

Human Rights Cases

that made a difference



Human Rights
Commission

Te Kāhui Tika Tangata



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10

Human Rights Cases that made a difference



New Zealand Aotearoa

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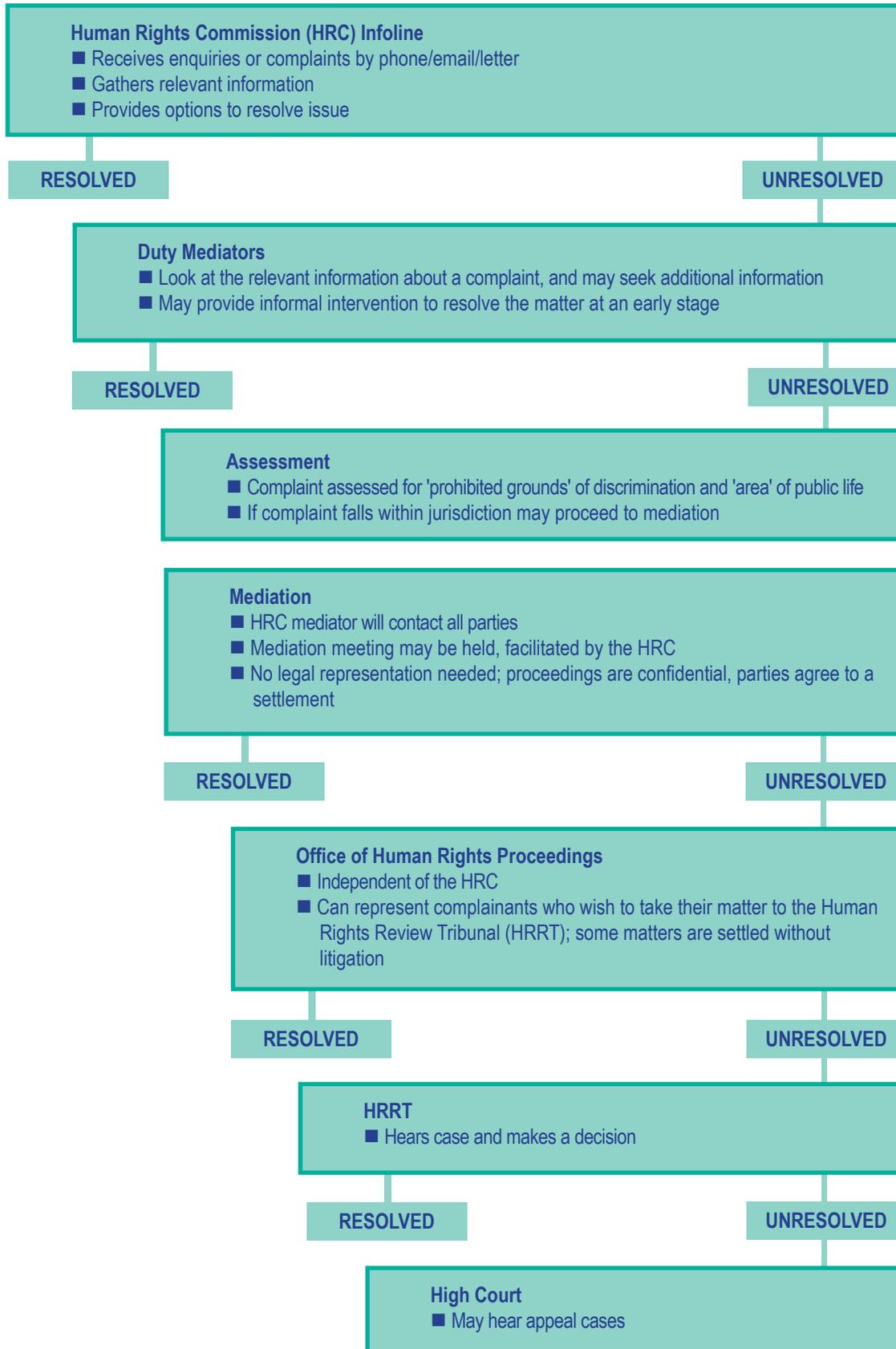
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Resolving Disputes Under the Human Rights Act 1993



What discrimination complaints say about New Zealand today

He kōrero mo te āhua o Aotearoa inaianei mai i nga tono tukino whakahāwea, takahi i te Mana, me te Tapu o te tangata

The discrimination complaints that come to the Human Rights Commission are a weather map charting the peaks and troughs of the social tensions and human rights issues that affect everyday New Zealanders.

This report selects ten cases that illustrate the range and impact of discrimination complaints mediated by the Commission's Disputes Resolution Service or dealt with through the Commission's broader mandate.

Since the mediation service was introduced in 2002 the discrimination issues most complained about have been 'race' and disability, far outstripping the next two contenders, sex (and sexual harassment), and age. Disability complaints have increased steadily, and age discrimination is also a growing area. The levels of sexual harassment and racial harassment complaints have remained steady.

Many complaints – particularly on the grounds of disability, age, marital and family status – arise in response to the design of state social provisions.

Discrimination against people due to their sex or ethnicity is often subtle and indirect. Discrimination on other grounds tends to be voiced more openly. Disability discrimination is usually 'out in the open' because an inability to accommodate a disabled customer or job applicant can be seen as not being anybody's responsibility. It appears more common to openly discriminate against older people in the job market, and against gay, lesbian, bisexual and transgender people in provision of rights and services relating to health, marriage, adoption and data collection. Harassment of people due to their sexual orientation or transgender status remains a problem.

The more obvious the unlawful discrimination, the easier it can be to openly address, although not necessarily to overcome. The Director of the Office of Human Rights Proceedings has noted that disability and age cases are more likely to be accepted for representation than racism or sex discrimination cases, as respondents are more likely to have a clear case to answer.

Ko nga tono tūkinu whakahāwea, o nga mahi takahi i te mana me te tapu o te tangata e tae mai nei ki te Kāhui Tika Tangata, he tohu e rite ana ki nga tohu huarere a Tāwhirimātea, ā, nga piki me nga heke o te āhuatanga noho o te Iwi, me nga take mana tangata tika tangata hoki, e pā nei ki nga iwi katoa o Aotearoa i enei rā.

Tekau nga keehi kei roto i tenei ripoata, i kōwhiritia, hei whakanui i te whānuitanga me te hōhonutanga o nga tono whakahāwea, nga mahi takahi i te mana me te tapu o te tangata, e kōkiritia nei, e tirohia nei e nga kaitakawaenga o te Roopu Tataki Hohourongo, me nga kawenga whanui atu o te Kāhui Tika Tangata.

Mai i te timatatanga o nga mahi takawaenga nei i te tau 2002, ko te nuinga ano o nga tono whakahāwea, e pā ana ki te "momo ā iwi" me te hauātanga o te tangata.

Maha noa atu enei i nga tono i muri mai ara "te ira tangata" (te whakatiwheta hemahema) me nga tau pakeketanga o te tangata.

Engari e kake haere ana nga tono mo nga mahi whakahāwea ki te hunga hauā, me te pakeketanga o te tangata. E rite tonu ana hoki te haere kino o nga mahi whakatiwheta hemahema, me te whakatiwheta momo ā iwi. He nui hoki nga tono whakahāwea i runga i nga take nei te hauātanga, pakeketanga, te āhua noho mārentanga, me te āhua noho o te whānau, i raro ano i nga whakaritenga nohoanga tangata puta noa i nga rohe katoa o te motu.

Ko nga mahi whakahāwea tūkinu i te tangata i to ratou ira tangata, wahine, tānetanga, te momo ā iwi ranei, he mahi kuhu kee, penei i te whakatakoto ritenga, kahore te kōrero kanohi ki te kanohi.

I roto i etahi atu wahanga e mārama ana te kite atu i te mahi whakahāwea tūkinu.

E mārama ana hoki te kite atu i te mahi whakahāwea tūkinu ki te hunga hauā, na te kore hiahia o te tangata tuku whare tuku mahi ranei ki te mau tika i nga tikanga mahi tikanga korero ranei.

Ko te whakaaro tonu he pai noa iho te whakahāwea ki te tangata kaumatua, kuia ranei, te pakeketanga ranei o te tangata i roto i nga tikanga tuku mahi. E orite ana hoki te kino o nga whakaaro ki te hunga whakatāne, whakawahine, takatāpui i roto i nga tika ki nga rātonga hauora, mārenatanga, matua whāngai, me te kohikohi take katoa. E tu kino tonu ana nga mahi whakatiwheta i te tangata na to ratou āhua noho takatāpui, te noho whakatāne, noho whakawahine ranei.

Mena e mārama ana te kite i te mahi tūkinu whakahāwea, pai ana te huarahi hei rapu i te oranga, ahakoa e kore e kitea te mutunga o enei mahi.

Ko te kōrero ano o te Rangatira o te Tari Whakatau Take, maha atu te mau i nga take tono mo nga mahi tūkinu whakahāwea ki te hunga hauā me te hunga pakeke, I nga take tono mo nga mahi tūkinu whakahāwea ki te tangata mo tona momo ā iwi, te ira tangata, ā, tānetanga, wahine-tanga, na te mea he mārama te kite atu i nga take o te keehi hei hāmene i te tangata e whakapaetia ana.

**Please note: Names have been changed in these case studies.*

Religious belief

A Muslim was denied a service in a humiliating way because he was thought to be a security threat – but he initially complained to the Commission on the grounds of race rather than religious belief, as his nationality documents and physical appearance seemed to play a role in the incident.

1. Religious leader on plane

Mr Adam was a Muslim religious leader aboard a plane waiting to go overseas, where he would be speaking at a conference. He was a New Zealand resident but had dual citizenship and was not travelling on a New Zealand passport. He was dressed in traditional religious attire, and went to the toilet to perform some ritual ablutions before takeoff, as he intended reading some religious texts on the flight. Mr Adam took about ten minutes in the toilet, taking time to tidy it before leaving.

After leaving the toilet, the flight attendant asked to see his passport, and escorted him off the plane. Airport security and police had been called, and had been conferring with flight staff about him. The officials questioned the validity of Mr Adam's passport which had an unfamiliar irregularity. The passport was then security checked while Mr Adam waited, and was cleared as valid. Despite this, Mr Adam was not allowed back on the flight to attend the conference, because he had "upset the staff".

He was not given any information on how he had upset the flight staff beyond the passport query, and made a complaint to the Commission on the grounds of race and national origin.

The Disputes Resolution Process

When contacted by the mediator, the airline confirmed that the time Mr Adam had spent in the toilet was the cause of the "upset", and had caused Mr Adam to be viewed as a security risk. After Mr Adam's departure from the plane, the toilet and the aisle in which he had been seated was searched.

The decision to prevent Mr Adam from reboarding the flight was made jointly between airport security, police, and flight staff, but had been based on the flight staff's concern about Mr Adam's unusual "behaviour". The airline said that it had been following security protocols. Upon receiving the complaint, and with it, context about Mr Adam's actions and community standing, the airline agreed that he was not a security threat, realised the gravity and harmful impact of their actions, and were eager to resolve the issue through mediation.

Outcome

The settlement of the complaint included

- a written apology to Mr Adam
- a replacement air ticket
- monetary compensation
- a gift to his religious association
- an agreement that Mr Adam's religious association would give a training session for airline staff on matters of religious and cultural practices, and
- a promise of a review of the airline's methods for dealing with possible security threats.

Highlight

Mr Adam was satisfied with the level of engagement. His primary aim in taking the complaint was to prevent the same thing happening to other people.

2. Nurse aide with Hepatitis C

Genevieve was a nurse aide at a retirement home, where she had been working for some years. She had Hepatitis C. Genevieve had recovered from a drug addiction, and her job was an important part of her new life – she was a well liked, dependable and enthusiastic member of staff. She had always been open with management about her health status and medical history, and they had never indicated that they considered her to be a health risk to the population or staff of the retirement home. Genevieve began taking on too much work to compensate for an increasing understaffing problem, resulting in burnout and a period of extended sick leave unrelated to her Hepatitis C. Before she returned, she was informed by a manager that her Hepatitis C presented a risk to the population of the home, and that she would not be welcomed back. She was not given a letter of warning or termination, nor was any change of workplace policy over Hepatitis C discussed with her, although the manager gave her a small sum of severance cash. Genevieve believed she had been unfairly discriminated against, but felt that challenging the rest home would be a long, drawn out and stressful process that she could not face on her own, given the blow to her confidence. Eventually, her case manager and a disability advocacy group supported her to make a complaint to the Commission against the rest home, in particular against the manager who dismissed her.

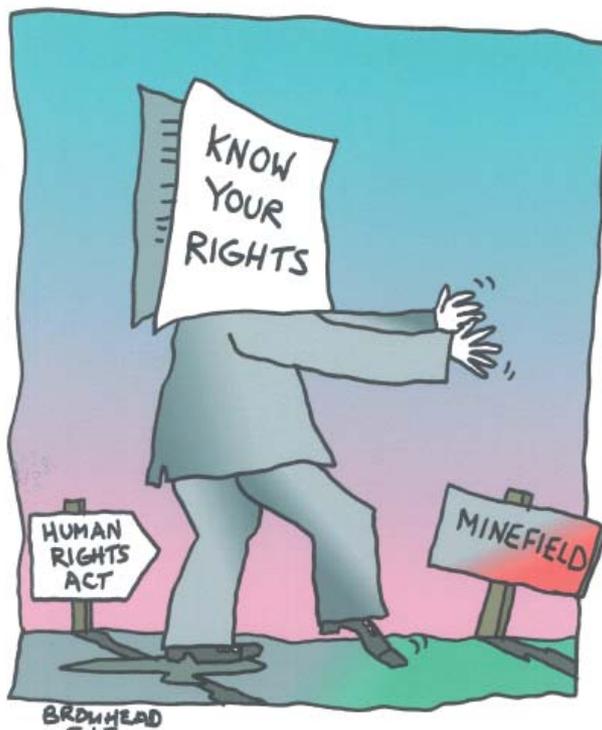
The Disputes Resolution Process

Genevieve wanted acknowledgement that she had been treated unfairly, an apology, compensation for loss of wages, and Hepatitis C training to be provided to the staff. The rest home denied that they had dismissed Genevieve, and stated that she had resigned of her own accord. They stated that they doubted the use of mediation in this case but said that they would attend a meeting if asked. However, after several months, the rest home had still not agreed to a date for a meeting. Suspicious, Genevieve decided not to pursue mediation.

Outcome

Genevieve's request for legal representation at the Human Rights Review Tribunal is being considered by the Director of the Office for Human Rights Proceedings.

Disability is consistently the second largest source of complaints to the Commission. Around half of all disability complaints are in the area of employment or pre-employment. Because disability often requires open discussion about how it might be accommodated, it is not unusual for complaints to be a result of a direct negotiation, and an overt refusal to interview, employ or accommodate a disabled or chronically ill person on the job.



Disability

Large public sector employers are obliged to have Good Employer policies and have an Equal Employment Opportunity programme. They should be making improvements on how to provide fair opportunities for people with many kinds of impairments. They are also likely to have staff dedicated to dealing with those issues. In this case, mediation helped the complainant connect with the most effective and supportive parts of an institution he was struggling to engage with.

3. The colour-blind Police candidate

After a lengthy assessment process, Josh passed the entry level requirements to join the police force. The next stage was a medical examination, which found that he had a mild form of colour-blindness. Josh was told that he could not become a police officer. He challenged this decision after locating research from the United States that showed his particular form of colour-blindness wasn't a significant risk to police work. The Police were conducting a review of eyesight requirements at that time and Josh submitted a paper to that review. However, his career was essentially on hold for an unspecified period with no guarantee of the outcome of the review, or when his application would be reconsidered. It had been over a year since he began the recruitment process. He contacted the Commission's Disputes Resolution Service for help.

The Disputes Resolution Process

The mediator contacted the liaison person at the Police to discuss whether the review action could be sped up over Josh's case, and whether it was necessary to proceed to a formal Commission complaint. It was decided that the body's review process should run its course first, after timeline assurances on Josh's case were given by the liaison person. The Police liaison also met with Josh, who found her "more approachable" than other people he had been dealing with. Within a few weeks, the Police were able to advise that enough preliminary work had been completed on the eyesight review to consider Josh's case.

Outcome

A month after he contacted the Commission, the police advised that they were prepared to accept Josh's application. He was "absolutely delighted".

Highlight

Low level intervention by a mediator helped involve the right people, who could best provide clarity and responsiveness to the complainant.



4. Breastfeeding on the road

Lori had returned to work after her parental leave. Her baby was suffering health problems, and required exclusive breastfeeding, so she expressed milk at work on her breaks, and fed her child in the morning and evening, at home. Because her work regularly required out-of-town travel, she had taken her baby and her 17-year-old son to act as the baby's caregiver with her on several trips.

Lori's employer was unhappy with the situation, and refused to let her use the company car for these trips, saying it was not insured for transporting employees' family and children. Lori offered to take her own car on trips, but the employer refused to reimburse her petrol costs if she drove with her baby and caregiver. Lori was upset about this, as she thought it was a reasonable accommodation. She was also suspicious that there had been no previous objections to her or other staff members, including management, driving their family members in company cars. When the time came for her next out of town trip, she was forced to make a choice between paying for petrol she could not afford and not taking the trip at all, as she could not leave her baby behind. She made a complaint of sex discrimination to the Commission.

The Disputes Resolution Process

The employer said that his understanding of the company's liability for work-related travelling with children was unclear. However, he said that his broader reason for refusing to approve Lori's travel with her child was that he felt it was unsuitable for Lori to take her son out of school to take care of the new baby when she travelled for work. Lori's employer was also concerned about how stress over juggling her baby's health, her family's needs, and her job might impact on Lori's health, wellbeing, and work performance. He was of the view that she should take more parental leave. Lori noted that if her only choice for keeping her job was to either stop breastfeeding or be forced to take unpaid parental leave, she would take the issue to the Tribunal.

Outcome

Lori and her employer agreed that work would be found for her solely within the city over the next three to five months so she would not have to travel. This meant a drop in hours of work and a drop in income. The solution was acceptable to both sides, but did not address the legal foundation for her complaint. The terms were less favourable than before she was breastfeeding, and combined with the employer's reasons for treating Lori less favourably, could still have arguably amounted to unlawful sex discrimination. Despite this, Lori's priorities were to make sure she could still exclusively breastfeed her baby, to keep her job, and maintain a positive relationship with her employer. The settlement also meant her son or partner did not need to take time off school or work in order to accompany her as a caregiver on out of town trips. For Lori, the reduced impact on the family overall and her job security was felt to be worth the compromise.

The right to breastfeed at work and in public has been a recurring public discussion. The Commission's publication of 'The Right to Breastfeed' report, its leaflet 'Your Rights as a Breastfeeding mother', and its facilitation of a cross-sector forum on the right to breastfeed, was a broad response sparked by the complaint and public activities of breastfeeding advocate Liz Weatherly. The Commission did not mediate Ms Weatherly's complaint at the time, assessing the specifics of the case as outside its jurisdiction. The Commission has now constituted a policy that requires a broad and inclusive approach to breastfeeding complaints.

Section 61 ‘Exciting racial disharmony’

Section 61 of the Human Rights Act makes it unlawful to publish or broadcast material which is threatening, abusive or insulting and is likely to excite hostility against groups of people, or bring them into contempt, because of their race, colour, ethnicity, or national origin. This provision has to be read in conjunction with the right to free speech provided for in the Bill of Rights Act. This creates a high threshold for this category of complaint. Furthermore, in the ‘Mohammed cartoon’ case it was noted that Muslims are not an ‘ethnic’ or ‘racial’ group. However the complaints were an important gauge of the intensity of community feeling. Dialogue about offensiveness, community engagement, and press responsibilities proved the appropriate response.

5. The Mohammed Cartoons

Global controversy erupted this year over the publication in a Danish newspaper of cartoons depicting the Prophet Mohammed, several of which linked the Prophet and Islam with terrorism. Depiction of the Prophet Mohammed is proscribed by Islam. The newspaper was eventually subjected to threats and international protests, followed by violent unrest in many countries where Muslims were offended. Numerous other newspapers reprinted the cartoons arguing solidarity with the principles of a free press. In the context of the news story about the reasons for this violence and controversy overseas, *The Dominion Post*, *The Press*, and the *Nelson Mail* published the cartoons in New Zealand. New Zealand Muslim communities protested, and a wide variety of people complained to the Commission, including Christians. TV One and TV 3 news broadcasted the images in the context of the local reaction.

The Disputes Resolution Process

The complaints did not fall within the jurisdiction of the Human Rights Act, but the Race Relations Commissioner became involved as part of the Commission’s wider mandate to encourage harmonious relations in society. The Commissioner publicly questioned the usefulness of publishing the cartoons, and was able to convene a meeting between religious leaders and media institutions to discuss the issues.

Outcome

The resolution attempted to overcome Muslim alienation from the mainstream media by committing to better channels of dialogue, and committing to informing the community about diverse cultures and beliefs. *The Dominion Post* and *The Press* did not resile from their decision to publish the stories in the context of the news, but apologised for offence caused and undertook not to publish the cartoons again. All parties affirmed the importance of freedom of the media, but also acknowledged that responsibilities that come with that freedom include sensitivity to diverse cultures and beliefs.

The industry participants agreed that the Commission should facilitate further discussion, that the Journalists Training Organisation should address training issues that arose from this debate, and that a directory of Muslim spokespeople would be compiled and made available to the media to facilitate a better flow of information.

The Federation of Islamic Associations of New Zealand was happy with the outcome, and considered that the matter had been dealt with appropriately. It called off any further protests. A month later, after a further meeting between FIANZ, the Race Relations Commissioner, and the Freedom Committee of the Commonwealth Press Union, an opinion piece written by the FIANZ President was published in several newspapers throughout the country.

Highlight

In his opinion piece, the FIANZ President said: “That meeting epitomised for me what New Zealand is all about – that despite our diverse backgrounds, we can work together in good faith to build a strong and cohesive society. This debate also provided the Muslim community with an opportunity to open a dialogue with the broader New Zealand community and address a number of the myths and stereotypes that some people have about Muslims”.

Legal context

In accordance with local and international jurisprudence, the Commission’s view is that Muslims are from a wide range of ethnicities and cannot be defined as an ethnic group, or a group defined by racial or national origins. The cartoon issue could therefore not be dealt with under Section 61 of the Human Rights Act.

6. Arthritis drug for juveniles

In early 2004, the government drug agency Pharmac began subsidising a new kind of effective medication for rheumatoid arthritis. The drug, Enbrel, was only available for people with the disease who were aged 18 and under – defined as juvenile arthritis. A steady stream of complaints to the Commission followed, from arthritis sufferers of many ages, from 19 upwards. These people were unable to access any affordable and effective medication because of their age.

The Disputes Resolution Process

Pharmac targeted juvenile arthritis sufferers in its initial subsidies because they were a small and vulnerable group. Pharmac's initial response to the complaint was that their medical advisers recommended making these few dozen children the priority, before more funding was made available from the Ministry of Health. However, Pharmac also noted that they were investigating how to fund arthritis drugs of this kind for older people. Eventually, they announced that they were negotiating with suppliers with a view towards providing a wider subsidy, and requested that mediation processes be put on hold as the results could resolve the complaint.

Outcome

In 2006 Pharmac began subsidizing an arthritis drug with a similar effect to Enbrel for people over 18. Complainants who were now able to access the drug were very happy with its effects and pleased that they were able to use the complaints process. While the complaints process did not necessarily cause the expansion of the drug funding, the Commission's involvement meant Pharmac was obliged to consider the legal and human rights aspects of its funding decision. Some complainants felt that their complaint had not been resolved because the same drug was not available for people of all ages, but the Commission considered the complaints closed.

Age discrimination complaints are on the rise, from 6 percent for the 2002-2003 financial year to nearly 10 percent of all complaints in the last year. The two key areas for both older and younger age groups are employment and the way Government funding is distributed, differentiated, and prioritised. The Commission has taken a strong advocacy position against ageism in discrimination and the EEO Commissioner is promoting an Employment of the Older Worker strategy. Successive governments have made a wide variety of provisions for people of different age groups – for example in eligibility for education and training, benefits, licencing, and other entitlements. Complaints reflect the complex task of designing state social policy based on different categories of need, without unfairly cutting some groups out, or placing onerous requirements on others.



7. Older drivers seek equal treatment

People 80 years of age and over were subject to mandatory practical driving tests every two years to remain eligible for a driver's licence. This was of concern to senior citizens who felt that the policy was discriminatory and harmful. When the Government's partial exemption from the Human Rights Act's anti-discrimination provisions ended on the last day of 2001 Grey Power, the older people's lobby group, immediately launched a campaign encouraging members to make complaints to the Commission about the driver licensing policy.

The Disputes Resolution Process

The Commission received more than 150 complaints, most of which described the significant harm that regular testing caused to older people in terms of anxiety, cost, restriction of livelihood, and loss of confidence. In its response, the Government accepted that this was a prima facie case of age discrimination, but that it was a justifiable limitation on freedoms under section 5 of the New Zealand Bill of Rights Act. Complainants overwhelmingly rejected the Government's opinion that the testing regime was justified arguing that research showed older drivers were at less risk of causing accidents.

Outcome

Grey Power was represented on the group which subsequently responded to the Minister of Transport's request for a review of crash risks for older drivers. As of December 2006 the Government ended the requirement that drivers over 80 years of age be subjected to regular mandatory driving tests to retain their licences.

Highlights

Through their representation on the policy review process, the complainants were able to participate in the considerations which eventually resulted in the amendment to the legislation.

8. The female truckie

Susan was a seasoned truck driver. Despite 25 years experience on the road and good references, she was refused an interview over the phone by a small trucking subcontractor. The subcontractor told her that the freight company contracting him did not allow them to hire women drivers because they 'get pregnant'. Susan was astonished. She pointed out that she was 48, and that at her stage of life, children were not on her mind. The subcontractor still refused to grant her an interview.

Susan called the freight company and asked them about their policy. They said they most certainly did not have a policy that cut out women and would welcome her direct applications for any vacancies they had. At this point she called the Commission duty mediator for advice.

The Disputes Resolution Process

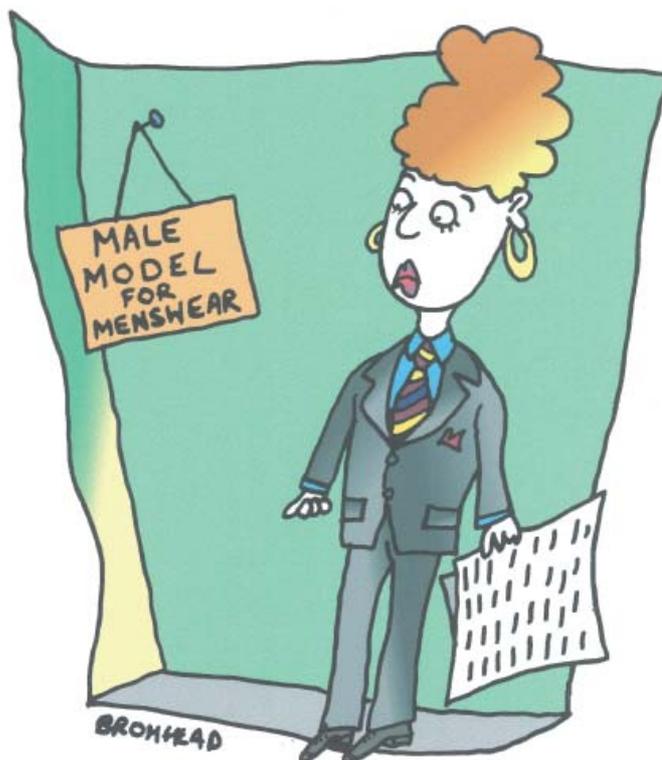
Susan was a confident person. Before becoming directly involved, the mediator suggested a strategy. Susan's priority was to get a job interview and there was a possibility that if the Commission called that this could reduce Susan's chances of a good outcome. The mediator suggested that Susan contact the subcontractor to tell him she had spoken to the freight company about their policies and to ask again for an interview.

When Susan called again, the subcontractor again refused to grant her an interview, and told her off for trying to stir up trouble. The mediator then decided to make a call on Susan's behalf. However, before this could happen, the subcontractor called Susan back with a change of attitude.

Outcome

The subcontractor apologised to Susan for being in a bad mood that day and offered her a job interview straight away. Although the subcontractor did not admit that they had applied a discriminatory policy, or that they checked the policy with the freight company, Susan achieved what she wanted out of the process.

Sex discrimination usually makes up around 7 percent of complaints, and people complaining of sex discrimination are mostly women. Overt sex discrimination against women is increasingly 'underground' – complaints are mostly about indirect discrimination, and are dominated by employment and pre-employment issues such as pregnancy, breastfeeding and child-care within the workplace. The case of a female truck driver being openly turned down for an interview because of her sex is unusual for its overt nature, giving voice to usually unspoken (and illegal) barriers.



Sexual Harassment

Sexual harassment is unwelcome or offensive and harmful behaviour of a sexual nature in public life; or unwanted requests for sex, for example by a colleague, combined with an implication that not meeting those requests will be disadvantageous. The vast majority of complainants are women, particularly those at work. Their levels of social, economic and workplace vulnerability, and the personal stress that the harassment has caused them, can affect their desire to participate in the complaints process. The number of sexual harassment complaints has been at a similar level to all other sex discrimination complaints combined.

9. Requests for sex

Odette, a bus driver, started receiving offensive phone calls and text messages requesting sex. Although she changed her phone number several times, the calls continued. She was very upset by the calls and became afraid of answering her phone or checking text messages. She eventually gathered that the callers were her male workmates, as phone numbers were kept in a dispatch register. One of the callers told her that her ex-boyfriend Rick had given out her phone number, and had encouraged him to call her and request sex for money. Rick also worked for the bus company and Odette believed he could have accessed the dispatch register. Rick was later heard making offensive sexual remarks about Odette to a colleague at work. Odette felt unable to talk about the issue with company management, and instead resigned. It was only when she received an anonymous call from Rick after resigning, that she made a sexual harassment complaint to the Commission. The complaint was against both Rick and the bus company.

The Disputes Resolution Process

The mediator wrote to the bus company manager about the details of the complaint. The manager expressed disappointment that Odette was unable to come to them directly with her complaint before she resigned, but assured the Commission that it would take the allegations very seriously. The bus company then dealt with the issue internally and informed the Commission of its actions. Both the bus company and Rick were open to the suggestion of a mediation meeting, but a meeting did not occur.

Outcome

In his discussions with bus company management and in his letter to the Commission, Rick denied that he had given out Odette's phone number. In his letter, Rick did admit to the offensive conversation and final phone call. He said that his offensive sexual remarks about her were taken out of context, were not meant to offend or upset, but he apologised for the offence.

The bus company said that Rick had accepted that his actions were inappropriate. He had been given a formal verbal warning, and counselling on his legal responsibilities according to the Human Rights Act. The bus company also pledged to secure its dispatch register and to ensure staff knew that sexual harassment was unacceptable. The company reported the incident to its senior compliance officer at Land Transport New Zealand.

Odette was happy with the company's response and considered her complaint against them resolved. She did not accept Rick's written response as resolving her complaint, but did not want to have a mediation meeting with him. She changed and de-listed her phone number.

10. Housing denied because of race

Latu, a Samoan woman, was looking at a property with the intention of renting it. However the real estate agent told her that the landlord didn't like to rent to 'Islanders' because the landlord thought they always had more people living with them than was agreed to in the tenancy. The estate agent wasn't sympathetic to the landlord's opinions, but believed that he had to follow their instructions. He tried to find Latu other accommodation. Latu was extremely aggrieved and insulted, and made a written complaint about the estate agent to the Commission.

The Disputes Resolution Process

The real estate agent was very upset as he believed he had done the right thing by being upfront about the landlord's specification, and had done his best to find Latu another house. He did not accept that he bore any liability under the Human Rights Act and believed that the landlord was the guilty party.

Latu brought aiga support people with her to mediation, which created tension in the first part of the session, because they felt personally offended by the discriminatory treatment. The mediator decided to split the meeting into different rooms and carried on with separate sessions. After the mediator explained to the agent in person how real estate agents could breach the Human Rights Act by carrying out the discriminatory instructions of their employer, the agent finally realised the law applied to him. His earlier defensiveness disappeared and he became remorseful.

Outcome

"With new understanding they moved forward really quickly," says the mediator. The estate agent was able to come back to the table and offer sincere acknowledgement of wrongdoing. Latu was also able to come back and acknowledge that the estate agent had tried to help her find another house with good will. As well as the mutual acknowledgement, the estate agent agreed to a substantial financial settlement to reflect his legal liability. The presence of the mediator to defuse, educate, and engage in "shuttle diplomacy", was vital in this case.

Significant discrimination has long occurred for Pacific Island and Māori people in their search for rental accommodation, although is often difficult to prove in individual cases. Sometimes complaints or inquiries are a matter of suspicion about landlord attitudes and repeated failure to secure housing. Sometimes after being told that the property is "no longer available" a Pakeha friend or partner receives a warmer welcome from the estate agent or landlord. In this case, the real estate agent openly admitted to the discrimination, because he didn't realise he was legally liable for implementing a landlord's discriminatory requirements.





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