



Equal Opportunity



Tasmania

Protecting and Strengthening Australia's Multiculturalism and Social Inclusion

Submission by the Anti-Discrimination Commissioner (Tas)

May 2017

Equal Opportunity Tasmania
(the office of the Anti-Discrimination Commissioner)

Phone: 1300 305 062 (in Tasmania) or (03) 6165 7515

E-mail: office@equalopportunity.tas.gov.au

Web SMS: 0409 401 083

Translating and Interpreting Service: 131 450

National Relay Service

TTY Users: Phone 133 677 then ask for 1300 305 062

Speak and Listen: 1300 555 727 then ask for 1300 305 062

Office: Level 1, 54 Victoria St, Hobart TAS 7000

Post: GPO Box 197, Hobart TAS 7001

www.equalopportunity.tas.gov.au

Celebrating Difference
Embracing Equality

Contents

INTRODUCTION	1
DIVERSITY AND SOCIAL INCLUSION	2
Tasmania	2
Acceptance of Diversity	4
Improved data collection	9
Leadership	9
Report It!	11
Promoting multiculturalism in schools	13
Diversity in Sport	13
Community Outreach	14
ADDRESSING SYSTEMIC DISADVANTAGE	15
Language Services	16
Advocacy Services	17
PROTECTION UNDER DISCRIMINATION LAW	18
Human Rights Framework	18
Discrimination Law	18
Prohibited Conduct	19
Anti-vilification offences	20
Exceptions	21
Importance of Discrimination Law as a foundation for multiculturalism	21

Introduction

Thank you for the opportunity to make a submission to the Senate Select Committee on Strengthening Multiculturalism Inquiry into ways of protecting and strengthening Australia's multiculturalism and social inclusion.

The increased movement of people at the global level and the consequent increase in cultural, ethnic and religious diversity within contemporary societies requires an ongoing commitment to diversity and social inclusion.

Multiculturalism is not just about individual empowerment and equality of opportunity. It is must also be about recognising the legitimacy of diverse cultural origins and acceptance that as a community we are all required to adapt and change as the cultural mix of our society changes.

Flowing from a broad acceptance of diversity are significant gains for the broader community, both economically and socially.

A diverse community brings unique skills and characteristics that have the capacity to provide a competitive edge within an increasingly global economy. Language skills and a first-hand understanding of new markets, for example, have a strong role to play in improving international trade and broadening our business horizons.

Adherence to principles that recognise the value of diversity and promote access and equity across all public domains provide a strong basis on which to promote inclusion and enhanced feelings of belonging. They must be supplemented, however, by action to counteract intolerant and negative views where they exist.

The following provides information on the role of Equal Opportunity Tasmania in protecting the rights of people in Tasmania to be treated fairly on the basis of their race. I would be happy to provide further information on these matters should you wish me to do so.

Sarah Bolt
ANTI-DISCRIMINATION COMMISSIONER (TAS)

Diversity and Social Inclusion

Australia is and remains a country of rich cultural diversity.

At the time of the 2011 census, over a quarter of Australia's population was born overseas and around 20% of our citizens has a least one overseas born parent. As well as being home to one of the world's oldest continuous cultures, we are home to over 270 different ancestries.¹

Our multicultural heritage shapes who we are and informs the basis on which our community has developed since colonial times.

Multiculturalism is a hallmark of our national identity. This is reflected in the strong sentiment among Australians that multiculturalism has been good for Australia. The Scanlon Foundation Mapping Social Cohesion research found that 86% of Australian either agree or strongly agreed that multiculturalism has had a positive impact on our community.²

Support for the principle of multiculturalism masks complexities, however, which it is important to understand: complexities which exhibit a more uneven view about diversity and show a degree of ambivalence about multiculturalism in some sectors of our community.³

The Scanlon Foundation, for example, has reported significant increase in experiences of discrimination, which rose from 15% in 2015 to 20% in 2016, the highest level recorded since the Scanlon surveys begun.⁴

The following examines these issues in Tasmania and reflects on the sorts of approaches which may be adopted to protect and strengthen Australia's multicultural foundations.

Tasmania

Whilst Tasmania is a culturally diverse State, a combination of low arrival numbers, highly concentrated settlement patterns and our relatively dispersed population brings particular challenges for multicultural policy.

Tasmania has the lowest proportion of overseas-born residents of all States and Territories (12.6 % or 64,200 people), well below the Australian level of 26.9% (6.0 million people) recorded at the 2011 census.⁵

¹ Australian Bureau of Statistics, *Reflecting a Nation: Stories from the 2011 Census, 2012-2013* (Cat No. 2071.0 released 21 June 2012)

² Scanlon Foundation, *Multiculturalism: Discussion Paper* (February 2016) p 5

³ Scanlon Foundation, *Multiculturalism: Discussion Paper* (February 2016) p 7

⁴ Scanlon Foundation, *Multiculturalism: Discussion Paper* (February 2016) p 25

Equal Opportunity Tasmania

Whereas over one-third of Australians have parents that were both born overseas, the figure is much smaller in Tasmania with only 14.9% of Tasmanians having both parents born overseas⁶, the majority of which were born in the United Kingdom.⁷ In excess of 75% of Tasmanians have parents who were both born in Australia⁸ and 91.7% of Tasmanians only speak English at home, compared with 76.8% nationally.⁹ Only 5.7% of Tasmanians live in households where two or more languages are spoken, compared with 20.4% at a national level.¹⁰

We also have very low population growth rates, a situation which has led the Tasmanian Government to develop a Population Growth Strategy aimed at increasing the State's population to 650 000 people by 2050, including through increased overseas migration.¹¹

Net migration in 2015-16 reflected an annual gain of 1,185 people, 42 due to net interstate migration (NIM) and 1,143 due to net overseas migration (NOM). Tasmania's NOM, however, represented less than 1% of national NOM.¹²

Of those granted visas in 2014-15, 679 arrived under the skilled stream and 406 under the family stream. In addition, 425 temporary work (skilled) subclass 457 visas were granted and 2818 student visas were granted.¹³

At the same time Tasmania has been host to a small but significant proportion of humanitarian entrants.¹⁴

⁵ Australian Bureau of Statistics, *Migration Australia 2015-16* (Cat No. 3412.0 released 30 March 2017)

⁶ Australian Bureau of Statistics, 2011 *Census QuickStats: Tasmania*

⁷ Of Tasmania's overseas born population, over 38 per cent were born in the United Kingdom (around 25,000 people) at the time of the 2011 census. For further details see Australian Bureau of Statistics, *Migration Australia 2015-16* (Cat No. 3412.0 released 30 March 2017)

⁸ Australian Bureau of Statistics, 2011 *Census QuickStats: Tasmania*

⁹ Australian Bureau of Statistics, 2011 *Census QuickStats: Tasmania*

¹⁰ Australian Bureau of Statistics, 2011 *Census QuickStats: Tasmania*

¹¹ State of Tasmania, *Population Growth Strategy: Growing Tasmania's Population to 650,000 by 2050* (Department of State Growth, September 2015)

¹² Australian Bureau of Statistics, *Migration Australia 2015-16* (Cat No. 3412.0 released 30 March 2017)

¹³ Department of Immigration and Border Protection, State and Territory, *Migration Summary* (30 June 2016) p120

¹⁴ Between 2001-01 and 2010-11, 2,496 humanitarian entrants arrived in Tasmania.

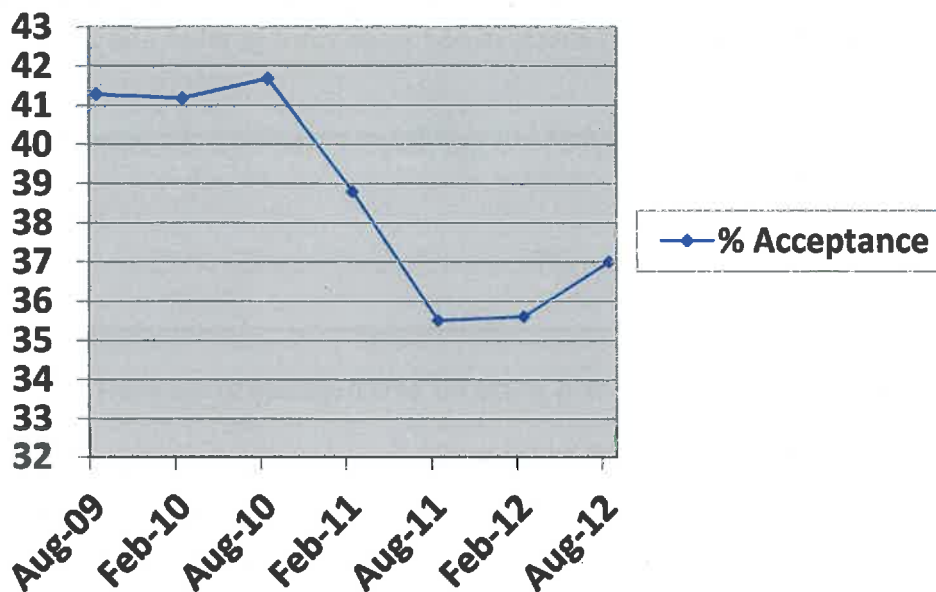
Of the humanitarian entrants who arrived during between 2001-02 and 2010-11, 60.5% or 1512 persons settled in Greater Hobart, 39.6% settled in the North and only 2.7% or 68 people settled in the Mersey-Lyell area.

Acceptance of Diversity

Whilst most Tasmanians are supportive of diversity within the Tasmanian community, some remain intolerant of people from different groups, including those from diverse ethnic groups and religions.¹⁵

Surveys conducted as part of the Tasmania *Together* project between 2009-2012 exhibited a decline in levels of acceptance of diversity within the Tasmanian community from around 41 per cent to 37 per cent at the time of the last survey in August 2012.

Figure 1: Levels of acceptance of diversity in Tasmania



A similar trend is also evident nationally.¹⁶

¹⁵ Enterprise Marketing and Research Services, *Tasmania Together Community Survey Research Report February 2012*, summary table 2. See also previous survey results at <http://benchmarks.dpac.tas.gov.au/report/detailedmop/ID/1082#>

¹⁶ Andrew Markus, *Mapping Social Cohesion*, (Scanlon Foundation 2011) 17.

Equal Opportunity Tasmania

Extensive regional surveys undertaken as part of the *Challenging Racism: the Anti-Racism Research Project* undertaken by the Scanlon Foundation between 2001 and 2008¹⁷ found that whilst there is substantial support for multiculturalism within the Australian community, significant levels of intolerance continue to exist: ¹⁸

- 41 per cent of survey respondents believed there are cultural groups that do not belong in our society.
- Approximately 10 per cent of survey respondents believed that some races were naturally inferior or superior and that groups should remain separated.
- Around 20 per cent of survey respondents had experienced some form of race-hate talk (verbal abuse, name calling, racial slurs, offensive gestures etc).
- Six per cent had experienced physical violence.

Survey results for Tasmania exhibit a similar pattern. Whilst a significant number of Tasmanians were supportive of cultural diversity: ¹⁹

- 89.5 per cent of respondents believe that racial prejudice exists in Tasmania;
- 40.3 per cent of Tasmanians believe that there are cultural groups that do not fit into Australian society;
- Almost 9 per cent of survey respondents self-identified as racist; and
- Over 7 per cent of respondents were against inter-racial marriage.

Importantly, however, regional variations demonstrate and unevenness in the distribution of these sentiments across the State.²⁰

¹⁷ see *Challenging Racism: The Anti-Racism Research Project* (2011) at http://www.uws.edu.au/ssap/school_of_social_sciences_and_psychology/research/challenging_racism.

¹⁸ *Challenging Racism: The Anti-Racism Research Project*, National Level Finding, Table 1.

¹⁹ *Challenging Racism: The Anti-Racism Research Project*, State level comparisons, Table 1.

²⁰ A higher percentage of Tasmanians surveyed as part of the Challenging Racism: Racism Research Project (2001-2008) believed that it was a good thing for society to be made up of different cultures (91.5%) than at the national level (86.8%). Only the ACT (94.3%) and the Northern Territory (93.7%) rated higher than Tasmania in this regard. However the Northern Tasmania region had a lower percentage of people who believed it was a good thing for society to be made up of different cultures (89.1%). The figure in the north more closely reflects national sentiment.

Equal Opportunity Tasmania

- A larger number of Tasmanians self-identify as racist in northern Tasmania (10.3%) compared with the rest of the State (8.9%).
- The number of Tasmanians who believe that Australia is weakened by people of different origins sticking to their old ways (36.3%) is significantly higher in northern Tasmania (42.8%) and somewhat lower in Hobart (31.3%).
- The proportion of Tasmanian who do-not consider that Australians from a British background are privileged is stronger in the North West/West (44.6%) than the rest of the State (38.3%).
- The number of Tasmanians who are against inter-racial marriage is somewhat stronger in northern Tasmania (9.5%) than the rest of the State (7.3%).
- Separatist sentiments were particularly strong in Tasmania in regard to Muslims (41.1% against inter-racial marriage with a person of the Muslim faith), but significant numbers of Tasmania also expressed concern about inter-marriage with Aborigines (particularly in northern Tasmania (22.6%) and Hobart (20.9%)), Asians (19.0%), those of Jewish faith (17.8%) and Black Africans (18.4%).
- The number of Tasmanians who believe that certain cultural groups don't fit into Australian society is somewhat lower in the North West/West (37.1%) and Hobart (39.1%), but higher in the North (44.8%). Over 40 per cent of those interviewed during the survey in Tasmania expressed anti-Muslim sentiment, 19 per cent expressed anti-Asian sentiment, 18.4 per cent expressed anti-black African sentiment, 17.8 per cent expressed anti-Semitic sentiment, and 17.5 per cent anti-Aboriginal sentiment.²¹

Patterns of tolerance and intolerance are often linked to variations in socio-economic background and age.²² Over 60% of Tasmania's population live in socially disadvantaged regional areas and approximately one third of Tasmania's population is reliant on government pensions and allowances.²³ At the same time, Tasmania had the oldest population of all the states and territories with a median age of 41.9 years.²⁴ However this alone is insufficient to explain regional variation in views.

²¹ Challenging Racism: The Anti-Racism Research Project, *National level findings, Regional response profile (Tasmania)* at http://www.uws.edu.au/ssap/school_of_social_sciences_and_psychology/research/challenging_racism.

²² For a discussion on these issues see James Forrest and Kevin Dunn, 'Attitudes to Diversity: new perspectives on the ethnic geography of Brisbane, Australia' (2001) 42.4 *Australian Geographer* 440-441.

²³ Australian Bureau of Statistics, *Government Benefits, Taxes and Household Incomes* (Cat No. 6537.0)

²⁴ Australian Bureau of Statistics *Population by Age and Sex, Regions of Australia 2015* (Cat No. 3235.0) released 18 August 2016.

**Equal Opportunity
Tasmania**

Forrest and Dunn explore the issue of particular ethnic mix (or lack of it) as an added factor in explaining attitudes toward race.²⁵

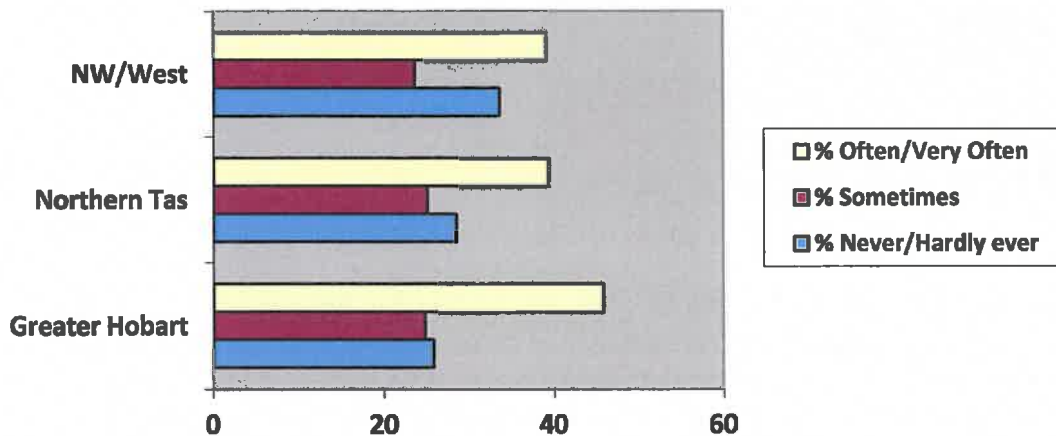
Areas of high cross-cultural interaction, where significant mixing occurred between the established local population and new immigrant groups, had an impact on perceptions about particular group and led to much higher level of acceptance of ethnic diversity and cultural difference.

These findings are largely consistent with patterns discernible in Tasmania, where anti-diversity attitudes toward particular groups appear to be highest in areas where opportunity for cross-cultural contact is minimal.

Tasmania has a highly regionalised and dispersed population, with around 57 per cent of our population living outside the capital city.²⁶ However distribution patterns of migrants coming to the State remain overwhelmingly concentrated in urban centres.

This is also demonstrated in regional variations in reported levels of cultural mixing.²⁷ Across all circumstances (in the workforce, in social circles and in sport) it is possible to detect regional variation in the levels to which Tasmanians interact with members of other cultural groups.

Figure 1: Cultural Mixing in the Workforce: Tasmanian regions



²⁵ James Forrest and Kevin Dunn, 'Attitudes to Diversity: new perspectives on the ethnic geography of Brisbane, Australia' (2001) 42.4 *Australian Geographer* 441 ff.

²⁶ Australian Bureau of Statistics, *Regional Population Growth, Australia, 2015-16* (Cat No. 3218.0) released 30 March 2017.

²⁷ Challenging Racism: The Anti-Racism Research Project, *National level findings, Regional response profile (Tasmania)* at www.uws.edu.au/ssap/school_of_social_sciences_and_psychology/research/challenging_racism.

Figure 2: Cultural Mixing in social life: Tasmanian regions

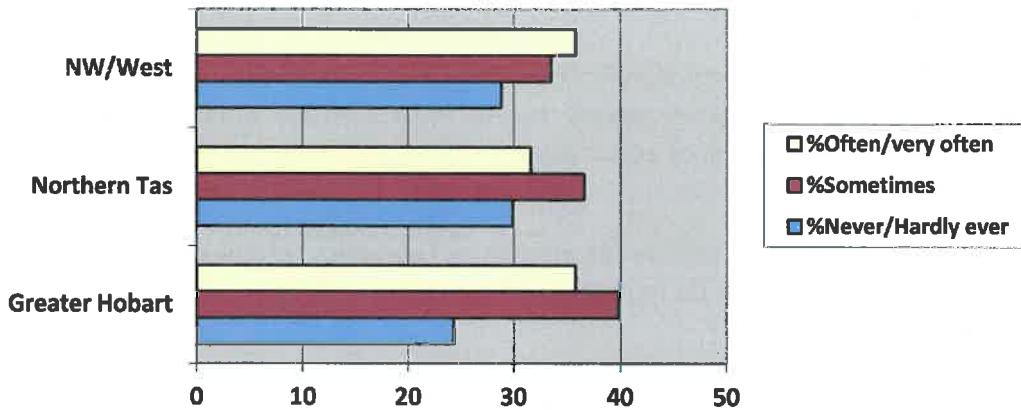
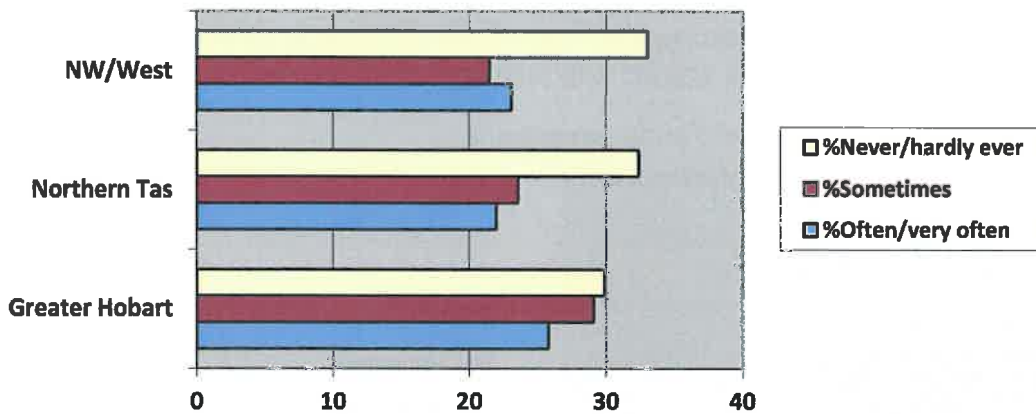


Figure 3: Cultural mixing in sport: Tasmanian regions



These figures provide valuable insight into patterns of racism and related behaviours in Tasmania and elsewhere, and point to the types of strategies that may be useful in promoting pro-diversity attitudes. They provide a basis on which to develop ongoing programs across employment, education and sport, for example, to promote increased interaction between long term residents and those who are newly arrived. Importantly they indicate that ongoing vigilance and proactive action is required to ensure that the advantages of diversity are promoted and celebrated.

Initiatives such as Welcoming Cities project aimed at encouraging intercultural interaction and the development of strong and positive relationships between Australians of different ethnic and cultural backgrounds are suggested,²⁸ as are actions promoting cultural awareness and challenging stereotypes and misrepresentation that divides communities.

²⁸ www.welcomingcities.org.au

Improved data collection

The information collected on patterns of anti-diversity sentiment provides a valuable basis on which to plan strategies to promote increased tolerance across all areas of Australia.

Undertaking ongoing surveys as a means of providing the evidence base required to develop effective strategies to promote multiculturalism is critical to informing public policy, including in regional areas. This should also include strategic research and disaggregated data collection by ethnicity in relation to access to health, housing, education, legal and employment services by culturally and linguistically diverse communities, including experiences of racial discrimination.

Efforts to understand patterns of intolerance toward those of diverse cultural backgrounds may also be enhanced by the introduction of improved reporting on the nationality and ethnicity of victims of crime and the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators. This has been recommended by the Committee on the Elimination of Racial Discrimination as a means of developing a greater understanding of crime motivated or based on race and should be reflected as a commitment in the Australian multicultural policy.²⁹

Leadership

The persistence of discriminatory attitudes within the Australian community requires a comprehensive response at all levels within the community, including among political and media elites.

Migration policy has been the subject of significant debate within Australia for more than a decade, particularly in relation to asylum seeker arrivals.

High profile media discussion around issues such as asylum seekers arriving by boat, for example, has the capacity to heighten division within the population and impacts negatively on social cohesion.³⁰

Further, heightened sentiment against particular ethnic minorities (in particular those of the Muslim faith) fuels anti-diversity sentiment and increases levels of intolerance within the broader community.³¹

While at the same time recently announced changes to the citizenship test which increase the level of English proficiency before citizenship will be granted, risks sending a negative message to

²⁹ Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by State parties under article 9 of the convention*, 77th sess, UN Doc CERD/AUS/Co/15-17/CRP.1 (2-27 August 2010) Recommendation 23 p 6

³⁰ Andrew Markus, *Mapping Social Cohesion*, (Scanlon Foundation 2011) 17.

³¹ Andrew Markus, *Mapping Social Cohesion*, (Scanlon Foundation 2011) 17.

Equal Opportunity Tasmania

migrants of non-English speaking background and fails to take into account the generational nature of integration into Australian society.

Leadership at all levels within our community is essential to promoting the benefits and advantages of Australia as a successful multicultural nation. How our leaders shape public debate is critical to how we conduct ourselves as a nation and how inclusive and tolerant we continue to be as a people.

One of the primary concerns regarding recently proposed changes to 18C of the Racial Discrimination Act was the extent to which it risks sending messages that it is acceptable to racially offend, insult, humiliate or ridicule others.

Action to protect and strengthen multiculturalism must be multi-faceted and deal with racism at all levels (individual and systemic). It is the responsibility of all levels of society to work cooperatively to address intolerance wherever it exists.

Fortunately there are many examples where action is being taken to strengthen social cohesion and tackle racial and religious intolerance.

An example of this type of measure is the *Racism. It Stops with Me* Campaign developed by the Australian Human Rights Commission in conjunction with the Department of Immigration and Citizenship, the Department of Families, Housing, Community Services and Indigenous Affairs and the Australian Multicultural Council.³²



³² See <http://itstopswithme.humanrights.gov.au/>

Equal Opportunity Tasmania

The commitment to undertake the campaign was contained in the 2011 national multicultural policy, *The People of Australia*, and has attracted strong support across the community.

Equal Opportunity Tasmania has worked with a number of State Government Agencies and other bodies to promote the campaign.

In an Australian first, we worked with all four Tasmanian emergency service agencies (Tasmania Police, Ambulance Tasmania, State Emergency Service, Tasmanian Fire Service) to facilitate a joint pledge to the campaign. We have also been involved in signing up organisations and businesses within the city of Clarence as supporters (Eastlands Shopping Centre, Rose Bay High School, Cambridge Primary School, Colony 47, Migrant Resource Centre, Soroptimist International Hobart, Clarendon Vale Primary School and the Passion for a Purpose group). This followed endorsement and signing of the pledge in 2014 by organisations in Hobart which included Metro Tasmania, Glenorchy and Hobart City Councils, Yellow Cabs Tasmania, Taxis 131008 Hobart and Taxis Combined.

Highly visible campaigns of this nature, including through social media, encourage individuals to take action to counter racism provide the basis for shifting social norms and lead to behavioural change.

Disappointingly, however, the *Racism. It stops with Me* campaign was not officially recognised by the current federal Government in its March 2017 multicultural statement despite receiving high profile endorsement and support for organisations such as Twitter Australia, the AFL, the National Rugby League, Telstra and Universities Australia. It is recommended that resources be provided to the Australian Human Rights Commission to enhance the profile of the *Racism. It Stops with Me* campaign. This could include, for example, prominent distribution of the messages associated with the campaign at public venues, on public transport and throughout schools.

Report It!

Modelling pro-social behaviour will also assist in encouraging action by individuals to intervene where discrimination on the basis of race or ethnic background is present. Emerging research into the benefits of encouraging bystander action provides a basis on which it is possible to develop a more proactive campaign against manifestations of discrimination in everyday situations.³³

Nelson and Dunn suggest a five step process to enhance the capacity of individuals to intervene in situations where racism is expressed.³⁴

³³ Jacqueline Nelson and Kevin Dunn 'Bystander Anti-Racism: A review of the literature' *Analyses of Social Issues and Public Policy* (2011) 11(1), 263-284.

³⁴ *ibid* 279.

1. Raising awareness about racism as well as what constitutes inclusive behaviour, particularly in social settings;
2. Increased understanding of the negative social and economic effects of racism and a stronger appreciation of its unacceptability;
3. Encouraging everyone to accept responsibility for creating a non-discriminatory culture and promoting the need to 'speak out' where racism is encountered;
4. Local leadership and role-modelling of bystander action in a way which normalises and promotes action; and
5. Increased understanding of appropriate ways to intervene and the means by which to do so in a non-confrontational way.

In addition to provisions under Tasmanian discrimination legislation enabling protection against such discriminatory conduct on the basis of race, EoT has also instituted a program allowing individuals to report incidents where they have been abused or harassed or have witnessed this occurring to another person.

Report it! was established in 2009 to increase the awareness of international students and people from culturally and linguistically diverse (CALD) backgrounds about actions they can take to report incidents of racially-motivated discrimination and harassment, particularly in public places. The catalyst for establishing the program was an escalation of incidents of violence and aggressive or abusive behaviour toward international students and other recent arrivals in Hobart.

Report It! has enabled EoT to get a better picture of patterns of racial abuse and the profile of both victims and perpetrators and led to more informed and targeted preventative interventions. It also represents an important mechanism for more increasing awareness of rights, enables safe bystander action and action particularly by those who may be afraid to make a formal complaint.



A report can be made by anyone: those who are the subject of harassment or abuse and those who witness it. Those making the report can remain anonymous if they wish.

Through the Report it! project in 2015–16 I received reports of 13 incidents that were race or nationality based, many involving young people or international students.

Equal Opportunity Tasmania

Many of the situations reported to me involve insults or other offensive conduct in public places. In some cases this was a precursor to physical violence. In others, no physical violence was involved. In all cases, however, the victims felt sufficiently concerned about the incident to report it to my office. Where it was possible to identify respondents (using CCTV or other footage) the report proceeded to a formal complaint.

The following are typical elements of the reports received by EoT:

- Newly arrived migrants or humanitarian entrants being abused or physically threatened on public streets, bus malls or from passing cars by unknown people. The abuse has commonly involved racist name calling and/or being told to 'go back to where you come from'. In one case, the people reporting had been in Australia for only two days.
- Abuse of those who have come here on work visas.
- Racial taunting of long-term Australian residents. For example I have received a number of reports from an Australian of Indian background who had been subjected to months of racially motivated threats and abuse by his neighbour.

In some cases those who have been the subject of racist abuse are referred to my office by other State authorities, including Tasmania Police, on the basis that a complaint or under the Tasmanian Act is the only effective avenue of redress or resolution.

Highly visible programs of this nature encourage individuals to take action to counter racism and help to change unacceptable behaviour.

Promoting multiculturalism in schools

Educational settings also provide critical settings to promote diversity and inclusion.

Equal Opportunity Tasmania has developed training modules on discrimination, harassment and bullying that have a specific focus on racial diversity. This work focuses on raising awareness of the benefits of a diverse society and work environments and promotes inclusive practices. It seeks to challenge racist attitudes through promoting an understanding of the benefits of diversity and the prohibitions against discrimination on the basis of race in Tasmanian law.

A particular emphasis is placed on delivering training and education sessions in Tasmanian schools. This work provides a strong foundation for the development of increased awareness of diversity among young Tasmanians.

Diversity in Sport

We have also engaged in a number of initiatives aimed promoting diversity in sport.

This has included developing networks with sport and recreational organisations and taking an active role in implementing initiatives such as the *Play By the Rules* program within the Tasmanian community.

Equal Opportunity Tasmania

Sport – ‘play, engage, inspire’ was the theme of the 2012 Harmony Day celebrations in Tasmania in recognition of the important role sport can play in fostering connections across the community and uniting people of all cultures.

The importance of this approach, and one that could be replicated in a myriad of ways, is the conscious effort to engage areas of the community that may not normally be associated with actions to address discrimination. Developing, promoting and supporting non-racist behaviours and modelling these in mainstream settings can itself lead to a reduction in racist attitudes and/or beliefs in the broader community.

Community Outreach

Community-wide education campaigns have the capacity to reduce the incidence of discrimination, racism and prejudice within the community.

In March 2012, EoT launched a series of posters and postcards promoting awareness of rights and responsibilities under the *Anti-Discrimination Act 1998*. Two posters aimed at increasing the understanding of rights and responsibilities in relation to race discrimination were released to coincide with Harmony Day 2012.



These and related materials are used by EoT trainers and community outreach workers to promote understanding of rights and responsibilities under discrimination law.

Addressing Systemic Disadvantage

Action to promote multiculturalism must also tackle the impact that systemic disadvantage has on those from culturally and linguistically diverse communities.

People from different race and ethnic backgrounds face barriers to health care, education and employment often as a result of deeply embedded sentiments (however subtle) within institutions and systemic barriers to the services they provide. Disadvantage of this nature requires systematic action to address.

In Tasmania, we know that on a wide range of measure people of CALD background do less well than the community as a whole.³⁵ For example:

- Tasmanian children from a non-English speaking background aged 0-12 participated at a much lower rate in child care (4.7 per cent) than in the community (7.3 per cent).³⁶
- People from CALD backgrounds are under-represented in access to residential aged care services in Tasmania.³⁷
- The proportion of people of CALD backgrounds accessing specialist disability services (including accommodation support; community support; community access; and respite) in Tasmania is lower than the proportion of non-CALD users.³⁸

The administration of services and programs can often be based on subtle forms of discrimination, whether intended or not. Bias in the way in which programs and services are delivered can have cumulative effects and deepen intergenerational disadvantage experienced by some of the most vulnerable groups in our community.

Migrants often face unique barriers to participation and access to services that facilitate settlement. In order for information and services to be fully accessible they must cater for the diversity that exists within the Australian community. This means that services should allow for

³⁵ See for example a range of measures in the Steering Committee for the Review of Government Service Provision: *Report on Government Services* (2017)

³⁶ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2017* Volume B Chapter 3.3, Table 3.5, Proportion of children aged 0-12 years from special needs groups attending Australian Government approved child care services, 3.10

³⁷ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2017* Volume F Chapter 14, Table 14.1, Representation of special needs groups in the aged care target population, compared with their representation in older clients of aged care services, 14.12

³⁸ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2017* Volume F Chapter 15, Users of State and Territory administered NDA specialist disability services, by country of birth 2014-15, 15.14.

language and cultural diversity through the provision of translated materials, interpreters, bilingual services workers as well as innovative and culturally appropriate service delivery arrangements.

Traditionally, programs have focussed on raising awareness of systems and services within migrant communities, particularly those groups who are newly arrived. However facilitating a greater understanding and respect for cultural difference across key service providers and in the broader Australian community is also crucial.

Strategies to address structural discrimination include increased understanding of the diversity (or lack thereof) of targeted populations, the development of culturally appropriate practice guidelines, cultural competence training, increasing the diversity of workforce across all service sectors, and moving away from a 'one size fits all' approach to service delivery toward models that are culturally responsive and engaging.

Action undertaken as part of the Tasmanian Government's *Tasmanian Multicultural Policy 2014* is helping to assist in this area.³⁹ Key strategies include an ongoing commitment to a program aimed at Better Access to Government Services for former Humanitarian Entrants; the development of an online Multicultural Access Point; and the implementation of Multicultural Language Service Guidelines for Tasmanian Government Agencies.⁴⁰

Addressing structural discrimination in ways that increases social capital will have important social, cultural and economic spin-offs. Greater integration into mainstream services and social structures provides opportunities for cross-cultural interaction and helps to promote social inclusion.

To be successful, however, it is critical to involve people with lived experience of migration, their advocates and other representative organisations to ensure that services meet the needs of consumers from CALD backgrounds.

Language Services

Access to quality language services is also central to facilitating access to services. Whether it is assistance with helping elderly migrants navigate aged care services or ensuring that persons of non-English background are able to participate on equal terms in the justice system the provision of interpreting and translating services is critical to accessing services for many migrants with limited English proficiency.

As part of the *Tasmanian Multicultural Policy*, the Tasmanian Government has developed whole-of-government *Multicultural Language Services Guidelines for Tasmanian Government*

³⁹ Tasmanian Government, *Tasmanian Multicultural Policy 2014* (Department of Premier and Cabinet)

⁴⁰ Tasmanian Government, *Tasmanian Multicultural Policy 201: Action Plan* (Department of Premier and Cabinet)

Equal Opportunity Tasmania

*Agencies.*⁴¹ The Guidelines aim to enhance access to interpreter services and the provision of multilingual information.

Success of the Guidelines depends in large part, however, on the supply of interpreters in new and emerging community languages. Action to assist in developing a strategic approach to the provision of language services is therefore encouraged.

The provision of English language training is also critical to enabling migrants to fully participate in the Australian community and to improve service access.

Not only must migrant English programs be readily available, the way in which they are delivered should recognise and adjust for differences in levels of literacy and proficiency in the language of particular migrant's country of origin. Strict limits on the availability of hours available to migrants may in itself discriminatory to the extent that the individual needs and circumstances of migrants are not taken into account.

Advocacy Services

The provision of advocacy services is often a necessary adjunct to the ability to access services and enable people from diverse communities to assert and enforce their rights.

Whether it is assistance at a local level to assist individuals navigate mainstream services or advocacy at a systemic level to represent the views and requirements of migrant communities in national debates, the provision of advocacy and representation is critical to enabling people from CALD backgrounds to have their views represented and their needs addressed.

In Tasmania, our Migrant Resource Centres in both southern and northern Tasmania have been providing help and support for new migrants settling in Tasmania over many decades. The Centres also play a critical role in providing ongoing support and advice as people progress through settlement periods and are strong advocates to Government about the needs and issues facing migrants in Tasmania.

Equal Opportunity is strongly supportive of the continued availability of resources to support relevant peak bodies and organisations as well as support for those organisations at local levels that often struggle financially to provide services that facilitate improved outcomes for their clients.

⁴¹ Tasmanian Government, *Multicultural Language Services Guidelines for Tasmanian Government Agencies* (Department of Premier and Cabinet, July 2016)

Protection under discrimination law

Human Rights Framework

Agreements and treaties to which Australia is a signatory provide a strong foundation for recognition of a contemporary approach to multiculturalism.

Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR) provides that members of ethnic, religious or linguistic minorities 'shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'.⁴²

Other relevant articles in the ICCPR include Articles 2 and 26 which provide a right to equality on the basis of, among other things, race, ethnicity and religion or belief; Article 18 which provides a right to freedom of religion or belief; Article 19 which provides a right to freedom of opinion and expression; and Article 20 which provides a right to freedom from religious hatred.

At the same time the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) provides protection from discrimination on the basis of race or ethnic origin.⁴³

ICERD also places a positive duty on signatories to develop measures that seek to address disadvantage because of race or ethnicity and promote understanding between those of diverse racial or ethnic backgrounds.

Discrimination Law

Discrimination law provides for a civil process for complaining of and addressing discrimination and offensive conduct that is within jurisdiction. Tasmania's *Anti-Discrimination Act 1998* (Tas) operates concurrently with federal discrimination law, including the *Racial Discrimination Act 1975* (RDA).

Under the *Anti-Discrimination Act 1998* (Tas) discrimination on the basis of race is unlawful in many areas of public life including employment, education and training, provision of facilities, goods and services, accommodation, and membership and activities of clubs.⁴⁴

⁴² *International Covenant on Civil and Political Rights* (entry into force (except Art 41) 23 March 1976)(entry into force for Australia (except Art 41) 13 November 1980) (entry into force for Australia Art 41 28 January 1993) ATS 1980 No. 23

⁴³ *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966 (entered into force 4 January 1969)(entry into force for Australia 30 October 1975 except Art 14) ATS 1975 No. 40

⁴⁴ *Anti-Discrimination Act 1998* (Tas), Part 4.

Equal Opportunity Tasmania

In 2015-16 race was identified in 19 discrimination complaints (12.7% of total complaints) received by the Equal Opportunity Tasmania.⁴⁵ Discrimination on the basis of religious belief or affiliation was also identified in 12.0% of complaints and discrimination on the basis of religious activity in 8.7% of complaints.⁴⁶

Exceptions are permitted in certain circumstances, including in relation to employment if the discrimination is based on a genuine occupational qualification or requirement;⁴⁷ or in relation to places of cultural and religious significance if the discrimination is in accordance with the customs of the culture or the doctrines of the religion and it is necessary to avoid offending the cultural or religious sensitivities of any person of the culture or religion.⁴⁸

Prohibited Conduct

Section 17(1) of the *Anti-Discrimination Act 1998 (Tas)* prohibits a person (or organisation) from engaging in conduct that that offends, humiliates, intimidates, insults or ridicules another person on the basis of the following attributes:

- race;
- age;
- disability;
- sexual orientation;
- lawful sexual activity;
- gender;
- gender identity;
- intersex;
- marital status;
- relationship status;
- pregnancy;
- breastfeeding;
- parental status; and/or
- family responsibilities.

Complaints made under section 17(1) of the Tasmanian Act are subject to the requirements of section 22. Section 22 requires that certain prohibited conduct under the Tasmanian Act must be conduct 'by or against a person engaged in, or undertaking any, activity in connection with' specified areas of activity. These areas include employment; education and training; the provision of facilities, goods and services; accommodation; membership and activities of clubs;

⁴⁵ Anti-Discrimination Commissioner, Tasmania, *Annual Report 2015-16* (Equal Opportunity Tasmania, 2016) p47

⁴⁶ *ibid*

⁴⁷ *Anti-Discrimination Act 1998 (Tas)* s 41.

⁴⁸ *Anti-Discrimination Act 1998 (Tas)*, Part 5

administration of any law of the State or State program; awards, and/or enterprise agreements or industrial agreements.

There are two requirements to prove conduct in breach of section 17(1):

- There must be conduct that offended, humiliated, intimidated, insulted or ridiculed a person on the basis of one or more of the attributes listed; and
- The conduct must be such that a reasonable person would have anticipated that the other person would feel offended, humiliated, intimidated, insulted or ridiculed in all the circumstances.

Section 17(1) does not simply provide for an individual to complain because they were offended. It is a prohibition on conduct that offends, humiliates, intimidates, insults or ridicules another person in circumstances that 'a reasonable person, having regard to all the circumstances, would anticipate that the other person would be offended, humiliated, intimidated, insulted or ridiculed'. This test creates a significant threshold to the application of the section and provides an objective test of the impact of the action.

In 2015-16, 12.0% of complaints received by Equal Opportunity Tasmania alleged offensive, insulting, intimidating, humiliating or ridiculing conduct on the basis of race.⁴⁹

Anti-vilification offences

Civil anti-vilification provisions are available under section 19(a) of Tasmania's Anti-Discrimination Act:

A person must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the grounds of –

- (a) The race of the person or any member of the group;
- (b) ...

Section 19 is not subject to the requirement that the conduct occur in an area of activity listed in section 22.

In 2015-16, 7.3% of complaints received by Equal Opportunity Tasmania alleged incitement to hatred, serious contempt or severe ridicule on the basis of race.⁵⁰

⁴⁹ Anti-Discrimination Commissioner, Tasmania, *Annual Report 2015-16* (Equal Opportunity Tasmania, 2016) p71

⁵⁰ Anti-Discrimination Commissioner, Tasmania, *Annual Report 2015-16* (Equal Opportunity Tasmania, 2016) p71

Exceptions

By virtue of section 55, the provisions of both section 17(1) and section 19 of the *Anti-Discrimination Act 1998* (Tas) do not apply if the conduct is:

- (a) a fair report of a public act; or
- (b) a communication or dissemination of a matter that is subject to a defence of absolute privilege in proceedings for defamation; or
- (c) a public act done in good faith for –
 - (i) academic, artistic, scientific or research purposes; or
 - (ii) any purpose in the public interest.

The effect of section 55 is to provide a defence against conduct within the scope of sections 17(1) or 19 when reporting public acts or if an act is undertaken in good faith for professional reasons or for public purposes. It is important, however, to recognise that section 55 can only be enlivened in respect of sub-section (a) if the report is 'fair' and, in relation to sub-section (c) if the act is done in 'good faith'. In all circumstances it is up to the respondent to make the case for the exception.

This provision provides the appropriate balance of the right to freedom from discrimination and the right to freedom of expression.

Importance of Discrimination Law as a foundation for multiculturalism

The procedures available to complainants under Tasmanian discrimination law provide a cost-effective and efficient means of resolving complaints of discrimination and prohibited conduct. The emphasis in the approaches adopted is one of education and the promotion of fair treatment of both complainants and respondents. This is also the approach adopted in relation to complaints made under the RDA and I believe is the most effective way of addressing the harm caused by prejudice and discrimination.

It is my experience that complaints made under the Tasmanian Act—or discrimination law more generally—are not made lightly or about insignificant matters. To the contrary, in many cases the complainant alleges abusive and threatening behaviour for some time prior to taking the step of lodging a complaint and it is not uncommon for allegations to involve descriptions of repeat or ongoing offending by the same person.

P and his family are newly arrived migrants from Bhutan. After moving into rental accommodation, P and his family have been subjected to verbal abuse; they have had a bag of rotten meat left on their doorstep; water balloons have been thrown at the house including through an open window; ice cream, beer bottles, whole fish, fish heads and soiled nappies have also been thrown at the house. Most recently four of the alleged respondents entered P's yard. They banged on his door and windows and yelled at his daughter in the bathroom, asking her for sexual favours including saying 'come and suck my dick you bitch'. P's request to his real estate agent to move out of the property

Equal Opportunity Tasmania

has been denied. P and his family endured this behaviour for over three months prior to making a complaint under the Tasmanian Act.

L, who is of East Asian background, was subject to racially insulting behaviour and abuse at a bus mall by two young women and a man. One girl bowed to him with her hand clasped together and then pulled her skin outwards from her eyes in a manner L took to be ridiculing his racial background. When L reacted, he was screamed and sworn at by the man in a severe, aggressive manner including racist comments and abuse.

T was verbally abused on the basis of race whilst getting petrol from a petrol station. The respondent allegedly yelled 'hurry up you fucking whore' and 'go back to where you came from you big fat fucking whore'. T was very shaken by the abuse and has suffered ongoing distress. She would like to feel safe in public and for people to live free of racial and sexual abuse.

In some circumstances, making a complaint under the Tasmanian Act is viewed as an avenue of last resort after attempts have been made to follow up matters through internal complaints mechanisms or finding that the behaviour has continued after doing so. In the case of P cited above, four reports were made to Police prior to them providing advice on ways in which P could act to stop what were clearly distressing actions by his neighbours.

In other cases I have received complaints from individuals who were simply going about their daily business and were abused or harassed in a way that was unacceptable by today's standards. L, for example, was walking through a bus mall. T was simply filling her car at the petrol station. It is often the random and unprovoked actions of this kind which leave a lasting legacy with individuals and which can impact on their confidence and feeling part of a shared community.

It is the strong view of Equal Opportunity Tasmania that any attempt to diminish the protections available under discrimination law at either a State or Federal level to reduce protections against offensive conduct would leave Australians who experience serious acts of racially offensive, insulting, humiliating or ridiculing acts without a legal basis on which to have those behaviours addressed.