



# Talking Point

**16 November 2020**

## **A law misunderstood**

If we lived in a world that celebrated difference, in a world where the practice of kindness outshone cruelty and a world where empathy prevailed over disinterest, the world would be unrecognisable to what it is today.

In Tasmania, if we lived in a society free of discrimination, incitement to hatred and harassment, the need for anti-discrimination laws would be eliminated.

Sadly, discrimination and harassment continues to have negative impacts upon the lives of many Tasmanians. Some Tasmanians endure ridicule, bigotry and exclusion every day. People have the legal right to live their daily lives without being subjected to antisocial, divisive and often callous behaviours. People have some of these rights protected under the *Anti-Discrimination Act 1998* (Tas).

The Act has attracted a lot of media attention lately. Unfortunately there appears to be a general misunderstanding of the Act and the legislative functions of the Anti-Discrimination Commissioner.

The role of the Anti-Discrimination Commissioner is an impartial one. The Commissioner administers the provisions of the Act, as decided and passed by the Tasmanian Parliament.

The Act provides a means to remedy acts of discrimination, prohibited conduct, incitement to hatred and sexual harassment.

Every person in Tasmania, resident or visitor, has the right to lodge a complaint.

Each complaint that is lodged is assessed in accordance with the provisions of the Act. In the event that certain legislative elements are satisfied, the complaint must be accepted for investigation. If the legislative elements are not met, the complaint is rejected.

If a complaint is accepted for investigation, the Act mandates that steps be taken to facilitate resolution between the parties, and so a conciliation conference is scheduled. The complaint process encourages confidentiality.

A point of confusion often arises around when allegations are legally proven to be true, or otherwise. The Anti-Discrimination Commissioner has no power to determine disputed facts or questions of law; that is the role of the Anti-Discrimination Tribunal.

We are privileged to live in a country that has anti-discrimination legislation. Without it, life could take a very backward turn. Gender equality could slide back decades, children with disabilities may be ostracised and institutionalised. Mandatory retirement may be reintroduced, same sex relationships could be criminalised. An increasingly Orwellian society devoid of rights protection could quickly see segregation on the basis of colour, religion and gender identity become mainstream.

Tasmanians should be proud to know they enjoy rights which mean they are able to live freely from prejudice, assumptions and poor treatment because of who they are or how they choose to live, and that if someone breaches these rights, they have the ability to use the process set out under the Act to try and resolve the issue.

Everybody has the right to criticise and question the law. However, before critiquing the Act, I encourage critics to take the time to understand its intention, provisions and processes while keeping in mind that one day you, a friend, family member or colleague may need its protection.

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