

DISCRIMINATION TOOLKIT LAUNCHED YOUR GUIDE TO MAKING A DISCRIMINATION COMPLAINT



Attending the Discrimination Toolkit launch (left to right) Teena Balgi, Elizabeth Evatt AC, Meredith Osborne, Justice Margaret Beazley AO, Fiona Pace and Bill Grant OAM.

In a partnership of Community Legal Centres, Legal Aid NSW and AIAL, the Discrimination Toolkit was officially launched on 28 March 2007 by keynote speaker, the Honourable Elizabeth Evatt AC.

The authors of the 150 page booklet are Meredith Osborne (Elizabeth Evatt Community Legal Centre), Teena Balgi (Kingsford Legal Centre) and Fiona Pace (Lismore Legal Aid) who identified the difficulty of finding resources to assist complainants who believed they had been discriminated against.

Describing this book as 'brave', Justice Evatt said it had taken on the difficult issue of assisting complainants who were representing themselves, in determining whether they should begin in the State or Federal jurisdiction. Often complainants were not eligible for legal assistance and therefore the booklet would be able to assist them in deciding whether they had been discriminated against, what legal or non-legal options were available to them and how their matter might progress if it went to court.

Community workers, advocates and legal practitioners will also find the book useful as it comprehensively outlines areas of discrimination, options for making complaints and procedures before the various tribunals and courts. Procedures relating to case conferences, mediations and conciliations are also outlined. In addition, useful resources such as contacts for tribunals and legal assistance are included.

Also speaking at the evening's proceedings were her Honour Justice Margaret Beazley AO and Chief Executive Officer of Legal Aid NSW, Bill Grant OAM.

Justice Evatt's opening remarks -

This week we remember the bicentenary of the abolition of the slave trade by the British in 1807. It was another 25 years before British slaves were actually freed and slavery persisted in the United States until 1865. Freedom, even when attained, did not bring equality. Former slaves and their descendants suffered gross racial discrimination in their struggle for equality in the US, and it was a further 90 years before the Supreme Court ruled that segregation was discriminatory.

The prejudiced attitudes of racial superiority, ethnic and religious hatred, which arise from an inability to accept people as they are and to tolerate the diversity of our world can, when unchecked, lead to violence and genocide.

Freedom and equality: first principles of human rights

Bearing in mind the evil effects of racial and religious prejudice, the history of slavery and segregation, the racism involved in colonialism, the holocaust and other genocides, it is no surprise that in 1948 the Universal Declaration of Human Rights took as its starting point the principle of the dignity, freedom and equality of all human beings (UDHR art 1).

Nor is it surprising that the first major UN human rights instrument to come into force was the Convention on the Elimination of All Forms of Racial Discrimination (1965, in force in 1969). Australia's ratification of that Convention opened the way for the enactment of the *Racial Discrimination Act 1975*, the first Commonwealth anti-discrimination law. It covers discrimination on grounds of race, colour, national or ethnic origin, etc. It was later extended to racial hatred.

This legislation was sorely needed in view of the malevolent effects of racial prejudice and discrimination on the indigenous people of this country. After enduring violent oppression, denial of equality in the law, they have still to win their long struggle against discrimination and prejudice, against the neglect that diminishes their life expectancies and opportunities. The Racial Discrimination Act played a part in turning the tide for indigenous people. It paved the way for the *Mabo* decisions of the High Court, which struck down discriminatory Queensland legislation, which would have appropriated indigenous land and extinguished all rights of the traditional owners. This led to the later decision recognising native title and overruling the doctrine of *terra nullius*.

That is a good news story. But the overall picture in regard to the universal principle of equality is less satisfactory. Discrimination of all kinds adversely affects many in our community. The right to equality and non-discrimination applies regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. But it is not fully realised.

There are laws against discrimination. At federal level, we have, in addition to the Racial Discrimination Act, the Commonwealth *Sex Discrimination Act 1984* (which applies discrimination in certain fields on the ground of sex, marital status, pregnancy or potential pregnancy. It also covers dismissal on the ground of family responsibilities, and sexual harassment). Other legislation proscribes discrimination on the ground of disability, the *Disability Discrimination Act 1992* or age, the *Age Discrimination Act 2004*. All these Acts have their origins in international conventions, declarations and resolutions. There is extensive State anti-discrimination and vilification legislation, covering similar ground to the Commonwealth laws and adding (in NSW) discrimination on such further grounds as homosexuality, transgender and infectious disease.

All forms of discrimination violate the right to equality and diminish the enjoyment of rights by the targets of such discrimination. There should be recourse and remedies for all kinds of unfair discrimination.

Gaps in the protection against discrimination

But despite the extent and complexity of the laws, there are gaps in our legal protection against discrimination. Anti-discrimination laws apply to specific fields and specific grounds. They are subject to exemptions and exclusions, which limit their application.

Australians have no general legal protection of the right to equality without any discrimination, such as can be found in the Constitutions of Canada and South Africa.

The Constitution of the Republic of South Africa, 1996 provides that everyone is equal before the law and has the right to equal protection and benefit of the law. It also provides that neither the State nor any person may unfairly discriminate, directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (Article 9)

International equality standards not met

The absence of any such provision in Australian law is regrettable, particularly as we are a party to the International Covenant on Civil and Political Rights which is built on the principle of equal enjoyment of rights. It calls for equality before the law, the equal protection of the law, the prohibition of discrimination and equal protection against discrimination on any ground (Article 26).

These principles are part of the Constitutions of Canada and South Africa. They are incorporated in the ACT *Human Rights Act 2004*, s 8, and the Victorian *Charter of Human Rights and Responsibilities Act 2006*, s 8, but they are lacking in Commonwealth law.

Australians do not have the general protection against discrimination of any kind that is called for by international standards. This is not an academic issue. People who experience certain kinds of discrimination fall through the cracks in the system of legal protection.

Some people may be able to take their case to an international body. But even if the case is won, this will not necessarily result in a good outcome here in Australia.

Sexual orientation

A few years ago, an issue relating to the discriminatory treatment by the Commonwealth of parties to a same sex relationship was taken to the Human Rights Committee in Geneva. Though most States provide some degree of protection from discrimination in regard to sexual orientation, there is no enforceable legal protection in this regard under Commonwealth law.

The Committee found that the Commonwealth *had* discriminated by denying a dependant pension to the surviving partner of a war veteran, on the basis that the Act does not recognise same sex relationships. The Committee concluded that this was an unjustified distinction, violating Article 26 of International Covenant on Civil and Political Rights. Australia has since informed the Committee that it does not accept the finding of violation and does not consider that the author is entitled to a remedy.

The Human Rights and Equal Opportunity Commission is now conducting an Inquiry into discrimination against same-sex couples under Commonwealth and State law regarding access to financial and work-related entitlements and social security benefits. One can only

hope that the outcome of this inquiry will lead to new efforts to apply the equality and non-discrimination principle to same sex couples.

Equality before the law, knowledge and resources

Although there is the possibility of taking some discrimination cases to international bodies, the vast majority have to depend on Commonwealth or State legislation to counter the discrimination which has such an insidious effect on their lives. These laws operate concurrently, providing a complex package of overlapping anti-discrimination laws, administered by two different sets of institutions, courts and tribunals. So complex are they, that, even in cases where people have protection under anti-discrimination laws, that protection will be of little value if it is not known and understood by those entitled, or if those people lack the knowledge and resources to ensure that their rights are respected. The right to equality before the law and before courts and tribunals cannot be effective without the knowledge and means to proceed.

The Discrimination Toolkit launched

Enter the ***Discrimination Toolkit*** which will prove to be a valuable resource to everyone affected by discrimination and to those who are asked for advice and assistance.

It is a brave book, tackling those tricky areas of overlap between federal and state jurisdictions and those fine distinctions, which leave some protected and others outside the system. It steers a course through all this complexity to help people decide how to proceed in individual cases. It will help those who work directly in the anti-discrimination field, community services which may be asked about the issues and those who have the courage to take action on their own behalf.

It is the product of co-operation between several groups, all committed to improving community access to law. I would like to second the remarks of Bill Grant about the excellent work done by Community Legal Centres in providing legal information, advice and representation for so many people who otherwise would be left unable to insist that their rights be respected.

The ready accessibility of the Centres to people and their willingness to assist in a wide range of issues means that they are well placed to identify the legal needs of the community and to advocate for law reform and extension of legal services. Long may they continue to give a voice to those whose rights need to be represented.

I am especially proud that the Centre which bears my name has had a major role in the creation of this publication.

I congratulate that Centre, the Kingsford Legal Centre, the Legal Aid Commission of NSW and the Australian Institute of Administrative Law for their contributions to this project. I thank the funding bodies for their contributions to the project.

I congratulate especially the three authors:

Meredith Osborne, the Education and Promotion Co-ordinator, Elizabeth Evatt Community Legal Centre

Fiona Pace, Solicitor with the Legal Aid Commission of NSW, based in Lismore.

Teena Balgi, Solicitor and Clinical Supervisor at Kingsford Legal Centre, based at the University of New South Wales.

The Toolkit is highly practical, it is free, and I believe that it will be available in electronic form. I have pleasure in launching the

Discrimination Toolkit: Your Guide to Making a Discrimination Complaint

A free copy of the ***Toolkit*** can be downloaded from the Legal Aid website www.legalaid.nsw.gov.au-publications or order a hard copy version directly from Legal Aid.