

BALANCING THE ACT

Commissioner's Report



I recently attended a meeting in Perth for ACHRA (Australian Council of Human Rights Agencies).

One of the issues we discussed was substantive equality, how it was operating in Western Australia, and whether the framework could be used in other states.

Many people reading this might ask, 'Don't you already deliver substantive equality through anti-discrimination legislation?' The answer is that we do, to some extent, address the issue through the laws in Queensland, mainly via indirect discrimination, but it's not specifically mentioned in the Act.

Anti-discrimination legislation largely proposes formal equality, which works on the premise that if we successfully promote equal opportunity for everyone at the outset, the outcomes will be fair and equitable for all. In other words, fair treatment leads to fair outcomes. In some ways, we make the assumption that one follows the other, and the focus of discrimination law is on the first ie fair treatment.

The idea of substantive equality involves achieving equitable outcomes as well as equal opportunity. It takes into account the effects of past discrimination and recognises that rights, entitlements, opportunities and access are not equally distributed throughout our community. It recognises that the same application of rules to everyone can have unequal results.

Another way to look at it is that discrimination law focuses on fair treatment to achieve fair outcomes, while substantive equality starts with a focus on fair outcomes and then on what needs to happen to achieve them.

Substantive equality is about addressing systemic inequality, which involves policies and practices in an organisation that impact on some groups more than others. It's not only about access to the services we provide, but about ensuring the service meets the needs of different groups of people.

I was impressed with the level of enthusiasm and support shown by government agencies in Western Australia, and with the commitment to working for fair outcomes.

This is an issue worth thinking about, and I'll be putting in some time and effort to see how the principles of substantive equality can be applied in Queensland.

For more information on the Western Australian Equal Opportunity Commission model, check their website at www.eoc.wa.gov.au

Susan Booth Commissioner

Disclaimer: The contents of this newsletter are for information purposes only, and should not be seen as legal advice.

STATEWIDE

telephone 1300 130 670
teletypewriter 1300 130 680
www.adcq.qld.gov.au
info@adcq.qld.gov.au

BRISBANE

level 1/189 Coronation Drv
PO Box 2122
Milton Q 4064
DX 44037

CAIRNS

Mcleod Chambers
78 Spence St
PO Box 4699
Cairns Q 4870
DX41346

TOWNSVILLE

155-157 Denham St
Townsville Q 4810
DX41421
FAX (07) 4799 7021
FAX (07) 4039 8609

ROCKHAMPTON

Level 1 James Larcombe Place
209 Bolsover St P O Box 1390
Rockhampton Q 4700
DX41168
FAX (07) 4938 4459

Q&A - Sport

To make a complaint under the Queensland Anti-Discrimination Act, a person needs to show they've been treated less fairly (than someone else in a similar situation), on the basis of one of the grounds and in one of the areas covered by the Act.

The Queensland Act includes 16 different types of discrimination, four types of vilification, sexual harassment and victimisation.

There's also a range of areas covered, such as work, goods and services, accommodation and education.

Although sport isn't one of the areas covered by the Act, we are able to take some complaints.

Question:

I play rugby league at state level. At every game, there's always one player on the other team who has a go at me because I'm Aboriginal. Calling me a 'black bastard' is one of the less offensive names I get called. Once it starts, the other players join in until it's almost unbearable.

I know they only do it to put me off my game, and I know they say that 'what goes on in the field, stays in the field', but I'm beginning to think it's time to take it off the field. Can I do this?

Answer:

You can take it 'off the field' by lodging a complaint of vilification on the basis of race. A complaint of vilification needs to show that the name-calling incidents happened publicly, and that they incited hatred, serious contempt or severe ridicule, of you because of your race.

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We can discuss this in more detail if you'd like to call us on 1300 130 670.

Question:

I play competitive soccer and I'm hoping to make the team in my local area. I'm a bit concerned about my coach because he always picks me to demonstrate a new skill, especially one where he needs to do some touching.

I don't want to say anything to him in case he pulls me off the team. The other players are gossiping, and one of them said he (the coach) called me his 'girlfriend'

the other day. I'm not his girlfriend, I just want to play soccer.

Answer:

If the touching you talk about is unwelcome, of a sexual nature and it is offensive, humiliating or intimidating, then it's sexual harassment and you can make a complaint about it to us.

The law says that sexual harassment is against the law, wherever and whenever it happens, so even though there's a sport context here, we can look at a complaint.

If you'd rather try to sort it out without making a complaint, you might want to talk to your Member Protection Information Officer. MPIOs are your first contact point for anything like sexual harassment, and big sports like soccer will have MPIOs. If you don't have one in your club, you could ring the state organisation.

We can talk more with you about this if you want to give us a ring on 1300 130 670.

Question:

I work as a trainer for a big sporting organisation. I'm a lesbian. I don't shout my sexuality from the rooftops, but I don't deny it either. Until now, I haven't had any problems from my co-workers or the players.

There's been a change of management in the organisation, and my new supervisor is making remarks to me about how I don't fit the 'image' they want, that I shouldn't tell people about my sexuality and that some of the women players feel 'uncomfortable'



www.playbytherules.net.au

Supported by the Australian, State and Territory Governments

I will

- Act within the rules and spirit of the game
- Give positive comments to encourage players
- Respect officials' and coaches' decisions
- Keep my emotions in check
- Thank players, coaches and officials

I won't

- Use bad language or harass anyone
- Criticise or ridicule anyone's performance

with me. I've checked with all the players, and they're fine. I work professionally at all times, and I think it's just the supervisor trying to get me to leave.

What should I do from here?

Answer:

From the details you've mentioned, this would be a case that's covered by our Act. The ground is sexuality, the area is work, and from what you've said, you're being treated less fairly because you're a lesbian, than someone who isn't.

Call on 1300 130 670 for more information.

Question:

My son plays football in the under 10s.

They were playing a game recently and the weather was really hot. I talked to the referee about it at half-time, and he said the team was fine, but he could take my son off if he was feeling the heat. I didn't want my son to miss out on playing, what I wanted was for them to stop the game until the weather cooled down.

My son stayed on the field, but I'm really unhappy about the decision. I think my son was treated really unfairly, just because he feels the heat more than the others.

Can you deal with this?

Answer:

No, I'm afraid not. You might want to raise the issue with the club. You haven't said whether the club has any guidelines about stopping play when the temperature reaches a certain level, but if they don't, this might be something you suggest.

You could also check the Play by the Rules website at www.playbytherules.net.au for some information or other ideas.

Question:

I'm 19 now and I've been umpiring junior netball games for the last three years. I love the game, but I've come to hate being an umpire, and I'm thinking of quitting.

I think I'm a really fair umpire, but I can't get through a game without a few parents questioning every call I make. They accuse me of all sorts of things, they get abusive and a couple of times I've ended up in tears.

I thought netball was supposed to be fun. Can you suggest anything?

Answer:

I agree. Sport should be about having fun. You might be interested in having a look at the Play by the Rules website at www.playbytherules.net.au to see how clubs can ensure this.

Play by the Rules is a national project supported by all the state anti-discrimination and sport and recreation agencies. It promotes fair, safe and fun sport.

One of the resources they offer is a little card which can be handed out to all players, officials and spectators.

If you still wanted to be involved, you might want to approach the club to see whether they have any policies about behaviour. You could also offer them these cards as a starting point.

Fairness – Everyone's Business

Fairness – Everyone's Business is a ready-to-go training cd-rom.

It includes all the information, activities, handouts and visual scenarios you'll need to present a dynamic two hour session in your own workplace.

We've also developed a promotional version of the cd-rom, which includes examples of each of the resources.

For your free sample copy, please call 1300 130 670.



Let us Know

The ADCQ has launched a new website page inviting people from Arabic and Muslim communities to tell their stories.

The *Let us Know* page was set up in response to ongoing reports of people being targeted for verbal abuse, threats and assaults while they were going about their daily lives. People had told us they wanted to be able to let someone know what had happened to them, even though most didn't want to make a complaint about it.

The *Let us Know* page asks people to tell of their experiences in public places such as the street, in shops, on public transport, at work or other places outside their homes.

The page gives people the opportunity to keep the Commission up to date with what's happening in the community. Individuals will not be identified; we're more interested in seeing whether we can spot any trends or patterns to this behaviour.

Check the website at www.adcq.qld.gov.au or call on 1300 130 670 for more information.

Depending on the response to the webpage, we will consider using this format to seek people's opinions on other issues falling within our jurisdiction.



Launch of the *Let us Know* webpage

Conciliated Outcomes

Sexual harassment at work

A woman had worked in a traditionally-male profession for twenty years without incident.

Soon after she started work with a new employer, she was subjected to ongoing sexual harassment by a co-worker. Incidents involved comments about her breasts, constant touching, bra-strap snapping, the offer of a vibrator and being encouraged to look at pornographic magazines. He also told her how he'd arranged the work so that he and she would be together on jobs.

She repeatedly told the co-worker she objected to this behaviour, and finally lodged a complaint with the company. The company had policies and processes in place for dealing with complaints, and investigated the matter. As a result of the investigation, the man was sacked.

The woman had resigned from the job before knowing the outcome of her complaint, and lodged a complaint with this Commission.

At the conciliation conference, the matter was settled with a payment to the woman by both the man and the company.

Parental status in pre-work

A woman saw an ad offering part-time work in the sporting industry. It involved evening and weekend work.

She rang in response to the ad and was asked by the manager of the business whether she had children. When she queried it, she was told that women with children were unreliable for 'out of hours' work.

She lodged a complaint with the Commission, saying she simply wanted an apology and for the manager to be aware of how to handle enquiries for work.

The complaint was dealt with via early intervention, where the complaint handler contacted both parties separately by phone. The manager said he took so many work enquiries that he couldn't remember this specific one. He expressed interest in details of the law and was keen to get some help in how to conduct recruitment for jobs without breaching laws.

The complaint was settled when he offered any apology to the woman and agreed to undertake some training in anti-discrimination law to help him with future recruitment.

Impairment in pre-work

A young man with an impairment applied for work with a large employer in the retail sector. He impressed at interview and was told he'd do really well in the job, but heard nothing more.

When he saw the job re-advertised, he contacted the Commission and lodged a complaint.

This complaint was also handled via early intervention, through phone contact with both parties. The complaint handler spoke to the human resources manager of the employer, who was sympathetic and said he'd 'fix it'. He said the company had a policy of employing people with disabilities wherever possible, and of providing support once in the job.

The young man was offered the job, met with his support person for coffee before starting, and explained what he needed in order to do the job well. The details were agreed and the complaint was settled.

The Apology

On 13 January 2008, the Brisbane office of the Commission held a breakfast, and watched the televised National Apology to Aboriginal and Torres Strait Islander peoples by Prime Minister Kevin Rudd and the Leader of the Opposition, Dr Brendan Nelson.

In the preceding months the Apology had generated a range of positive and not so positive comments in the media from both Aboriginal and non-Aboriginal community members. Because so much had been said, many of us didn't know what to expect on the day.

The release of a draft Apology outline prior to the event gave some sense of the Prime Minister's direction, and confirmed that there would be no mention of compensation for the Stolen Generations.

These are the thousands of Aboriginal and Torres Strait Islander people who were removed from their parents and extended family at a young age. Many of the Stolen Generations did not see their families again for years, and some were never re-united, simply because they were Aboriginal or Torres Strait Islander.

Not being a Stolen Generations person myself but rather a descendant whose people were removed from their traditional area in south-east Queensland to a nearby reserve, I didn't personally experience the type of generational trauma of the Stolen Generations and so was somewhat unprepared for the impact of the outpouring of emotion on the day.

Our work get-together was reflective of other office and community gatherings throughout the country. Telecasts in Sydney, Melbourne and Canberra showed large groups of Aboriginal, Torres Strait Islander people and other Australians crowded around outdoor screens, displaying a sense of unity and sentiment seldom seen in matters regarding Aboriginal and Torres Strait Islander people. This was an historic day!

Ngambri elder, Mrs Matilda House-Williams, a local traditional owner representative, provided the first traditional opening of the Australian Parliament.

The Apology by Prime Minister Kevin Rudd acknowledged the wrongs done to Aboriginal and Torres Strait Islander peoples as a result of past Australian government laws, policies and practices that allowed the forcible removal of children from their families and communities.

While the Prime Minister specifically addressed Stolen Generations peoples, the Apology included all Aboriginal and Torres Strait Islander peoples who experienced profound injustices. He also acknowledged the broader Australian public who for so long were uninformed or unaware.

Even though some people have been critical of the Apology, those of us who witnessed the address have

noticed a growing feeling of national optimism about the future.

Since 13 January, the Australian government has signed the United Nations *Declaration on the Rights of Indigenous Peoples*, passed by the United Nations General Assembly on 13 September 2007. While the Declaration is not binding on signatory states, it is a powerfully stated document acknowledging the impact of colonisation on Indigenous peoples and the inherent cultural, social and political rights of all Indigenous peoples throughout the world.

The Apology has received extensive international coverage, with support and congratulations from those who recognise it as a watershed event in Australian history.

Liz Bond
Manager, Aboriginal and Torres Strait Islander Unit



Commissioner re-appointed

Susan Booth has been re-appointed Commissioner of the Anti-Discrimination Commission Queensland for a three year period.

Ms Booth has also accepted the chair of the peak human rights body, the Australian Council of Human Rights Agencies [ACHRA].

Re-location

The Anti-Discrimination Commission will relocate to new premises in early 2009.

After about eight years just outside the Brisbane CBD, staff will move back to the city, and will share space and facilities with other 'complaints' agencies.

We'll provide more details of the move in the next issue.

Discrimination Law For Community Organisations

**Wednesday 2 July & Thursday 4 December
2008, 9.00am - 1.00pm**

This course is designed for people working in community organisations, and gives an overview of discrimination law in Queensland. The session allows time for questions and discussion.

For:
Community organisation workers needing basic information about discrimination.

Time
Half day

Cost
Free

Course content includes

- definitions of discrimination, sexual harassment, vilification and victimisation
- direct and indirect discrimination
- vicarious liability and reasonable steps
- exemptions
- complaint handling

Discrimination Law

an introduction to the Act

Thursday 24 July 2008, 9.00am - 1.00pm

This course gives an overview of the law in Queensland. No previous knowledge is needed, and the session has been designed to allow for questions and discussion.

Recommended for
Anyone needing basic information about discrimination law.

Time
Half day

Cost
\$140 per person

Course content includes

- definitions of discrimination, sexual harassment, vilification and victimisation
- direct and indirect discrimination
- vicarious liability and reasonable steps
- exemptions
- complaint handling

Fairness - Everyone's Business

How to present a two hour session in your workplace

Thursday 14 August 2008, 9.00am - 4.00pm

This is a full day course which will give you the information and tools to run a session in your own workplace on discrimination issues. The session is based on a cd-rom kit produced by the Commission which contains everything you need for a two hour session, including a Powerpoint presentation, visual scenarios, activities, sections of the Act, tips for trainers, handouts and a comprehensive trainer's guide.

You will also have the opportunity to buy the kit after the session.

Recommended for

Workplace trainers, human resource practitioners and others needing to present sessions on discrimination law in the workplace.

Some knowledge of discrimination law would be an advantage, but is not essential

Time
Full day

Cost
\$280 per person

Course content includes

- planning a session
- getting started
- the law
- activities and case studies and how to use them
- dealing with questions
- using resources

Your place or ours

Many of these courses can be delivered in your workplace. If you have six or more people needing training, you may want us to come to you.

Fees are \$700 for a half day session for up to 25 people.

Call and have a chat with one of our trainers.

To register for any of these courses, please complete the form on the back of this brochure.

- Please note: prices may increase after July in line with any CPI increase.

Session Details

The Contact Officer

Introduction to the Role

Tuesday 9 September 2008, 9.00am - 1.00pm

This course looks at the role of the Contact Officer in the workplace.

Recommended for

anyone thinking about taking on the role, human resource staff, recently appointed Contact Officers and occupational health and safety officers.

We also recommend that you're familiar with your organisation's policies and procedures and that you've attended our course on discrimination law.

Time

Half day

Cost

\$140 per person

Course content includes

- a quick review of discrimination law
- the impact of discrimination and harassment
- the role of the Contact Officer
- options for dealing with complaints
- case scenario discussion

Investigating Complaints in the Workplace

Thursday 25 September 2008, 9.00am - 4.00pm

This course offers you the chance to consider and discuss the best way for complaints to be investigated in your workplace. The session will not accredit you as an investigator.

Recommended for

Human resources practitioners and complaints investigators.

Time

Full day

Cost

\$280 per person

Course content includes

- principles of fairness
- composition of complaints
- the investigator's role
- steps in an investigation
- the xyz investigation activity

The Contact Officer

Advanced

Thursday 16 October 2008, 9.00am - 1.00pm

This session is delivered using a six part case study as the basis for small group discussion.

Recommended for

Contact Officers, policy officers and human resource managers.

We also recommend that you've attended the introductory course, and that you're familiar with your organisation's policies and procedures.

Time

Half day

Cost

\$140 per person

Course content includes

- review of the Contact Officer role
- record keeping
- vicarious liability, duty of care, confidentiality
- the investigation process
- quality control issues

The Contact Officer

Refresher Course

Thursday 6 November 2008, 9.00am - 1.00pm

This course has been designed specifically for current Contact Officers, to help address the challenges that have come up during the job and to build on skills needed in the role. The course includes discussion of recent developments in discrimination law.

Recommended for

Current Contact Officers

We also strongly recommend that you've done the introductory and advanced Contact Officer courses

Time

Half day

Cost

\$140 per person

Course content includes

- review of the Contact Officer role
- review of discrimination law
- skills development activity
- dilemmas and how to deal with them

Far North Queensland region

Community relations

The Cairns office closed the 2007 year on a particularly high note, having successfully hosted its inaugural International Human Rights Day *Living Books* event.

The concept of inviting ten interesting people in our community to share their stories with 'the readers', proved to be a great success. These wonderful people opened their hearts to talk about the often traumatic and unexpected events in their lives, which have led them to follow a path that perhaps had not been in their life plan.

The Commission invited 'readers' to come along to the Cairns Regional Art Gallery, register to talk with the 'books' of their choice and spend twenty minutes sharing the richness of the life experiences of the chosen 'books'. The generosity of the living books was admirable.

We found the media to be supportive of the event with local ABC Morning Show host, Pat Morrish, presenting her entire program from the *Living Books* forum. Each book was interviewed during the program. Indigenous radio and local television news also took the opportunity to interview the Commission's Regional Manager and several 'books'.

Training

Ongoing training requests from community based organisations, government departments and the private sector have increased in the past twelve months. Trainers have provided onsite sessions to year 8 and year 11 students, workers in the mining industry, university contact officer students, electorate office staff, government health workers, Indigenous justice groups and Indigenous Certificate IV trainees from throughout the Cape.

The Commission's two day training for legal and other advocates working within the jurisdiction has been delivered for the first time in the Far North region. The training was well attended with responses to the content including comments such as:

"Presenters excellent, interesting and on point".

"Appropriate – targeted all participants, solicitors, social workers etc at an appropriate level. Simple to more complex in an overview fashion – great".

Complaints

The successful resolution of complaints within the Commission continues to be achieved at a high level with an average 70% settlement rate for the current financial year.

Paul Innes

Living Book

International Human Rights Day 2007

Paul at age 20, opted for a swim at a local swimming hole. Paul says "I met with an injury that changed my future, leaving me quadriplegic. My focus then turned further to health and healing, while I continued in community groups and volunteered on many committees.

I fought for compensation for six years, and against extreme odds, won. I threw a free celebration for the public which was enjoyed by thousands, announcing a grant to maintain a nearby children's playground.

I lectured in institutions and travelled the country both as an advocate and adventurer. On purchasing an 88 acre organic fruit farm, I laboured for eight years with my trusty modified ride-on mower and about six WWOOFERS (Willing Workers On Organic Farms) who came from all countries and did four hours work in exchange for food, accommodation and sharing of culture.

My home was also used as sanctuary for the local women's shelter.

I am currently involved with a new Assistance Dog company and have just launched a second book with a local writers group. My passion for astral travel has always consumed me and will continue to be my greatest treasure to share."

After taking part in the celebration of International Human Rights Day hosted by the Anti-Discrimination Commission in December Paul says:

"I felt extremely honoured to be asked to contribute to the Commission's celebration.

[After being asked] I was excited about the event. I knew it would go well. It made me go through my whole life and think: what do I want to present to the world about me, things that have made me happy. Since the event it has given me the focus to get on with things like my writing. I'm more confident about what I'm doing with my life."

(On the day) "I appreciated it if even one person wanted to talk with me. I'm a strong person and I had family, friends, carers and my old mate Bowie [my dog] with me. It wasn't much about nerves."

Paul and other *Living Books* from the inaugural event have committed to support and play an active role in this year's International Human Rights Day *Living Books* event.



Paul Innes and Pastor Kofi Boateng

Tribunal Decisions

Byrne v Kelly & Anor [2008] QADT6

BACKGROUND

The complainant has a psychiatric illness (bipolar disorder) and the Guardianship and Administration Tribunal (GAAT) found that he 'was not capable of understanding the nature and effect of decisions about financial matters or was not capable of freely and voluntarily making decisions about financial matters.' The Public Trustee was appointed as administrator for the complainant's financial affairs.

It appears that the complainant had large debts and was unable to repay them. This was a significant factor in the Public Trustee's decision to sell the complainant's home. The complainant vigorously opposed the sale of his home and maintained that he was owed money by insurance companies and a firm of solicitors. He wanted the Public Trustee to take legal action on his behalf in these matters and claimed that if the money owed to him was recovered, his home would not have to be sold.

The sale of the complainant's home was eventually averted when several creditors reduced or wrote off their debts and the mortgagee agreed to a different repayment schedule. The Member suggests that this was largely due to the work of the Public Trustee's office.

GROUNDS OF COMPLAINT

The complainant (who was not legally represented) argued that the Public Trustee treated him less favourably than a person without his impairment would have been treated in similar circumstances, when it refused to take any legal action on his behalf against the insurance companies and firm of solicitors said to owe him money.

Another allegation was that the officer appointed by the Public Trustee to handle his affairs refused to listen to him, did not accept his word, made mocking comments about him, calling him 'the guy bringing in heaps of documents' and that he ignored the material provided by the complainant.

The conduct of an unnamed employee of the Public Trustee was also part of the complaint. When the complainant was trying to stop the sale of his home, he told the employee that the money owing to him (mentioned above) was sufficient to meet any mortgage liability. The employee is reported to have said: 'You must have imagined it. Nothing will stop the sale.' The complainant took these words to be a reference to his psychiatric impairment and argued it amounted to less favourable treatment.

FINDINGS

None of the allegations of discrimination was proved.

The Member found that the decision made by the Public Trustee's officer not to pursue legal proceedings was made in what the officer 'perceived to be the best interests of' the complainant.

Member Rangiah drew a comparator. He proposed the situation where the Public Trustee was administering the financial affairs of a person who was a prisoner sentenced to more than three years prison. In these circumstances he found that the Public Trustee would have made the same decision as the present case. He found that the decision about the complainant's financial affairs was not influenced by the fact that he has a psychiatric illness.

Regarding the refusal to listen by the Public Trustee's officer, or give credit to the material provided by the complainant, the Member found that the officer was acting 'honestly and with reasonable diligence to protect' the interests of the complainant. Member Rangiah was of the opinion that it was the complainant's unwillingness to accept the decisions made by the officer which caused him to think that he was being ignored.

The alleged comment about 'imagining' things by the unnamed employee was not accepted by the Member as discrimination. He indicated that there was not sufficient detail. The first respondent denied using the words and the context was unclear.

COSTS

Member Rangiah refused to make the costs order against the complainant sought by the respondents. He found that as a result of his impairment, the complainant had a genuine belief in the validity of his complainant. He noted that the 'very reason for the Public Trustee's appointment as administrator' is the complainant's lack of capacity due to his impairment. He concluded: 'The Public Trustee is a statutory officer whose appointment is for the public benefit. This is one of the situations in which his costs must be borne by the public purse.'

Sherman & Anor v Grady & Anor [2008] QADT7

BACKGROUND

Mr and Mrs Sherman bought a residence at Sanctuary Cove, a south-east Queensland resort-style community, in 1998. (Sanctuary Cove was created by an act of Parliament, and any changes to the by laws had to be approved by the Minister.) They joined the country club and remained active members until their membership was terminated, against their wishes, by the owners of the club in 2004.

Mr Sherman complained that his membership of the Club was terminated because of his political activity. Mrs Sherman complained that she was discriminated against on the basis of her relationship status or her association with, or relation to, a person identified on the basis of one of the attributes listed in the Act.

GROUNDS OF THE COMPLAINT

Mr Sherman claimed that his actions, principally in trying to maintain the 'lifestyle' and 'amenity' of the owners and residents of Sanctuary Cove, and also in applying to have Sanctuary Cove Resort admitted to the Queensland Heritage Register, were 'political activities'.

There is no definition of 'political activity' in the Act.

The respondents submitted that the term (political activity) be considered in the narrower sense of connection with government – the policies, structure, composition, role, obligations, purposes or activities of government.

Mr Sherman argued that as 'government' means 'the authoritative direction and control over communities, societies and states', it followed that actions taken by a person to try to determine the direction and control of a 'community' such as Sanctuary Cove should still be regarded as 'political activity', even after a narrower application of the term was applied.

Member Forrest accepted Mr Sherman's argument that he was engaged in political activity. He said that Mr Sherman's involvement in his own community 'was involvement in activity that bore on government', and that this activity could not 'properly be characterised as just part of an administrative procedure'.

The respondents submitted that the reason for Mr Sherman's exclusion from the country club was the statements made by Mr Sherman in a number of publications which were seen as defamatory, unfounded and misleading. This submission was not accepted by the Member.

Member Forrest found that Mr Sherman's membership was terminated because he 'had been actively agitating in a manner and in respect of things over a period of time that the second respondent regarded as against its commercial interests and, principally, because that agitation culminated in his being involved in causing an application to be made for the Queensland Heritage listing of the Sanctuary Cove Resort'.

The Member then turned to Mrs Sherman's complaint on the basis of relationship status or association. When Mr Sherman's membership was terminated, 'so too, incidentally and automatically, were Mrs Sherman's "rights, privileges and license" in respect of the use of the country club's facilities'.

He found that Mrs Sherman had been treated less favourably than other members of the club on the basis of her association with Mr Sherman, who was identified on the basis of his political activity.

Member Forrest found both respondents responsible for the unlawful discrimination.

COSTS

The complainants sought reinstatement to membership of the club they had now been excluded from for three

and a half years. The second respondent said it could not do this even if ordered by the Tribunal, as it no longer owned the club.

The Member ordered that the respondents do everything within their power to ensure that the complainants' membership rights were fully restored.

He also ordered payment of \$30,000, plus interest, to each complainant in general damages, including embarrassment and humiliation.

Mr Sherman was also awarded \$15,000 plus interest, and Mrs Sherman \$18,000 plus interest, in other damages for costs they incurred in using facilities outside Sanctuary Cove.

Exemption application re: Raytheon Australia Pty Ltd & Ors [2008] QADT1

Raytheon Australia applied for exemption from the operation of parts of the Act for a period of five years.

The exemption was sought to allow the applicants to undertake the commercial supply of defence articles, services and products. The business has contracts with the Commonwealth of Australia and the United States government. To fulfil these contracts, access to defence equipment and technology was needed. The laws and regulations of the United States impose strict restrictions on the provision of defence information and technology to organisations outside the United States and to non-United States personnel. The restrictions included the provision of information to people of certain nationalities, including 'dual nationals', as the term is defined in the *International Traffic in Arms Regulations* (ITAR).

The Anti-Discrimination Commission Queensland, the Queensland Council of Unions and the Ethnic Communities Council of Queensland opposed the granting of an exemption.

As a result of submissions from these agencies, the applicant reframed the exemption to make it narrower and to demonstrate a need for the exemption.

Member Boddice granted the exemption subject to conditions including the following:

- it must relate to actions/omissions reasonably necessary to meet requirements of ITAR and US Security Regulations
- it must apply directly or indirectly to work carried on by the applicant
- the applicant must take reasonable steps to avoid/reduce adverse effect on individuals (reasonable steps are specified)
- the applicant must report every six months to the Anti-Discrimination Commission Queensland

The exemption was granted for three years, instead of the five years sought.

A Training Story

A large university recently held its orientation week for new students. The organising committee contacted the Commission, saying that during past orientation weeks, some 'traditional' activities may have included behaviours that could humiliate, embarrass or intimidate new students.

The Commission had delivered training sessions at the university, so the committee was aware of its obligations under law, but it was also under pressure to maintain the past traditions of the university.

They wanted to provide a safe and fun environment for all, so decided that any participation by students in the activities would be voluntary. This was quite a departure from previous years, where there was pressure on students to be involved.

To ensure this, they agreed to speak with all students personally so they were aware that no intimidation or humiliation would be tolerated, and that any concerns of inappropriate behaviour would be taken seriously and acted on. The committee was keen to provide a safe and open environment in which students could seek help without fear of repercussions.

From all accounts, the strategies worked well.

This example is useful to demonstrate that regardless of how long a certain practice or tradition may have been in place, it's always helpful to do a review. Activities that could treat a person less favourably, or in which a person might have difficulty participating, based on unlawful discrimination or harassment, could severely harm those forced to take part.

Individuals and educational institutions need to be aware of requirements to prevent unlawful behaviour which might attract liabilities under discrimination law. These laws do not stop people from having fun, they simply try to ensure that everyone has fun.

For more information on training, or to book for any of the courses listed, please call 1300 130670.



Trainers Warren Kuskopf and Gabriel Monson

Central Queensland

Training

The Rockhampton regional office has been busy delivering anti-discrimination training to contact officers in the mining industry in the last few months. Employers are becoming more aware of their potential liability for their employees' behaviour and are seeking to train their workers to reduce that risk.



Stuart and Alison celebrate International Human Rights Day

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Climate Change

The Queensland Commission has set up a climate change working group to try to reduce our carbon footprint.

The working group has come up with a range of initiatives, some of which can be implemented immediately (eg ensuring all equipment is turned off at night), some of which need a bit of investigation (eg switching light systems to an 'off' default), and some of which need to be considered in the long-term (eg looking at the cost involved in switching to accredited green power for provision of electricity).

Using the slogan 'From little things...', the group will also be passing on 'green tips' to staff.



Anti-Discrimination Commission Queensland

The Commission has a two-fold role.

One is to deal with complaints of alleged discrimination, sexual harassment, vilification or victimisation. The other is a broad education role where we offer a range of training programs at your place or ours, and where we engage with communities in a range of ways on a number of issues.

Complaints:

We can deal only with complaints which are covered by the Queensland Anti-Discrimination Act 1991.

To lodge a complaint, you need to show you've been dealt with less fairly than someone else in a similar situation, because of one of the grounds mentioned in the Act. The unfair treatment also needs to have happened in one of the areas covered by the Act.

Grounds

- sex
- impairment
- relationship or parental status
- race
- religious belief or activity
- political belief or activity
- trade union activity
- lawful sexual activity
- pregnancy
- breastfeeding needs
- family responsibilities
- gender identity
- sexuality
- age

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Areas

- work (including pre-work)
- goods and services
- education
- accommodation
- superannuation and insurance
- disposition of land
- club membership and affairs
- administration of state laws and programs
- local government

Sexual harassment is against the law whenever and wherever it happens, as is vilification on the basis of race, religion, sexuality and gender identity. It is also unlawful to victimise someone because they are involved in, or are thinking of lodging, a complaint.

Training

The Commission offers a range of courses which we can present in your workplace, or in our offices. They include

- an overview of the Act
- the contact officer role and work (three courses)
- investigating complaints
- educating staff
- discrimination law for community organisations

We can modify courses to suit your needs.

LET US KNOW

if you've seen or experienced
public hostility or violence
towards Arab and Muslim people.

Even if you don't want
to make a complaint
we'd like to hear your story.

adcq ANTI DISCRIMINATION
COMMISSION QUEENSLAND

Statewide 1300 130 670

TTY 1300 130 680

www.adcq.qld.gov.au