the sessions were well received and it was pleasing to see that employees and managers are taking the issues of workplace discrimination, harassment and bullying seriously.

If you would like more information about training, or you have an enquiry regarding any of the information in the article, contact the commission.

## PEOPLE WITH A DISABILITY AND THE WORKPLACE

Assumptions about people with disabilities are often based on inaccurate assumptions, stereotypes and prejudice. Employers should not base judgements and decisions on an assumption that a person with a disability will not be able to perform the inherent requirements of a position.

In many instances the participation and performance of people with a disability can be facilitated or improved with an adaptation to a work practice or adjustment of the physical environment – that is by accommodation of a special need.

If a person with a disability is able to perform the inherent or essential duties required in a position, with some alterations or adjustments to the workplace or workplace practices, the responsibility rests with the employer to make these adjustments - unless taking this action would impose unreasonable hardship on the employer.

In considering the need to accommodate special needs, each fact situation should be judged on its own merit. Adequate effort must be made to ascertain whether any reasonable adjustment or adaptation is necessary or possible.

Possible adjustments include:

- changes to recruitment and selection procedures, eg provision of an interpreter for a person with a hearing impairment;
- modifications to work premises eg. a flashing light to alert a person with a hearing impairment, installation of ramps, or automatic opening doors;
- changes to work schedules or work practices, eg. flexible hours, regular meal breaks for a person with diabetes, reallocation of some duties among staff, work rosters and shifts that recognise that workers have family responsibilities;
- modification to equipment, eg. lowering a workbench or providing an enlarged print computer screen;
- provision of training or other assistance, eg. a mentor or support person for a person with an intellectual impairment.

Under the *NT Anti-Discrimination Act* (“the Act”) an employer who fails to make reasonable accommodation, or adjustment to the workplace, is unlawfully discriminating against a person with a disability.

There are circumstances where accommodation of a special need may be unreasonable, such as where the adjustment required by a person with a disability would impose unjustifiable hardship on an employer.

In determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are taken into account. This involves an assessment of what is involved in meeting the needs of that particular individual.

Some factors that may be taken into consideration are:

- the nature or type of the special services or facilities required;
- the cost of providing the special services, or facilities;
- the number of people who would benefit or be disadvantaged;
- the financial circumstances of the employer;
- the disruption that providing the special service or facilities may cause;
- the nature of any benefit or detriment to all persons concerned.

If you are unsure about your rights and responsibilities in this area, seek free and confidential advice from the ADC.

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

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