



Balancing the Act

Issue 32 Winter 2012

Commissioner's Foreword



Anti-Discrimination Commissioner, Kevin Cocks AM

Research suggests that racism continues to exist in Australia despite a decrease in overt racism over the past 20 years, due in part to the development of strong social norms against openly expressing racist views.

This shift in attitudes is backed up by comprehensive racial discrimination and vilification laws administered by the Australian Human Rights Commission (AHRC) at a federal level and state and territory anti-discrimination commissions.

However, the research also indicates that the social norms are not well developed in all areas of Australian life. In particular, racism still continues to raise its ugly head in the sporting arena. In recent years we have witnessed many reported examples of racial vilification in sport.

There is a long history of racism in sport in Australia, most notably in Queensland. The great fast bowler, Eddie Gilbert took 5 for 65 against the touring West Indies team in 1929 and once bowled Sir Donald Bradman for a duck in 1931.

Eddie was excluded from higher honours because of his Aboriginal background.

Indeed it is only in the last ten to fifteen years that racism has been identified by a range of national sporting codes in Australia as being a significant issue. As a result, many individual sporting bodies have put in place a range of anti-racism strategies and initiatives to address the issue.

Despite the strategies and initiatives, we still continue to witness racial vilification of players by other players, officials and supporters. In recent weeks there have been media reports of Queensland rugby league players and supporters being racially vilified at club games and the second State of Origin match.

It was encouraging to see the swift action taken by the Collingwood AFL club that banned a supporter who racially abused Gold Coast Suns player Joel Wilkinson. It was equally notable that Magpie star Dale Thomas pledged his support for Wilkinson by reporting the incident.

It is heartening to see the Queensland Rugby League is also taking a strong stand on racial vilification. At the final State of Origin match held in Brisbane, the QRL made a clear statement to all attending the game that racial vilification should be reported to stadium security, and is not part of Queensland league culture.

It is this type of leadership that we require within the sporting arena whether it be senior administrators, players or supporters. Once racial vilification is witnessed, it should be reported and swift action taken, as was done by the Collingwood club.

Racial vilification has no place in any part of our society, that is why parliaments throughout Australia have developed laws to protect people against racial vilification in all areas of public life including sport.

Racial vilification legislation defines certain behaviours and actions as being unlawful. Racial vilification is defined as any act or form of behaviour that happens publicly which could incite others to hate, threaten, ridicule, insult or show contempt towards another person on the basis of that person's race.

If you feel that you have been discriminated against or vilified because of your race you can make a complaint to the ADCQ.



ADCQ welcomes Attorney-General

*Jarrod Bleijie MP, Attorney-General and Minister for Justice
Photo by Lyle Radford*

ADCQ staff welcomed the new Attorney-General and Minister for Justice, the Hon Jarrod Bleijie, on his recent visit to the Brisbane office. The ADCQ is an independent statutory authority and the Commissioner reports directly to the Attorney-General in his capacity as the Minister for Justice. We look forward to continuing to provide a highly effective complaint resolution service, and education programs on rights and responsibilities under the *Anti-Discrimination Act 1991*.

A conversation with Queenslanders

2011 was the twentieth anniversary of the passing of Queensland's *Anti-Discrimination Act 1991*.

In looking to the future, the ADCQ engaged Queenslanders in a conversation about how to build a fair and inclusive Queensland. This is the thrust of the twenty year old Act which is as much needed today as it was in 1991.

Over five hundred people participated in seventeen round table events held in fifteen towns and cities across the state. The conversation centered around the question 'If there was one thing I would do to make Queensland more fair and inclusive, it would be....'

Some of the key messages raised in the conversation related to opportunities in education, the media and through legislative amendment. We also heard that work towards a fair and inclusive Queensland needs to consider the issues of regional and remote areas, accessibility in all areas of life and for all ages, respect for Aboriginal and Torres Strait Islander peoples and their history, as well as protections for our most vulnerable citizens.

See back cover for more photos and emerging themes from the 20th anniversary roundtables.



ADCQ gets behind National Anti-Racism Strategy

The ADCQ partnered with the Australian Human Rights Commission in April to host well attended public consultation sessions in Townsville and Brisbane to hear views on how racism affects the community and what we should be doing about it.

The National Anti-Racism Partnership and Strategy aims to promote a clear understanding in the Australian community of what racism is, and how it can be prevented and reduced.

The consultation process aims to build on existing good practice, empower communities and individuals to take action to prevent and reduce racism, and to seek redress when it occurs.

Improving service delivery to regional Queensland

ADCQ is committed to improving service delivery to regional Queensland. As part of that commitment, ADCQ staff have recently travelled to regional districts to deliver training and information to organisations and community members as well as exploring ways to maintain quality service delivery to non-metropolitan areas.

Anne Franzmann from the North Qld office headed west to visit the communities of Charters Towers, Richmond and Hughenden. The Brisbane Community Relations team travelled to Dalby and the Lockyer Valley to conduct training and community visits, while the Aboriginal and Torres Strait Islander Unit team delivered Tracking Your Rights training in Woorabinda and Charters Towers.

During the visits, regional Queenslanders highlighted some of the challenges they face including potential for sexual harassment in isolated locations, access issues, an ageing population and managing competing priorities as small business owners.

National Anti-Racism Partnership consultation in Brisbane

Community concern about racism in sport prompted the ADCQ to engage with the Queensland Rugby League about taking a coordinated, zero-tolerance approach to racism in the code, beginning with the finals in this year's State of Origin series in Brisbane.

Messages were displayed on the stadium screens periodically during the match, informing the crowd that racism in any form will not be tolerated. The advice also includes a phone number patrons can call to report incidents of racial abuse.

Federal Race Discrimination Commissioner Dr Szoke and the Partnership have been engaging with national sporting bodies, including the NRL and AFL to identify champions who will endorse the Strategy at the time of its launch in August.

Focus on the Central Queensland team



The Central Queensland team

The Central Queensland office of ADCQ is located in Rockhampton and provides training, education and complaint management services to the broader Central Queensland region.

The team has over thirty years' combined experience working in human rights, as well as bringing together a range of other skills and qualifications in the fields of justice, child protection, management and behavioural science. They pride themselves on being proactive and engaged members of the Central Queensland community.

In the past twelve months the team has conducted over one hundred visits to community organisations to provide information on human rights and anti-discrimination issues. Additionally they participate in community events and actively foster networks throughout the region to enhance knowledge of anti-discrimination law, and work towards building a fair and inclusive Queensland.

The Central Queensland team has also been the driving force behind the ADCQ state-wide initiative to train staff in eighty-three courts across Queensland. As part of this project, the team pioneered the use of video conference technology to deliver ADCQ training to regional areas.

Taking the law to the Central Queensland community

Law Week this year (14 to 20 May) was the catalyst for a major effort by the ADCQ Central Qld office to spread the word about rights and responsibilities under Queensland's anti-discrimination law.

The theme for this year's Law Week, 'law and justice in your community', resonated with ADCQ Central Qld Manager Ben Cooke.

ADCQ's vision is for a fair and inclusive Qld, and in our twentieth anniversary year the Commission is encouraging Queenslanders to consider the place of human rights close to home, and what each person can do to promote dignity for every individual.

As one of the key members of the organising committee for Law Week in Rockhampton, Ben helped drive the successful event which included an open day at Rockhampton courthouse, mock trials, information sessions and exhibits.

ADCQ staff gave a presentation on human rights and anti-discrimination law to a lively audience including high school students and members of the public in the court precinct.

In reflecting on Law Week in an interview with ABC Radio Capricornia, Ben spoke of the role of law in setting a standard for civilized behaviour. He went on to say: 'The law itself sets a foundation for society - a society that is safe for everyone, and inclusive and fair.'



ADCQ staff connect with students at Law Week event

To mark International Day of Families (which co-incidentally fell during Law Week) the Rockhampton Office distributed information kits to families through a network of childcare centres in Central Queensland to promote the services of the Commission and educate the community on their rights and responsibilities under Queensland's anti-discrimination law.

Central Queensland's Fair Day for the gay and lesbian community was another event supported by Ben and his team. Fair Day was established to raise awareness about homophobia and its impact in the region, and to support diversity in the community.

To round out a busy month of community events and activities, Ben and Liz Bond (ADCQ's Aboriginal and Torres Strait Islander Unit coordinator) delivered a Tracking Your Rights information session to the Woorabinda community. 'The session was warmly received by participants and relevant to issues faced by the local community on a daily basis' said Liz. Plans for another Tracking Your Rights session in Woorabinda in the near future are already under way.

To contact the Rockhampton office for information on anti-discrimination issues, call (07)4938 4466 or 1300 130 670, TTY 1300 130 680 during office hours.

Advocating for the *Anti-Discrimination Act 1991*

In a decision delivered in February 2012, the Appeal Tribunal overturned a decision of the Queensland Civil and Administrative Tribunal about the relationship between the *Anti-Discrimination Act 1991* and the *Public Service Act 2008*.

The Anti-Discrimination Commissioner intervened in the appeal because of the broad impact of the original tribunal decision of diminishing the protections under the Queensland legislation.

Background

A complaint was made to the Commission by a public servant who worked for Queensland Corrective Services. The complaint alleged impairment discrimination in how she was treated at work and in the implementation of a process under the *Public Service Act 2008*. This process is commonly referred to as the involuntary ill-health retirement process. This type of complaint is not uncommon. In 2006 the former Anti-Discrimination Tribunal ordered the re-instatement of a person who had been involuntarily retired under the same provision of the previous version of the *Public Service Act*.¹

The complaint met the threshold under the *Anti-Discrimination Act* and the Commission directed the parties to participate in a conciliation conference. In the meantime, the complainant applied to the tribunal for an order to stop the ill-health retirement process until her complaint could be dealt with. There is a specific power under the *Anti-Discrimination Act* to allow for this type of order so as not to prejudice the possible outcome of conciliation or a hearing. This type of order had been made by the President of the tribunal in an earlier matter.²

In this case however the tribunal found that the complaint was invalid. It held that the Mental or Physical Incapacity provisions of the *Public Service Act 2008* impliedly repealed the prohibition against impairment discrimination in work in section 15 of the *Anti-Discrimination Act 1991*.

This meant that if Queensland public servants felt they had been unlawfully discriminated against in the process, they could only make a complaint to the Australian Human Rights Commission in Sydney, under the federal *Disability Discrimination Act 1992*.

Discrimination might occur, for example, in dismissing someone instead of making reasonable adjustments for their impairment. In fact that is what happened to Mr Toganivalu in the 2006 case. The process was used to dismiss Mr Toganivalu while he was on a return to work program for injuries he had suffered in an accident.

¹ *Toganivalu v Department of Corrective Services* [2006] QADT 13

² *Jones v Queensland Health* [2010] QCAT 700

The appeal

Ms Attrill appealed the decision, and the Anti-Discrimination Commissioner intervened in the appeal.

The Appeal Tribunal noted the main purposes of the *Public Service Act* include promoting equality of employment opportunity (EEO) in the public service, and the EEO target groups include people with impairments. The *Public Service Act* also requires government agencies to act to eliminate unlawful discrimination, as it is defined in the *Anti-Discrimination Act*, in employment matters. While the *Anti-Discrimination Act* prohibits discrimination in work, the prohibition is not absolute. There are a number of exemptions, including the ability to impose 'genuine occupational requirements' for a position and fixing reasonable terms when a worker has a restricted capacity to do the work required for the position.

The Appeal Tribunal held that in the context of the purposes of the *Public Service Act* and the public service principles, the mechanisms to investigate issues and make appropriate arrangements in the case of ill-health are not inconsistent with the requirements of the *Anti-Discrimination Act*.

Accordingly, the complaint was valid, and the Appeal Tribunal made orders so that the tribunal could further consider whether it should make an order which would effectively see Ms Attrill re-instated.

The respondent Department has since appealed to the Court of Appeal, claiming that the Appeal Tribunal has made errors in determining the issues. The further tribunal hearing has been put on hold, and the Court of Appeal hearing is likely to take place later in the year.

Role of the commission in complaints

The role of the Commission in dealing with complaints under the *Anti-Discrimination Act 1991* is to assist the parties to resolve the complaint through conciliation. This is a dispute resolution function, and as such, the Commission does not make decisions about the merits of a complaint or the credibility of the parties. A complaint is accepted if it sets out reasonably sufficient details to indicate a possible contravention of the Act.

In the conciliation process the conciliator will try to assist the parties to identify issues and provide information about the legislation and processes, however the conciliator is impartial between the parties and does not provide an opinion on the merits. If a complaint is not resolved through conciliation it can be referred to the tribunal for hearing and determination.

The Appeal Tribunal decision can be accessed from the Supreme Court Library (<http://www.sclqld.org.au>) and AustLII (www.austlii.edu.au) websites – *Attrill v Department of Corrective Services* [2012] QCATA 31.

QCAT exemption not always necessary

Recent decisions of QCAT demonstrate that it is not always necessary to apply to the tribunal for an exemption. *The Anti-Discrimination Act 1991* provides for a range of exemptions that recognise discrimination can be acceptable in certain circumstances. A helpful example is one of the recent decisions.

The Women's Community Aid Association (WCAA) applied to QCAT (the tribunal) for an exemption to allow it to recruit only female workers and volunteers, and provide services exclusively for women and children who have experienced domestic or sexual violence.

WCAA operates the Brisbane Rape and Incest Survivors Support Centre and Women's House Shelta, providing services to women and children who have experienced violence from men.

In addition to a range of specified exemptions, the *Anti-Discrimination Act 1991* includes a mechanism for applying to the tribunal for an exemption. The tribunal can grant an exemption for a period of up to 5 years, and can grant extensions of those exemptions. The tribunal is required to provide a copy of the application to the Anti-Discrimination Commissioner, and to have regard to any submissions that the Commissioner may make. In this case the Commission informed the tribunal that it had no objection to the proposed exemption, and referred the tribunal to decision of the former Anti-Discrimination Tribunal, where that tribunal had granted a similar exemption for an organisation to provide counselling, accommodation and incidental services to young disadvantaged women.³

In the work area, the Act allows for the imposition of a genuine occupational requirement. In considering this issue, the tribunal observed:

- In *Qantas Airways v Christie*⁴, Justice Gaudron of the High Court explained that determining if a requirement is an inherent requirement must involve consideration as to whether a position would be essentially the same in the absence of the requirement;
- In such a case the question is not whether the services of a male counsellor or support worker providing services to women who had experienced sexual or domestic violence from men are essentially the same as the same type of services provided by a female counsellor or support worker.
- The appropriate question is whether the effect on the recipient of those services would vary depending on the sex of the worker, and whether the presence of a male worker would trigger adverse emotional responses and prevent the development of empathy, comfort and trust that is sought to be engendered by counselling and support services in times of emotional fragility.

³ *Exemption Application re: ZigZag Young Women's Resource Centre Inc.* [2004] QADT 41

⁴ (1988) HCA 18, [36]

The tribunal was satisfied that it is a genuine occupational requirement for workers and volunteers at WCAA to be women, and concluded that the exemption in section 25 of the Act would be available to WCAA as a defence to complaints of sex discrimination in the work area.

The tribunal found that a service providing support and counselling by either sex, is quite different from a service providing support and counselling solely by women, where the recipients of the services are women who have experienced gender based violence.

In the services area, the tribunal considered the specific exemption in the Act that allows welfare measures to benefit members of a group with an attribute, if it is not inconsistent with the Act.

The tribunal found that providing counselling, support services and a safe environment for women who have experienced violence from men is not inconsistent with the Act. In fact one of the examples in the Act as to how the welfare measures exemption can be applied is 'to restrict special accommodation to women who have been victims of domestic violence or to frail, older people'.

The tribunal concluded that it was not necessary for the tribunal to grant an exemption because a valid defence and specific exemption applies for the staffing and provision of services in this case.

Women's Community Aid Association (Qld) Limited [2011] QCAT 593

<http://archive.sclqld.org.au/qjudgment/2011/QCAT11-593.pdf>

For further information about discrimination, contact the Anti-Discrimination Commission Queensland on 1300 130 670, or visit the website at www.adcq.qld.gov.au

Conciliation achieves positive outcomes

A complaint was made to ADCQ by an employee who claimed that her employment was terminated because she required a medical procedure and would need time off work to recover. Through the ADCQ conciliation process the complaint was successfully resolved. The complainant received an apology from their former employer, financial compensation and a supported statement of service. The complaint was resolved within three weeks of lodgement.



www.complaints.qld.gov.au
www.adcq.qld.gov.au

Accessible and inclusive information service

The ADCQ aims to provide information and enquiry services that are accessible and inclusive.

Telephone

We operate a toll-free telephone service available from anywhere in Queensland, staffed by experienced officers, by calling 1300 130 670 during office hours, or TTY 1300 130 680.

Aboriginal and Torres Strait Islander

The Aboriginal and Torres Strait Islander Unit assists with calls where the caller would prefer to speak with an Aboriginal or Torres Strait Islander staff member.

Deaf, hearing or speech impairment

If you are deaf or have a hearing or speech impairment you can call the ADCQ through the National Relay Service:

- TTY users, phone 133 677 then ask for 1300 130 670 (or call the ADCQ TTY number 1300 130 680 directly).
- Speak & Listen users, phone 1300 555 727 then ask for 1300 130 670.
- Internet Relay users, connect to the National Relay Service (see www.relayservice.com.au for details) and then ask for 1300 130 670.

LGBTI

For the lesbian, gay, bi-sexual and transgender communities, an experienced LGBTI community worker and staff member is available to provide information and discuss issues with members of these communities.

Community languages

Information about making a complaint is available in thirty languages from the Community Languages page of the ADCQ website - www.adcq.qld.gov.au/main/languages.html.

The most recent addition is information in the Karen language. Karen is the name of the people primarily from the Thai/Burmese border area, as well as the language spoken.

Email

Email contact with the ADCQ is available through info@adcq.qld.gov.au

ADCQ Public education calendar

Date	Session	Time	Location
10 Jul	Contact Officer	9:30am-4:30pm	Rockhampton
11 Jul	Understanding Discrimination Law	9am-1pm	Brisbane
12 Jul	Managing Complaints in the Workplace	9:30am-4:30pm	Rockhampton
13 Jul	Introduction to the Anti-Discrimination Act for Managers	9am-1pm	Rockhampton
17 Jul	Introduction to the Anti-Discrimination Act	10:30am-12:30pm	Rockhampton
17 Jul	Introduction to the Anti-Discrimination Act for Managers	9am-1pm	Townsville
17 Jul	Introduction to the Anti-Discrimination Act	2-4pm	Townsville
18 Jul	Contact Officer	9am-4pm	Townsville
19 Jul	Contact Officer - Refresher	9:30am-1:30pm	Rockhampton
19 Jul	Managing Complaints in the Workplace	9am-4pm	Townsville
24 Jul	Understanding Discrimination Law for Community Organisations	9am-1pm	Brisbane
2 Aug	Tracking Your Rights	10-12pm	Brisbane
14 Aug	Contact Officer	9am-4pm	Brisbane
16 Aug	Introduction to the Anti-Discrimination Act	10am-12pm	Mackay
16 Aug	Introduction to the Anti-Discrimination Act for Managers	1-5pm	Mackay
17 Aug	Contact Officer	9am-4pm	Mackay
21 Aug	Contact Officer	9am-4pm	Cairns
22 Aug	Understanding Discrimination Law	9am-1pm	Cairns
28 Aug	Introduction to the Anti-Discrimination Act for Managers	9am-1pm	Brisbane
5 Sep	Understanding Discrimination Law	9am-1pm	Brisbane
3 Oct	Contact Officer	9am-4pm	Brisbane
4 Oct	Tracking Your Rights	10-12pm	Brisbane
10 Oct	Contact Officer - Refresher	9am-1pm	Townsville
10 Oct	Introduction to the Anti-Discrimination Act	2-4pm	Townsville
11 Oct	Introduction to the Anti-Discrimination Act for Managers	9am-1pm	Townsville
17 Oct	Contact Officer - Refresher	9am-1pm	Brisbane
13 Nov	Understanding Discrimination Law for Community Organisations	9am-1pm	Brisbane
15 Nov	Introduction to the Anti-Discrimination Act for Managers	9am-1pm	Brisbane

ADCQ represented at the UN

In May staff of the ADCQ's Aboriginal and Torres Strait Islander Unit in Brisbane attended the eleventh session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York, as part of the delegation led by the Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission. Both staff were self-funded and attended as a personal interest in the UNPFII Theme 'The Doctrine of Discovery and its enduring impact on Indigenous peoples.'



A&TSI Unit staff Liz Bond and Lea Yettica-Paulson at the UN

From the opening in the General Assembly launched with the prayers of two Mayan elders to the closing ceremony by three Mayan children, the two week session was a very interesting succession of intervention speeches from Indigenous people from the five regions of the world – North and South America, Africa, Asia, Europe and the Pacific, which includes Australia, New Zealand and representatives of the South Pacific, Papua New Guinea and Hawaii (even though they are part of the United States of America). Many speakers were amazingly gifted orators who addressed the session without the aid of speech writers.

A two week agenda covered a range of issues relating to Indigenous peoples, including: the theme, education, women, Indigenous peoples and the World Intellectual Property Organisation, food and food sovereignty, human rights, youth, implementation of the United Nations *Declaration of the Rights of Indigenous Peoples*, dialogue with other United Nations agencies and emerging issues.

During the lunch break and after the close of daily sessions, free side events were run by delegate representatives from all represented regions on a range of issues relating to the two week agenda. Intervention speeches and other addresses will be made available on the United Nations UNPFII website: <http://social.un.org/index/IndigenousPeoples.aspx>

There was time for some sight-seeing and socialising with other delegates including a welcome get together before the eleventh Session and a cocktail evening – both arranged by the Australian Ambassador to the United States – for Australia's Aboriginal and Torres Strait Islander delegates. The UN had many exhibitions and a major exhibition was Food Sovereignty and Indigenous Peoples that featured art from Balgo, Western Australia, also hosted by the Australian Consulate.

Other memorable highlights were literally almost running into the Secretary-General Ban Ki-moon and being part of a private session with James Anaya, United Nations Special Rapporteur on the Rights of Indigenous Peoples, as members of the Australian Human Rights Commission delegation.

Play by the Rules

There is no doubt that Queenslanders love their sport. But there's nothing worse than a bad sport

To promote sporting environments that are free of harassment and discrimination, ADCQ is continuing to partner with the Australian Sports Commission and other state and federal bodies throughout Australia to publicise the Play by the Rules program.

Play by the Rules provides information, free on line training and interactive scenarios to promote inclusive, safe and fair participation in sport and recreation. Sporting clubs, organisations and schools can use Play by the Rules:

- to complement their sports policies and procedures (e.g. in risk management and complaint handling);
- as a way of communicating messages about positive behaviour in sport;
- to assist in responding to issues and preventing them escalating into bigger problems;
- as a resource for subjects and programs where ethics and legal issues concerning discrimination, harassment and child protection are relevant.

For more information visit the Play by the Rules website: www.playbytherules.net.au



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Education

- human rights education from a young age
- inclusive schools
- human rights education for teachers
- equal access for all



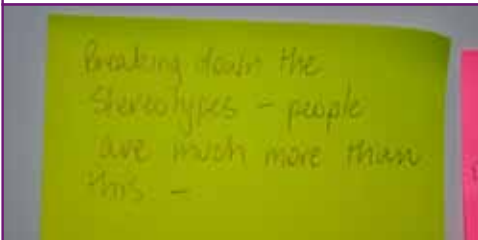
Aboriginal & Torres Strait Islander

- awareness of history & culture for all Queenslanders
- improved access to health, education & employment



Media

- encourage balanced reporting
- human rights education for journalists
- monitor discriminatory reporting



Access to justice

- for vulnerable people
- education for the legal profession



Accessibility

- public transport
- public spaces & buildings



Listening & hearing – not imposing a solution

- having a say in the solution



If there was one thing I would do to make Queensland more fair and inclusive, it would be...



Legislative amendment

- a charter of human rights
- loophole for 'not for profit' organisations allowing discrimination closed
- recognition of Indigenous peoples in constitution



Reaching into workplaces

- young workers
- workplace culture & environment
- workers with impairments

Access to information

- using social media
- face to face contact

Housing as a human right

- education for accommodation sector

Regional & remote

- access to services
- information sharing



Elder support & rights of grand parents



Poverty

- assistance for the most disadvantaged groups

Cross cultural

- access to interpreters
- awareness & appreciation of all cultures
- celebration of diversity
- deaf culture