Balancing the Act

How to avoid a hangover

This time of the year is a time when colleagues and workmates often like to get together to celebrate the end of the year. With some thought and a little preparation, everyone can enjoy the celebrations without worrying about having a legal hangover.

It is unlawful to sexually harass another person, no matter who or where they are.

What amounts to sexual harassment is reasonably clear. Any unwelcome, sexualised behaviour towards another person may be sexual harassment if an ordinary reasonable person would expect the other person may be offended, humiliated or intimidated.

Telling dirty jokes, texting crude comments or pictures, groping someone, showing porn to liven up the party, talking about your sex life or fantasizing aloud about what you’ve missed out on, is generally not acceptable, and is sexual harassment if it is not welcome.

The trouble is, most people are just too polite to say anything. They are more likely to try to change the topic of conversation, find an excuse to leave or even laugh, to cover their discomfort. But this does not mean that they won’t complain about it later.

Everyone is entitled to draw the line somewhere and it is often hard to know if or when you have stepped over their line. Being tipsy or drunk at the time is not an excuse for sexual harassment and makes it harder to pick up on the subtle social cues about whether or not behaviour or comments are welcome.

The only way to be sure not to overstep the mark is to avoid these kinds of behaviours altogether.

The best guide is: Stop. Think. If you can’t be sure; just don’t.

If you are at a function organised or sponsored by your employer, you can be sure that your boss won’t want to have to deal with a complaint of sexual harassment following the event.

Employers are legally liable for the actions of their employees; so if you behave inappropriately both you and your employer may be liable.

Employers have a legitimate role in deciding what workplace behavioural standards are acceptable. If your behaviour is not acceptable at work, then it won’t be acceptable at a work party or function.

Wise employers will remind staff about what they expect of them and make it clear that standards for workplace behaviour also apply at work related events.

If you treat others with respect and dignity, everyone can have a good time, celebrate a fruitful year and not be left with a legal hangover that may last well past the start of the new year.

A Andersen, State Director (Complaint Management), Anti-Discrimination Commission Queensland.

Online human rights survey for LGBTI people

The Australian Human Rights Commission (AHRC) is conducting an online survey and email submission process to find out about the key human rights issues affecting lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Australia.

The consultation aims to establish what legal protections exist and what legal barriers remain, what services are being provided and what are not, and what else can be done to improve the lives of LGBTI people. At the end of the consultation process, a report will be published which will provide a map of the challenges ahead and recommendations for pathways to change.

The Sexual Orientation, Gender Identity and Intersex (SOGII) rights snapshot report background paper and online survey is available from the AHRC website: www.humanrights.gov.au/sogii-rights. The online survey closes on 23 December 2014, but the last day for submissions has been extended until 6 February 2015.
Commissioner’s Foreword

Freedom of religion is a cornerstone of a civil society: religious hatred is not acceptable.

Australia has a long relationship with people of Muslim identity and Islamic faith. In pre-colonial times there were exchanges between Muslim fishermen in southern Indonesia and Aboriginal peoples in the far northern regions of Australia. During the colonial period the exploration and settlement of Australia was aided by Afghan and Indian cameleers, as well as people who came from many cultures and countries seeking their fortune and a better life during the gold rush period.

The descendants of these early settlers have been contributing to Australian society for well over a century. Today, Australia has a great diversity of contemporary Australian Muslim citizens from a range of cultures and countries. We have a great diversity of migrants who came to Australia fleeing persecution during and post-World War II and other wars such as the Vietnam conflict. Australia is recognised as one of the most peaceful and successful countries in the world, and it is well understood that multiculturalism has significantly contributed to making Australia the great nation it is today.

In a time when the world is facing a multitude of crises, whether they are man-made or natural, fear is often our first response. As a community we are justified in fearing people who commit gross acts of violence. As a community we want our legislators and law enforcers to take proportionate and reasonable steps to prevent acts of violence occurring in Australia, including acts of terrorism.

It is extremely important for all of us to know that the vast majority of the Muslim members of our community are as horrified and appalled by the acts of terror occurring in Syria and Iraq as the rest of the Australian community. They are very distressed that the perpetrators claim to be acting in the name of Islam, and some media uncritically promote this premise in spite of the fact that Australian Islamic leaders repeatedly state that Islam condemns such behaviour.

This distress is compounded when ordinary law-abiding Muslim members of our community (and in particular women wearing dress that identifies them as a person of the Islamic faith) are vilified when shopping, doing kids’ school runs and travelling on public transport. Others, such as people of Sikh, Hindu, and Buddhist faiths, as well as Orthodox and Coptic Christians are being singled out and vilified because of their religious attire. Such acts of vilification are against the law in Queensland.

We cannot allow fear to divide us. It is critical that we, as a community, pull together and stand united. The ethic of reciprocity (the Golden Rule) states ‘one should treat others in the way one would like to be treated’. This principle exists in a wide range of world cultures, religions, ethical traditions and is a standard that is often used to resolve conflicts. How would you feel if your mother or sister or daughter was assaulted, had clothes ripped off her and was spat on when going about her daily activities?

Recently in Queensland we had consecutive years of cyclones and flooding; individuals, families and communities faced many hardships. It was at those times I was most proud of my fellow Queenslanders. We saw people put aside their own fears and preoccupations to help their neighbours and communities in their time of hardship. The ‘Mud Army’ was a living example of the Golden Rule. People came from far and wide to help those who had lost much, if not everything, in Brisbane and surrounding districts floods. It didn’t matter about our race, culture or religious beliefs; we were there for each other.

Queensland has much to lose if we condone acts of intimidation, and racial or religious hatred. Irrespective of a person’s faith, race or culture they must be able to go about their daily lives without fear of being intimidated by physical and verbal assaults.

There is evidence that this is starting to be a reality. Take for example the intimidation, including death threats, made to councillors on the Gold Coast if they supported the development application for a mosque. Intimidation and threats to our elected representatives and their families undermines our democracy.

We must stand against acts by any individual or group that break the law. If we, as Queenslanders, allow fear of difference to determine how elected officials govern in their respective jurisdictions, then we have lost our democracy. This is the very thing terrorists want. We must not let fear or suspicion divide and conquer us.

Let’s remember the principle of treating others in the way we would like to be treated. It is this generosity of spirit we must draw upon in these times – standing united as neighbours, community and society.
Bystander action

Have you seen public acts of harassment, vilification or racist abuse and been unsure what to do? We have produced a video and fact sheet to assist bystanders to take positive steps if confronted by these public incidents.

The bystander action video and fact sheet provide practical tips on:
- how to respond to online incidents
- what to say when you see someone being harassed in public
- how to record and report the incident
- how to support the victim.

Both resources are now available on the ADCQ website.

Fair and inclusive Queensland

International Human Rights Day falls on 10 December each year and is a timely reminder of the Commission’s human rights obligations.

The Commission has a responsibility under the Anti-Discrimination Act 1991 to promote the understanding and acceptance of human rights, and works towards achieving a fair and inclusive Queensland.

We focus on community engagement which creates opportunities in local communities for relationship building, and engage in collaborative projects to advance human rights.

This work is inspired by Eleanor Roosevelt, who served as the first chair of the United Nations Commission on Human Rights, and oversaw the drafting of the Universal Declaration of Human Rights.

Bystander action

The community debate about production and certification of halal food has come to our attention. We have been receiving an increased number of enquiries about how discrimination law applies to the provision of food to meet religious dietary rules. Here are a few key points to clarify the issue:

- The Anti-Discrimination Act 1991 prohibits discrimination on the basis of religious belief or activity. This includes whether a person holds, or chooses not to hold a particular religious belief.
- Many service providers cater for the dietary needs of our diverse community, including religious, cultural, medical and preference (e.g. vegetarian).
- If a consumer feels discriminated against because of their religious belief, they have the option to complain to the Anti-Discrimination Commission.
- Consideration of the complaint will include whether it is reasonable in the particular circumstances that the service provider has not catered for the religious belief.

ADCQ’s bystander fact sheet

The debate about halal food

We focus on community engagement which creates opportunities in local communities for relationship building, and engage in collaborative projects to advance human rights.

This work is inspired by Eleanor Roosevelt, who served as the first chair of the United Nations Commission on Human Rights, and oversaw the drafting of the Universal Declaration of Human Rights.

To order copies of the ‘Where, after all, do human rights begin?’ poster, visit the resources page of the ADCQ website.
Beach Day Out

As part of Disability Action Week, the annual Beach Day Out event was held at Yeppoon foreshore. The annual event has been running for several years and gaining increased support and attendance each year.

Beach Day Out is a fun day at the beach for the whole community, especially for people with a disability who may ordinarily have difficulty accessing such an event. It includes free activities such as hand cycling, kite making, a sensory room and a fully accessible jumping castle.

As well as the fun, Beach Day Out aims to:
- promote positive attitudes towards people with a disability;
- break down stereotypes;
- highlight issues that affect people with disabilities from accessing services and facilities; and
- improve community support for people with a disability.

ADCQ’s Central Queensland team is part of the steering committee which organises Beach Day Out. Special thanks to the organisations involved in this year’s Beach Day Out including Departments of Communities, Child Safety and Disability Services, Community Solutions Rockhampton, Livingstone Shire Council, Capricorn Coast Community Access group, Suncare Community Services, Autism Qld and other supporting agencies.

Inclusive Community Champion

The Central Queensland office of the Anti-Discrimination Commission Queensland was recognised in the 2014 Spinal Injuries Australia annual Inclusive Community Champions Awards for the Livingstone region.

The awards are presented during Spinal Cord Injury Awareness Week (9 to 15 November) and acknowledge venues, services and individuals for their efforts to ensure that everyone can participate in the community.

Livingstone Shire Council Mayor, Cr Bill Ludwig, presented the award for the Best Government Department to Ben Cooke the Regional Manager (Central Queensland) in recognition of the intense involvement with the Beach Day Out inclusive and accessible community festival organised as part of Disability Action Week celebrations this year.

Cairns inclusive games day

Wednesday 3 December was International Day of People with Disability. To celebrate this important day, the ADCQ Far North Queensland team hosted an Inclusive Games Day in association with Sporting Wheelies and Disabled Association, Cairns Regional Council Access and Equity Advisory Committee and ARC Disability Services Inc.

The games day was a free, inclusive event open to all ages and abilities. It provided the Far North Queensland community with an opportunity to try games and activities such as goal ball, boccia, baseball, Zumba and wheelchair basketball.

Members from the Cairns Hoopsnakes Wheelchair Basketball team and the Cairns Shadow Strikers Goal Ball team as well as Paralympian, Christine Wolf were on hand to mentor participants in their chosen sport.

Do you have a good news story about human rights? Are you involved in a workplace or community initiative aimed at creating fair and inclusive spaces and communities? If so, ADCQ would love to hear from you. Send your stories to info@adcq.qld.gov.au.

Accessibilty pub crawl

People who go on a pub crawl can be denied access to venues for many reasons, but actual physical inability to access the venue should not be one of them. The Yeppoon Access Pub Crawl was created to highlight this very issue.

The annual event in Central Queensland aims to raise awareness of the challenges faced by people with disability and promote improved access to public venues.

The Yeppoon Access Pub Crawl engages a group of participants who visit a number of licensed venues using wheelchairs, walkers, blinkers and other aids so that they can experience first-hand the difficulties faced by people with mobility and other impairments.
**Everybody belongs**

Cultural Diversity Queensland, the Anti-Discrimination Commission Queensland and the Queensland Police Service have partnered to deliver six community conversations in regional centres across the state. The first three conversations were held in Rockhampton, Toowoomba and Cairns in November, with the second round taking place in Nambour, Townsville and the Gold Coast in December.

The purpose of the conversations is to let people know that the Queensland Government is committed to a Queensland where everybody feels that they belong and where racism is not tolerated.

The conversations provide an opportunity for inter-faith and culturally diverse community leaders and members, state and local politicians, the Anti-Discrimination Commissioner, Queensland Police and senior members of the Queensland Government to come together to:

- discuss local experiences
- provide information on complaint and reporting mechanisms for people who have experienced or witnessed racial vilification, abuse or violence; and
- share ideas and success stories on ways to build community harmony.

**Talk the Walk public forum**

The Commission has a leadership role in human rights in Queensland. One way we do this is by upholding, promoting and protecting the rights of Aboriginal and Torres Strait Islander peoples.

We recently partnered with Queensland University of Technology (QUT) Law Faculty and Recognise to deliver Talk the Walk, a public forum on constitutional recognition.

The event coincided with the ‘Journey to Recognition’ - an epic relay across Australia to build awareness of the need for recognition of Aboriginal and Torres Strait Islander people in the Constitution. The journey commenced in May 2013 and arrived in Queensland in July 2014.

The purpose of the Talk the Walk forum was to raise awareness and provide an avenue for discussion of the constitutional recognition issue and give the public an understanding about what recognition means.

The panel comprised Mick Gooda (Aboriginal & Torres Strait Islander Social Justice Commissioner), Joan Sheldon AM (former Queensland Deputy Premier), Ian Brown (Queensland Law Society President) and Stephanie Parkin, a young Aboriginal lawyer at McCullough Robertson Lawyers. Sandra Phillips from QUT provided commentary and facilitated questions from the audience of approximately 125 people.

If a referendum is called, the Commission plans to hold further community discussions on the constitutional recognition issue. The full video of the Talk the Walk forum can be viewed on the ADCQ website.

**Gold Coast women’s group**

A series of World Café style community conversations has recently commenced on the southern Gold Coast. The conversations were initiated by a group of Muslim women from the area who were concerned about fractured community relationships as a result of public debate over an application to build a mosque.

The primary goal of the conversations is to bring women of various faiths together to start the process of building good community relationships. It is not a forum for continuing debate about Islam or the presence of a mosque. The focus is on broader community issues of inclusion.

The first community conversation held in late September focussed on the question, ‘How do we support this community to find the courage and vision to be inclusive?’ This conversation was attended by approximately 44 women including a number of local police, a local councillor, women from both Muslim and non-Muslim faith backgrounds and a local journalist.

Gold Coast women’s group

The success of the initial conversation prompted a further conversation which was held on 25 November 2014. The second conversation built on the actions that were identified at the first meeting. Questions discussed included, ‘What are the elements of an inclusive community already happening here?’ and ‘What action am I willing to take to progress the vision of an inclusive community?’

ADCQ’s role in these conversations is to assist in creating community connections and facilitating the conversations. We welcome invitations from other community groups who are interested in building inclusive communities through community conversations.
LEGAL UPDATE

100,000 reasons to take sexual harassment seriously

In a landmark judgment, the Full Court of the Federal Court of Australia found that general damages of $18,000 awarded to a victim of sexual harassment was manifestly inadequate and increased the amount awarded to $100,000.

In 2010 Ms Richardson commenced legal proceedings against her previous employer, Oracle Corporation Australia, alleging that she was subjected to a constant barrage of sexual harassment over six months by a colleague.

The Federal Court ruled that unlawful sexual harassment had occurred and found Ms Richardson's former employer, Oracle, vicariously liable under the Sex Discrimination Act 1984 (Cth). The company was ordered to pay Ms Richardson $18,000 as compensation for her pain, suffering and loss of enjoyment of life resulting from the harassment.

On appeal, the Full Court of the Federal Court found that the original compensation amount of $18,000 was manifestly inadequate, having regard to the amount of damage suffered and with reference to current community standards. This decision has set a new benchmark for compensation awarded to victims of sexual harassment in the workplace.

Under Queensland’s Anti-Discrimination Act 1991 there is no monetary limit in compensation that can be awarded for loss or damage. Therefore this decision will have application in Queensland. The same principles should also apply for all types of discrimination (such as race, sexuality, impairment etc) as the case shows that the damages should properly reflect the level of harm done as assessed by today’s community standards.

With this decision, the monetary risk to employers if they do not take action to prevent discrimination and sexual harassment has dramatically increased. Employers now have 100,000 reasons to take these issues seriously.

(Richardson v Oracle Corporation Australia Pty Ltd [2014], FCAFC82, 15/7/14).

Real risk of legal costs where complaint is successful

In the case of Bell v State of Queensland [2014] QCAT 495, the Queensland Civil and Administrative Tribunal (QCAT) looked at the issue of whether a successful complainant should be awarded costs despite QCAT generally being a ‘no costs’ jurisdiction.

The complainant was found to have been sexually harassed, causing her a psychological injury. She was awarded $9,000 after a five day hearing at which both parties were legally represented.

QCAT awarded the complainant costs because it was not in the interests of justice to allow the successful claim to be eroded by requiring Mrs Bell to bear the costs of representation which was reasonably necessary to achieve that outcome.

This case signals to employers that they need to be aware of the real risk of having to pay a complainant’s legal costs on top of any damages awarded, if they are successful. This is especially where the case is long or complex enough for QCAT to allow legal representation.

Cost saving approach to dealing with all complaints at once

In MM v State of Queensland [2014] QCAT 478, QCAT allowed the complainants to amend their complaints to add allegations of victimisation that occurred after they made complaints of impairment discrimination to the Anti-Discrimination Commission Qld (ADCO). The tribunal also allowed them to add an additional respondent to the proceedings.

QCAT noted that the provisions relating to amendment and adding parties had themselves been amended in 2009 and were clearly intended to allow changes to a complaint in QCAT, even though the allegations were not part of the complaint to the ADCO.

This approach will save time and costs to all parties. Complainants will be able to make sensible amendments to their complaint without having to start again in the ADCO. Respondents will be able to answer all the allegations as part of one process in QCAT, rather than having to deal with related issues in both QCAT and ADCO at the same time.
Risqué risks

The following extract is taken from the article ‘Risqué risks’ written by Commission staff Deborah Keenan and Heather Corkhill, and published in the Queensland Law Society’s November issue of Proctor magazine. (Citations have been omitted.)

Consequences of workplace sexual harassment

It is well documented that, in addition to the possibility of significant legal action, losses caused to both businesses and victims of sexual harassment can be significant. Sexual harassment often has a serious and negative impact on the victim’s physical and emotional health.

Employers also suffer significant financial losses from the job turnover, use of sick leave, and losses to individual and workgroup productivity that result from harassment. A 2007 study from the United States found that the loss of productivity alone in cases of sexual harassment cost around US$22,500 per person.

Limited vicarious liability and best practice for employers.

In managing sexual harassment complaints in the workplace, it is advisable for employers to educate themselves on the context in which sexual harassment occurs:

- 91% of sexual harassment occurs in private, so is unlikely to be witnessed.
- Sexual harassment can occur in any direction and between people of any gender (although most complainants are women).
- Only one in five employees experiencing sexual harassment formally complains.
- Targets of sexual harassment generally deal with the problem in informal ways such as by avoiding or tolerating the behaviour, obtaining advice of friends and co-workers, or quietly leaving the job. Passive response strategies can include requesting shifts when the harasser is not working, or physical avoidance within the work-space.
- Complaints are less likely to be made in small organisations.
- A target of sexual harassment is more likely to report when the behaviour includes sexual assault or a request for sexual favours.

It is crucial that an employer has a strong and clear policy regarding sexual harassment that is regularly communicated to staff, and that proportionate disciplinary action is taken for breaches of policy. Industrial courts have on many occasions upheld dismissal on the grounds of sexual harassment which has been carried out with a clear policy and a fair process.

There are inherent risks in relying on a complaints system as a catch-all for detecting sexual harassment. The best approach is a proactive one:

- Implement a sexual harassment policy
- The policy should have clear and significant consequences for perpetrators of sexual harassment at work.
- Regularly train staff about sexual harassment and the policy.
- Take complaints seriously and manage investigations well.
- Avoid any actions that may be perceived as victimising a complainant. These could include standing down or dismissing a complainant, or demoting or transferring a complainant to another work-site.
- Treat the safety of workers from harassment as a primary and over-riding duty.
- Educate managers about sexual harassment.

The Australian Human Rights Commission has partnered with the Australian Council of Trade Unions and the Australian Chamber of Commerce and Industry to launch a national awareness raising strategy called Know Where the Line Is. The partnership recognises that not only is workplace sexual harassment an abuse of human rights, it is also something which has a negative impact on employee safety and security and is costly to businesses.

For more information on the strategy visit www.knowtheline.com.au
### Public education calendar
#### Jan-June 2015

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<th>Date</th>
<th>Session</th>
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<tr>
<td>3 Feb</td>
<td>Introduction to the Anti-Discrimination Act for community organisations</td>
<td>9-11</td>
<td>Townsville</td>
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<td>Contact Officer</td>
<td>9-4</td>
<td>Brisbane</td>
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<td>Introduction to the Anti-Discrimination Act</td>
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<td>Introduction to the Anti-Discrimination Act for Managers</td>
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<td>2-4</td>
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<td>Managing Complaints</td>
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<td>Introduction to the Anti-Discrimination Act for Managers</td>
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<td>Introduction to the Anti-Discrimination Act for Community Organisations</td>
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<td>Introduction to the Anti-Discrimination Act</td>
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<td>20 May</td>
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<td>Financial benefits of a diverse and inclusive workplace</td>
<td>9-11</td>
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<td>Introduction to the Anti-Discrimination Act for Community Organisations</td>
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<td>Unconscious bias</td>
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<td>Understanding discrimination law for community organisations</td>
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### ADCQ wins web award

The Anti-Discrimination Commission Queensland’s website has been judged the Queensland state winner of the 2014 Australian Web Awards in the government category.

The Australian Web Awards showcase outstanding work by Australian web designers and developers. Their purpose is to promote the industry, to champion web standards and to acknowledge excellence. Websites are judged on visual design, content, user experience, development and accessibility.

The ADCQ’s redeveloped website was launched in mid-2013. ‘We wanted to freshen up our old website but also enhance the user experience by making information easy to find and maintaining a very high standard of accessibility’ said Anti-Discrimination Commissioner, Kevin Cocks.

Many websites are unusable for people with a vision impairment or can only be navigated with a mouse, which also restricts users with limited motor skills. ‘These barriers are just not acceptable in this day and age, so we are leading the way in making information accessible to everyone’, said Commissioner Cocks.

The Australian Web Awards are run by the Australian Web Industry Association and have been a major national industry event since 2009. Categories include personal, e-commerce, commercial, government, education, culture and events, not for profit, innovation and social media.

ADCQ’s focus for the future will be on the continuous improvement of the website, including the installation of the world’s only fully accessible video player, Ozplayer. To provide feedback on the ADCQ website, email: website@adcq.qld.gov.au. Scan here to visit ADCQ’s website: