

# Briefing Paper for AFAO members

4 July 2006

## Tasmanian Anti-Discrimination Complaint Against the Australian Red Cross Blood Service

Yesterday, the Office of the Tasmanian Anti-Discrimination Commissioner decided to refer a complaint of discrimination to the Tribunal. This Briefing paper contains a brief history of the complaint and outlines what will occur at the Tribunal Process as well a summary of AFAO's response to current developments in the case.

### 1. Background

The Red Cross does not accept blood donations from males who report having had sexual contact with other men in the past 12 months. Others who are excluded include anyone who has had a tattoo, a blood transfusion, body piercing, been in a prison or lock-up, had sex with a sex worker, or had a partner with Hepatitis B or C. Others, such as those resident in the UK between 1980 and 1996, are permanently precluded from donating blood.

In late 2004, Michael Cain attended the Launceston branch of the ARCBS in order to donate blood but was informed that he was ineligible.

On the 19 June 2005 the Hobart Community Legal Service was instructed by Michael Cain to institute legal proceedings against the Australian Red Cross Blood Service (ARCBS). A complaint was lodged on Michael Cain's behalf on the 2 August 2005 with the Tasmanian Office of the Anti-Discrimination Commission

The AFAO Board considered the issue and, following consultation with members, resolved to support the current exclusion policy of the ARCBS.

In October 2005, the Tasmanian Anti-Discrimination Commission decided to investigate a case against the ARCBS. This decision was accompanied by a number of articles in the gay and mainstream press. This media coverage was instituted by the TGLRG and reflected their position and the position of Mr. Cain in bringing the case against the ARCBS.

In response to this media coverage; ACON, supported by the Australian Society for HIV Medicine (ASHM) and AFAO, produced and had published an advertisement in the Sydney gay press outlining facts relating to blood donation



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and HIV and restrictions on potential donors. The document declared these organisations' support for the current donation policy of the ARCBS and was published in November 2005.

## **2. Outcome of the complaint**

Following the investigation of the complaint by the Anti-Discrimination Commissioner; both parties in the complaint (Michael Cain and the ARCBS) were advised on 3 July 2006 that the matter will be referred to the Anti-Discrimination Tribunal (ADT) for Inquiry.

At the conclusion of the investigation the Commissioner formed the view that the matter was not amenable to Conciliation. This view was formed with regard to the questions of law raised by the complaint and the potential national and international implications of any decision pertaining to blood donations.

Further, the issues raised by the complaint give rise to questions of public interest and/or importance. Consequently it was deemed appropriate to refer the matter to the ADT which has the power to make determinations on questions of fact and/or law.<sup>1</sup>

The Tasmanian Gay and Lesbian Rights Group (TGLRG) issued press releases in support of the complaint and have already begun instigating media coverage of this issue.

## **3. The Inquiry Process and Potential Outcomes**

The Tasmanian Anti-Discrimination Tribunal is a division of the Tasmanian Magistrates court and was established by the Tasmanian Anti-Discrimination Act 1998

The Anti-Discrimination Tribunal is completely separate and independent from the Anti-Discrimination Commission. The role of the Commission is to investigate claims. That phase is now complete and the Commission has no further involvement in the matter.

Now that the complaint has been referred to the Tribunal, the Inquiry (hearing) phase has commenced and the complaint is managed by the Tribunal.

The steps that are taken by the Tribunal are as follows:

- a number of conferences will be conducted by the Tribunal to make sure that the Inquiry (hearing) is ready to proceed. These conferences are called directions conferences. At the directions conference procedural matters will be considered before the Inquiry can start (including applications for a suppression order or a closed inquiry).
- the parties may be referred to conciliation. The decision to refer to conciliation is made by the Tribunal Member after taking into account the wishes of the parties.

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<sup>1</sup> Statement from Samantha Bolt (Tasmanian Antidiscrimination Commissioner) 3 July 2006

- the complaint is listed for Inquiry which is the hearing when the parties and their witnesses will give evidence and a decision is made by the Tribunal as to whether the complaint has been substantiated.

Once an Inquiry has been held and if the complaint is substantiated the Tribunal may make an enforceable order. The orders which can be made by the Tribunal are set out in the Act and include orders as follows:

- The discrimination or prohibited conduct must not be repeated or continued.
- The respondent must redress any loss, injury or humiliation.
- The respondent must pay compensation.
- The complainant must be re-employed.
- The respondent apologise to the complainant.
- If the complaint is not substantiated then the complaint is dismissed.

#### **4. AFAO's response**

AFAO maintains an interest in ensuring that any changes in blood donation policy will not negatively affect the safety of the blood supply. Whilst review of the exclusion period for men who have sex with men would be welcome, AFAO believes that the current environment of HIV seroprevalence in MSM supports the existing exclusion policy. AFAO will continue to monitor developments in this case, as any changes to blood donation policy could have extensive ramifications to public health.

#### **5. Attachments**

Statement from Samantha Bolt (Tasmanian Antidiscrimination Commissioner)  
Email received 4 July 2006

Please find below statement from the Commissioner, Sarah Bolt in relation to Media Release sent out yesterday by Tasmanian Gay and Lesbian Rights Group. Following the investigation of the complaint the parties have been advised that the matter will be referred to the Anti-Discrimination Tribunal (ADT) for Inquiry. At the conclusion of the investigation the Commissioner formed the view that

the matter was not amenable to Conciliation she formed the view having regard to the questions of law raised by the complaint and the potential national and international implications of any decision pertaining to blood donations. Further, the issues raised by the complaint give rise to questions of public interest and/or importance. Consequently it was deemed appropriate to refer the matter to the ADT which has the power to make determinations on questions of fact and/or law.

#### **6. Relevant Links**

Tasmanian Gay and Lesbian Rights Group  
[www.tglrg.org](http://www.tglrg.org)

Office of the Tasmanian Anti-Discrimination Commissioner  
[www.antidiscrimination.tas.gov.au](http://www.antidiscrimination.tas.gov.au)

Tasmanian Anti-Discrimination Tribunal  
[http://www.magistratescourt.tas.gov.au/divisions/Anti-Discrimination\\_Tribunal](http://www.magistratescourt.tas.gov.au/divisions/Anti-Discrimination_Tribunal)

Australian Red Cross Blood Service  
<http://www.arcbs.redcross.org.au/>

Tasmanian Anti-Discrimination Act 1998  
[http://www.thelaw.tas.gov.au/linkto.w3p;doc\\_id=46++1998+AT@EN+CURRENT](http://www.thelaw.tas.gov.au/linkto.w3p;doc_id=46++1998+AT@EN+CURRENT)