

# Balancing the Act

The Newsletter of the ADCQ  
Issue Twelve - August 2001



## From the Commissioner's Desk.....



It certainly has been a very busy few months since my return to work after five months long service leave. On that note I extend my personal thanks to my deputy, Ms Susan Booth, who ensured that the Commission continued to operate smoothly during my absence.

There are many things to report over the last two months in particular.

On 7 June 2001 new laws to prohibit acts of racial and religious vilification were finally introduced by the Government. The laws do two things – first, they give a right of complaint for any public acts of racial or religious vilification, and second in cases that are very serious, the offender can be prosecuted through the criminal justice system. This is a welcome change. As many readers are aware it is something that I have been personally lobbying for throughout my time as Commissioner. More information about this can be

found in our main story on page 2.

The Commission continues to have a hefty caseload – in the last financial year staff dealt with a staggering 1777 matters. With the anticipated increased workload in administering the new laws, I cannot guarantee that the efficiency benchmarks will continue to be met. We will have to wait and see.

The Commission's Racism in Schools project reached its culmination. I was delighted to return from leave to a copy of the published book "Moving Forward – Students and Teachers Against Racism". The book is excellent and provides practical tools and strategies at a community school level to promote and embrace fundamental principles of diversity. The official launch by the Minister for Education, the Honourable Anna Bligh, was held on 19 July 2001.

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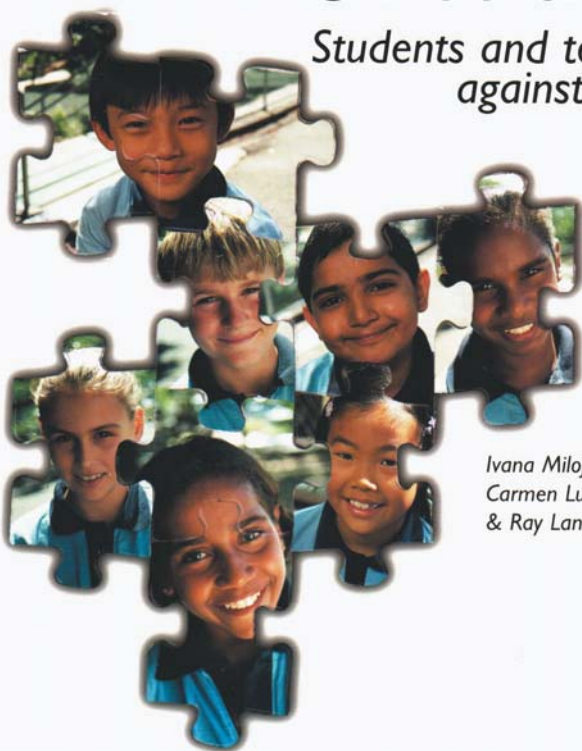
ISSN 1441-4872 (Print)  
ISSN 1441-4880 (On-line)

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## Moving Forward

Students and teachers  
against racism



Ivana Milojevic, Allan Luke,  
Carmen Luke, Martin Mills  
& Ray Land

There has been a lot of interest in the publication, both here and interstate. The book is unique, there is no other of its kind on the open market place. It not only documents actual incidents of racism but outlines practical strategies to deal with and eliminate such behaviour. It is my hope for the textbook to find its way into every primary and secondary school throughout the State.

The next thing to report is the extremely successful launch of the updated version of the *Tracking Your Rights* package to Torres Strait communities. I was fortunate enough to travel over the space of a week and a half with a senior spokesperson for the Torres Strait Islander community, Mr Bill Lowah. Bill has been a representative on the Federal Council for Reconciliation and has been a longstanding champion of the rights of Torres Strait Islander people. During a very rewarding trip the package was taken to Saibai, Badu, Kubin, St Pauls, Yorke, Horn, Thursday, Warraber and Murray Islands. We forged new partnerships and strengthened those already existing. It is my hope in the forthcoming year to do some follow

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# New racial and religious vilification laws for Queensland

By Susan Booth, Deputy Commissioner, Anti-Discrimination Commission Queensland.

After many years of lobbying by Indigenous, Ethnic and Religious groups and supported by the Anti-Discrimination Commission Queensland, the Queensland Government has passed new racial and religious vilification laws. The laws take effect from 7 June 2001.

The new laws amend the Queensland *Anti-Discrimination Act 1991* (the Act). Previously the Act did include a provision prohibiting racial and religious hatred, however the provision was technical and did not prohibit advocating racial and religious hatred.

The new Queensland laws clarify this. Now in Queensland a person who has been subjected to racial hatred can either bring a complaint under the Federal *Racial Discrimination Act 1975* as well as the Queensland *Anti-Discrimination Act 1991*. Further details about the Federal Act are available from the Human Rights and Equal Opportunity Commission ([www.hreoc.gov.au](http://www.hreoc.gov.au) or 1300 656 419 – Australia wide).

## The Queensland race hate laws – what you have to prove

During the debate about the legislation some concern was expressed that these new laws would stifle discussion and debate. It was also claimed that people in Queensland would no longer be able to tell any jokes. This is not the case.

The new racial and religious vilification law contains four elements. It is important to note that a person must be able to demonstrate that the alleged act of racial or religious vilification satisfies each one of these elements. In other words, if the statement or act only satisfies some of the elements it is not racial or religious vilification.

The four elements that must be proved are that the alleged incident was:

1. a public act
2. that incites
3. hatred towards, serious contempt for, or severe ridicule of a person or group of persons
4. on the ground of race or religion.

## A public act

This means exactly what it says – it must be an act done in public. The word is defined in the legislation, so it is clear what public means. It will include speaking, writing, printing, and displaying notices including websites. It will also include conduct that is *observable* by a member of the public.

Some likely examples that are included in this definition will be newspaper articles, commentary on radio and television and speeches. This means comments made by a person that can be overheard or seen by members of the public.

It will not include conversations that are private - for example, at a private party or on the telephone.

However, as outlined above, simply because a statement or gesture is public it will not itself be enough to satisfy the definition. This is because all three other elements listed must also be demonstrated.

## Incite

The second requirement is that the act must incite another person towards hatred, etc. It is not enough if the words merely insult or offend or humiliate. A good example of what will be incitement is when by way of commentary a radio announcer states “refugees from (a certain country) are mostly thieves and liars.” In contrast is the statement that “refugees from (a certain country) have had to rely on their wits to leave their country and come to Australia.”

The first statement potentially satisfies the definition of incitement; the second does not.

Some people *may* interpret the second statement that the refugees had to do certain illegal things by the comment “rely on their wits”. However hurt and humiliated persons may feel by the second statement, it does not objectively incite others to hatred, etc, and therefore will not satisfy the definition of incitement.

## Hatred towards, serious contempt for, or severe ridicule of a person or group of persons

The third element which must be satisfied is the hatred towards, serious contempt for, or severe ridicule of a person or group of persons. Like the definition of “incite” this third element requires some consideration of the exact meaning of the words used. It is clear that the act or statement must do more than simply offend personal feelings. It must in fact incite hatred, serious contempt or severe ridicule.

“Hatred” promotes extreme emotions. It refers to intense dislike or even detestation. Similarly, if the word or deed merely causes “contempt” or “ridicule” then it is not racial or religious vilification. The reason is it must be serious contempt or severe ridicule. These intensifying adjectives demonstrate that the legislation is not designed to catch ordinary discussion and speeches; only those that satisfy this high test.

Having satisfied those three matters – a public act; that incites; hatred towards, serious contempt of, or severe ridicule, of a person or group of persons, it must finally be about a race or religion of another person. It is only then that the matter can potentially become a racial or religious vilification complaint.

## Defences – not the end of the story

The Queensland Government has decided, that in the interests of free speech, even if something is said or done that satisfies the above requirements, it may not be unlawful because a person may argue a defence. These are similar to defences in defamation cases.

The first defence allows newspapers to report incidents of racial and religious vilification. The second is the usual defence of parliamentary privilege. The third defence allows for acts done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.



This defence allows a person to do or say something in good faith and in the public interest or alternatively, for academic, artistic, scientific or research purposes. If this defence is proven, a complaint of racial or religious vilification cannot be made out. The person defending a complaint must prove that it applies.

Complaints of racial and religious vilification will be handled by the Commission in the same way as other complaints. The allegations will be investigated and a conciliation conference will be held to resolve the matter. If it is unable to be resolved the matter will be referred to the Anti-Discrimination Tribunal for a hearing and final determination.

Finally, the laws also provide for serious racial and religious vilification. These require, as well as the vilifying statement or act, a threat of physical harm towards persons or property or inciting others to threaten physical harm towards others. Where this has been proved, criminal sanctions including significant fines and jail terms may apply.

Further information about racial and religious vilification may be obtained from the Commission.

## ***Is free speech under threat from the new race and religious hatred laws?***

The new legislation (see main story) strikes a fair balance between protecting free speech and ensuring every Queenslanders' human rights are protected. Since the new laws have been in place there have been some interesting comments made about how they will work. Outlined here are some of these comments and responses to them.

### ***"Education is always better than laws"***

Education is extremely important. However, education on its own has never been enough to stop extreme forms of vilification, therefore both are needed – laws and education. They go hand in hand and will combat racism and religious vilification and ensure harmony, which is essential to our multicultural society. The Commission has already begun to conduct education and provide further information on its website at [www.adcq.qld.gov.au](http://www.adcq.qld.gov.au).

### ***"Racial and Religious Vilification laws may stifle debate"***

This is not so. In fact, the new laws allow for exemptions that permit debate that is reasonable and done in good faith. For example a robust sermon that compares and prefers one religion over another, that is done reasonably and in good faith will never be covered under these laws.

### ***"Prosecuting under race hate legislation provides racists with a platform"***

Certainly, the prosecution of Frederick Toben (who produced a website that was found to vilify Jewish people) received considerable publicity. Some would argue that it would have been better to ignore the website. Another argument is that the prosecution is a powerful message that our community will not tolerate racial and religious vilification.

For many groups racial and religious vilification is not just a fact of life, it is frightening and offensive. The rise again of the Klu Klux Klan and other white supremacist groups on the Internet is frightening for all decent Queenslanders.

These laws will protect but will not stifle debate.

### ***Continued from Page 1***

up work in all of the communities that we have visited over the last six months and deliver the actual training package.

More recently, the Commission farewelled our second President of the Anti-Discrimination Tribunal, Ms Ruth Copelin. Ms Copelin has overseen the growth in matters received from 120 matters in her first year as President to 174 matters from 1 July 2000 to 31 May 2001. More importantly as a practitioner committed to human rights Ms Copelin has shown compassion and fairness to parties standing before the Tribunal. She has maintained the integrity, insight and independence of the Tribunal with a balanced approach attempting to reduce formalities but at the same time preserving the standing of the Tribunal as an independent judicial arbiter.

On behalf of all Commission staff I would like to extend my personal thanks for the excellent way in which Ms Copelin administered the Tribunal and the very sound and well reasoned judgements she gave. She has certainly left the Tribunal in an extremely strong position.

The Commission also welcomes the appointment of Mr Walter Sofronoff QC as the new President of the Tribunal. Mr Sofronoff is no stranger to human rights and he was in fact senior counsel on the

High Court Wik decision. We look forward to a person of obviously senior standing among the legal profession to take up the new post and carry forward the legacies that have already been set in place by former President Copelin.

Finally, turning to other matters of staff I am very pleased to pay tribute to Mr Cecil Fisher my Indigenous Liaison Officer. Cecil and I have developed a strong team and it was with great honour that I was informed of Cecil being awarded the Order of Australia Medal for his services to the Indigenous community. This was shortly followed by the announcement that Mr Fisher has also been awarded the Indigenous Elder of the Year at the NAIDOC Week celebrations. The Commission is very lucky indeed to have a person of such senior standing and respect working with our organisation. Congratulations Cecil!





## Rockhampton

The Rockhampton office continues to function without its Regional Director and is being supported by Ms Ruth Venables, Regional Director, Far North Region. The office has been steaming ahead with core business activities, conducting training sessions and holding conciliation conferences. Rockhampton staff have continued to promote and support South Sea Islander activities in the Central Queensland area, attending the Rockhampton City Council's formal recognition ceremony.

Ms Susan Booth, Acting Commissioner, visited the Rockhampton office in March. Whilst in Rockhampton, Susan conducted an interview with WIN Television concerning racist propaganda that was circulated in the Rockhampton district. Followers of a religious group called the World Church of the Creator targeted Aboriginal organisations and other local businesses. Shop windows were plastered with racist stickers and flyers. This is the second major race incident that has occurred in the Rockhampton area, the first being the reading of racial material over a local radio station. The battle of fairness for all continues to be fought by the Commission.

The office also continues to support community education in schools. Ms Alison Cox (Administration/Intake officer) received positive feedback from teachers and students from schools visited recently. Year 11 and 12 students were the main target audience. The students were given a general overview of Queensland anti-discrimination legislation with the focus being on work related issues. Topics covered included sexual harassment and requests for unlawful information at interviews. The aim of the presentations was to broaden the student's knowledge of their rights and responsibilities under the Queensland *Anti-Discrimination Act 1991*.

As well as conducting training, Rockhampton staff have also been broadening their knowledge base. Stuart Reid and Alison Cox attended a cross cultural awareness training conducted by Mr Jiri Martinek from Multicultural Affairs Queensland. The skills learnt will assist the staff in communication with clients from all cultural backgrounds.

## Townsville

Visits to Mt Isa, Cloncurry and Charters Towers featured with local launches of *Tracking Your Rights* earlier this year. Indigenous Liaison Officer Cec Fisher, Senior Conciliator Liz Bond and Regional Director Royalie Walters met with local Indigenous representatives to promote the package which is in hot demand. Extensive media coverage included the Gulf region.

Acting Commissioner Susan Booth opened the *Anti-Violence Forum* in April. The Forum included speakers and community consultation sessions. Townsville staff accepted a Safe Place Award and were commended for their ongoing support for the local gay, lesbian, bisexual and transgender community. As a follow-up the Queensland Aids Council (QUAC) presented training in relation to homophobia for our staff in May.

A media campaign and public meeting were conducted in Mackay during this period to promote Commission services. Mackay also appears to be in a discrimination education blitz with private sector



From left to right Liz Bond, Senior Conciliator, Royalie Walters, Regional Director, North Queensland and Cecil Fisher, Indigenous Liaison Officer at a launch of *Tracking Your Rights*.

and local authorities accessing our training. Training conducted for the Indigenous community was also well attended with great interest expressed in the Racial and Religious Vilification legislation. Liaison with our regional Aboriginal and Torres Strait Islander legal services continues with education sessions held for staff in Mackay and Townsville.

Northern Region has conducted record training this period. The new Recruitment and Selection course was well received. Already we have requests from several organisations to present this training in-house. We invite enquiries for all discrimination and sexual harassment training and will tailor programs to suit client needs.

## Cairns

It seems as if the flurry of activity surrounding the launch of the *Tracking Your Rights* package throughout Cape York Peninsula has only just subsided, and the next launch in the Torres Strait is just around the corner. Many thanks to Bill Lowah who has been working to organise the trip and to the Commissioner for her welcome participation in the launch so soon after returning from extended leave. There is no doubt that the Commissioner's show of support for the launch in the Torres Strait will have lasting effects for the Commission's profile there, and should increase the access to the Commission's services by the FNQ office.

Apart from planning the *Tracking Your Rights* launch, there have been a number of highlights during the quarter since the last edition. Our Regional Director, Ruth Venables met with the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination and Xenophobia, Professor Maurice Glèlè-Ahanhanzo. The meeting was fascinating to say the least. The discussion covered many issues of concern, especially those related to Indigenous Australians living in Far North Queensland. On a positive note, much of the meeting was spent discussing possible solutions to the main problems, including those the Commission is pursuing: *Tracking Your Rights*; the Racism in Schools Project; our education work and general complaint handling. The media coverage prior to the meeting was also very positive, which was particularly pleasing.



Other community liaison work has also been big on this quarter's agenda, with both Kevin Busch (Conciliator) and Ruth providing training to various agencies. There has been a lot of contact with James Cook University, in the form of both guest lectures, and less formal presentations to student groups, such as the Social Welfare Society. We've also continued our active involvement in the local area multicultural program ("LAMP"), with strong links being formed between all our staff and the LAMP reference group. The second annual Peace Week celebrations are also being planned with our support.

We have also been involved in a new committee, which has been established to address the issues affecting homeless people in the Cairns area. The committee has been formed to develop a collaborative approach to assist people access the services they need to either return to their homes outside Cairns if they wish to do so, or to be able to live safely and well if they choose to stay in Cairns. The committee has members from a variety of relevant service providers, both government and non-government. Our involvement has been welcomed by the other committee members to ensure that there is no risk of a repeat of the incident in the 1990's, when certain people were singled out and involuntarily removed from Cairns.

Last but certainly by no means least, sadly we report on the region's greatest loss this year, which has been in the form of staff turnover. Our administration and intake officer, Nicole Geake has taken extended leave, and Gill Townsend, our casual conciliator has finished her contract. Their joint departure both in the same quarter has been a bit of a "double whammy".

Nicole's happy presence around the office, not to mention her enthusiasm and efficiency, has been sorely missed. Nicole was a great asset to our office, Gill's experience and knowledge as a conciliator was a major bonus to the office. Kevin learnt much from her in the short time she was with us.

On a happier note, we welcome Meryl Slater, who comes to the Commission with a wealth of experience from her work at the Indigenous Land Corporation and the National Native Title Tribunal. She has demonstrated a remarkable aptitude for this field of work and quickly got up to speed on handling enquiries. For all the difficulties involved in running a regional office with a small staff team, at least we have been consistently lucky with the excellent staff we've been able to recruit. Thanks are due to all staff for their contributions.

## TRIBUNAL



## DECISIONS

### **Rutherford v Wilson and State of Queensland**

#### **President Copelin – HEA00/33**

##### *Background*

Ms Rutherford alleged that Mr Wilson had sexually harassed her. The alleged events occurred during 1998 when Ms Rutherford and Mr Wilson both worked in the office of Mr Robertson MLA. Details of the alleged sexual harassment included Mr Wilson saying to Ms Rutherford after she got her pay arrangements sorted out so quickly, "No, it's because you've got tits..." It was also alleged that after making him a cup of tea with milk in it he said to Ms Rutherford "I only like breast milk in my tea". Mr Wilson also said to Ms Rutherford on a number of occasions "you wear shiny shoes so people can see your knickers up your dress". There was a series of comments including "knocked up", "root", as well as comments about magazine pictures "she's got a bottom but she's got no pants on" and a further comment "you make 'em, we scrape 'em, no foetus will defeat us" after she had told Mr Wilson about her miscarriage.

##### *Outcome*

The President found that Ms Rutherford had been sexually harassed and awarded her \$10,000 in general damages. The President assessed her damages in the light of the fact that the conduct continued over a considerable period of time and having due regard to the impact of the harassment on Ms Rutherford.

### **Morgan v. GK**

#### **Member Pagani – H338/96**

##### *Background*

This matter involved the question of access to fertility services by same-sex couples. The complainant was living in a stable lesbian relationship and sought access to fertility treatment with Dr GK. It was alleged being refused treatment because she was in a lesbian

relationship discriminated against Ms Morgan. The Tribunal first heard this matter in 1996 and it found that Ms Morgan was discriminated against. The Tribunal decision was then appealed. The Court of Appeal overturned the original decision in 1998. Ms Morgan sought special leave from the High Court to appeal this decision, however this was refused. A component of the Court of Appeal's decision was to remit the matter back to the Tribunal on the issue of indirect discrimination. (*Editor's note: Indirect discrimination occurs when a rule or requirement is imposed with which a particular group of people cannot comply and which is not reasonable*).

In relation to indirect discrimination it was argued that Dr GK imposed a term on Ms Morgan that she obtain the written consent to the treatment by her male partner. Ms Morgan was unable to comply with this requirement because she is exclusively lesbian. It was further argued that a higher proportion of non-lesbians are able to comply with the term. The question which Member Pagani had to decide was whether the term was reasonable.

In deciding whether the term was reasonable, Member Pagani had to consider whether it was reasonable for Dr GK to follow the policy guidelines set by the Health Department and various Ethic Committees. These guidelines confined access to fertility treatment to heterosexual married or defacto couples where the male partner had given written consent to the treatment. Dr GK received his licence to conduct and provide fertility services from Queensland Health on the express condition that he follow and comply with these guidelines.

##### *Outcome*

Member Pagani found that Dr GK's conduct was reasonable as he was required to follow the policy guidelines set down by Queensland Health. The Member therefore found that he had not indirectly discriminated against Ms Morgan. It was noted that he had made no conscious determination to discriminate against

lesbians, had applied his policies to all prospective patients and that he did not act out of malice, or exclude lesbians from treatment because of any philosophical or religious grounds or because of any prejudices he held.

Member Pagani left open the possibility for future challenges to the guidelines themselves. She said "It was (and still is) open to lesbian women to challenge the various bodies who define and implement policies and guidelines restricting these types of services".

### ***I v. O'Rourke and Corinda State High School and Minister for Education of Queensland***

**President Copelin - HEA99/66**

#### *Background*

The complaint was brought by the parents of a student at Corinda State High School who alleged that their daughter had been discriminated against on the basis of her impairment in relation to her attendance at three school events. These were the year 12 school formal, the year 12 graduation dinner and a school excursion. "I" has been diagnosed with spastic quadriplegia and intellectual disability. She uses a motorised wheelchair and requires assistance for personal care and daily tasks.

**School formal:** "I" had to access the venue for the school formal by means of a stair climber and she was also provided with assistance when using the toilets as they were not wheelchair accessible. The respondents argued that it had considered a number of venues but they were rejected by the school on the basis of security and supervision concerns, costs, inadequate dance floor size and that alcohol was available nearby.

**Tourism studies excursion:** "I" was not allowed to participate in an excursion to Tangalooma Resort which was part of the Tourism

Studies Course. The school considered that it was unsafe for people using wheelchairs. "I" participated in an alternative excursion to Indooroopilly Shopping Centre to examine different aspects of travel agencies.

**Year 12 graduation dinner:** The venue for the dinner was a boat called the "Island". The boat was accessed via ramps and gangplanks. The school's manual arts department constructed a portable toilet for the use of students with disabilities including "I" which conformed to current standards for persons with disabilities. "I's" parents were concerned with emergency evacuation procedures. An extra crewmember was assigned to take personal responsibility for "I's" safety. "I's" parents believed that the school should have selected a more accessible venue. The respondents argued that the discrimination was not unlawful because of the exemptions provided for "Special services or facilities" and "Workplace health and safety" of the Queensland *Anti-Discrimination Act 1991*.

#### *Outcome*

President Copelin found that the respondents had discriminated against "I".

However, in relation to the school formal and year 12 graduation dinner, the Tribunal found that special services or facilities would have been required and the provision of those special services and facilities would impose unjustifiable hardship on the respondents.

In relation to the school excursion the President found that "the respondents had not proved on the balance of probabilities that special services were required". She awarded "I" the sum of \$3,000 in general damages "to reflect the loss of enjoyment of the normal school environment sustained by "I", being the excursion to Tangalooma which was an event which cannot be recaptured".



## CASE STUDIES

### **Sexual Harassment**

A mature aged woman complained of sexual harassment by an employer. The complainant alleged that the respondent hugged her after informing her she won the job. The complainant alleged the behaviour worsened when the respondent tried to hold her hand while she drove him to an appointment and that he questioned her in detail about her personal life and her living arrangements.

The complainant said that on the third day of employment the respondent placed his hands on the side of her face and forcibly kissed her. The complainant, who had been in the workforce for many years said that she did not expect to be sexually harassed at her age. The complainant stated that she had previously worked for a large construction company with 95% male staff and had not experienced any sexual harassment then. After leaving the company the complainant received a written apology from the respondent asking her to forgive him.

At a conciliation conference, the complaint was settled on a financial basis for the sum of \$10,000.

### **Race Discrimination in providing goods and services**

An Aboriginal woman who went to a large store alleged she had her bag searched because of her race. She said that she was at the

shop assistant asked to search her belongings.

The complainant alleged that she queried why only she was being searched when the other customers were not, however the shop assistant had ignored her concerns. She complained to the manager and said she felt no satisfaction with the reply provided.

During a conciliation conference, the matter was settled by the respondent providing an apology to the complainant and an undertaking that staff at the store would apply random bag searches in a non-discriminatory manner. The woman also received a financial settlement of \$1,500 for the humiliation she felt.

### **Age Discrimination in pre-work**

A woman contacted an employment agency regarding positions available at a fast food outlet. The complainant alleged that she was interviewed by the manager of the outlet and given a verbal offer of employment. She produced documents which she said were given only to successful applicants, and asked to fill them out, and was assured by the manager he would then ring her with her roster and shift times.

She alleged she was then contacted by the manager the next day who advised her that the owner of the franchise had said she was too old for the position and they only wanted someone younger so that they could pay them less.

A conciliation conference was convened at which the company's representative produced independent evidence to indicate that the positions were for a youth wage (the advertising of which is



permitted under legislation). These documents were not produced until the day of the conference. As a result, a decision to lapse the complaint on the grounds of it being misconceived was then made by the Commission.

The conference itself however was a valuable process in that the company relayed the information directly to the complainant along with their belief that she would be a valuable employee given her skill and experience. The complainant was able to convey how the process had affected her and her reasons for lodging the complaint.

The company acknowledged that the process undertaken by the manager at the time was not the most effective and that the information provided by the employment agency could have been clearer. The company made an offer to settle the complaint by way of \$2,000 compensation. The complainant accepted this offer and a conciliation agreement was signed.

### Sexual Harassment

A woman had complained to her employer that a colleague had sexually harassed her. She alleged that he had made inappropriate comments to her of a sexual nature and had physically placed his hands on her shoulders.

She alleged that the company dealt with her complaint by transferring her to another section whilst leaving the alleged harasser in his position. The company stated that this was an appropriate way to have dealt with the complaint. The transfer had in fact been to the complainant's detriment in that she was no longer able to access overtime in the new position.

The complainant also alleged that when she had approached the company to request a transfer back to her original position, she was told that they could not do this until she had withdrawn her complaint against them. The Commission advised both the complainant and the company of the victimisation provisions under the legislation. The company's legal representative made an offer to transfer the complainant back to her original position within the company. The complainant was satisfied with this and withdrew her complaint. This complaint was dealt with by way of an early intervention.

### Age Discrimination in the area of insurance

During the course of applying for a loan, a man was refused motor vehicle insurance by the credit provider's preferred insurer because the insurance company did not offer motor vehicle insurance to new clients over the age of 70 years. The man lodged a complaint of age discrimination against the insurer.

The insurer agreed that it did not offer motor vehicle insurance to new customers over the age of 70 years. The insurer referred to the high number of claims of first year customers combined with the insurer's own practice of charging increased premiums for persons aged over 70 years, but did not provide any statistical or actuarial data on which their policy was based. (It should be noted that insurers are permitted to refuse insurance if they have sufficient statistical data to support their actions).

The company had been reviewing its policies prior to the complaint being made to the Commission. Whilst the complaint was still being considered, the insurer advised that it had changed its policy and it now offers insurance to new customers over the age of 70 years. The company also expressed regret at any inconvenience caused to the complainant. On this basis the complainant discontinued the complaint.

### Sexual harassment

A man alleged that he was sexually harassed in the workplace. He claimed that a male work colleague approached him while he was standing on a ladder and ran his hand up the inside of his leg to his groin area. The man complained to management about the behaviour, and management spoke to the individual involved, but the complainant said that he did not feel that the matter was adequately dealt with or that he was supported by his employer in making the complaint. The matter resolved at a conciliation conference convened by the Commission, with the individual respondent providing the complainant with a personal apology, and the complainant's employer agreeing to train all staff in sexual harassment and discrimination issues and paying the man \$1000 in compensation.



*Commission staff were pleased to join in this year's annual Pride March and Fair Day (a celebration of the Gay, Lesbian, Bisexual and Transgender communities) held on June 30 in Brisbane.*



# Questions Answers

The Commission investigates allegations of discrimination, sexual harassment and racial and religious vilification under the *Queensland Anti-Discrimination Act 1991 (the Act)*. Here are some frequently asked questions about how complaints are dealt with at the Commission.

## *What happens when someone makes a complaint?*

The Commission has 28 days in which to decide whether the complaint comes under the *Queensland Anti-Discrimination Act 1991 (the Act)*. A complainant has to provide sufficient information to indicate that they have been treated less favourably in an area of public life, on the basis of an attribute, as set out in the Act.

Once a complaint is accepted it is allocated to a complaint handler (a Conciliator) who begins the investigation process by notifying the respondents and providing them with a copy of the complaint. The Commission is aware that the initial complaint may only be one side of the total picture. Once a response is received it is sent to the complainant for their comment. The complaint handler will then decide if further investigation is required.

## *Can someone accuse me of discrimination without hard evidence?*

The Commission must accept complaints that provide sufficient information that discrimination, racial or religious vilification or sexual harassment may have occurred. This can include alleged comments, descriptions of behaviour, documentation or other information. In accepting a complaint the Commission is not assuming that discrimination, racial or religious vilification or sexual harassment has occurred. Once a response is received and any further investigation carried out, the Commission will again assess the complaint to determine if it should continue or be declined.

## *Do I need a solicitor?*

Neither party needs a solicitor at this stage of the process. Many matters are successfully conciliated at the Commission without solicitors being involved. However it is up to the parties to decide if they wish to seek legal advice or engage a solicitor to assist them. Apart from solicitors there are also organisations that may provide assistance through advocacy such as unions, employer groups and other government funded organisations.

## *I have witnesses and documents to prove my case. Will the Commission investigate?*

The Commission will investigate matters where it is appropriate and relevant. In the first instance it is preferable to discuss the relevance of any documents you have in your possession with the complaint handler and then provide them to the Commission for detailed assessment. The Commission does have powers to request certain documents as long as they are sufficiently identified and are relevant to the complaint.

In relation to witnesses it is preferable if you arrange for them to make a statement to the Commission. If this is not possible then the complaint handler will consider interviewing the witness and taking a statement. The witness needs to understand that their statement will be shown to the other side. Again you should be able to identify what it is the witness will be able to tell us and the relevance to the complaint. In general, character witnesses are not useful or relevant in this complaint process.

## *What happens after the investigation?*

The Commission will assess the complaint again. If there is documentary evidence that discrimination, racial or religious vilification or sexual harassment did not occur the Commission will take steps to decline the complaint. In the majority of cases the Commission will call a conciliation conference and endeavour to assist the parties to reach a mutually satisfactory resolution to the matter. If an agreement is reached the matter is then finalised. If no agreement is reached and the Commission believes the complaint is not able to be resolved it may be referred to the Anti-Discrimination Tribunal for a determination to be made.

