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During the last five years of operation of the *Racial Discrimination Act* a total of 248 complaints have been lodged against hotels throughout Australia. The principal areas are New South Wales, Queensland, Victoria and Western Australia. In the main the complaints were that Aboriginal people were refused service and access to hotels and to certain areas within them because of their race and/or colour. In some instances hotel licensees and their staff have said bluntly that they did not serve Aborigines in the hotels as a matter of policy.

Refusal takes many forms, often direct and often without any reason being given. In some cases the publicans concerned attempted to shelter behind the laws governing licensed premises stating that they have the right to refuse to serve anyone.

White people have also been refused service because of their association with Aborigines. A common response to allegations of racial discrimination by the publicans involved is that Aborigines are troublesome and do not act according to proper social standards.

Most hotels involved in the cases barred Aborigines simply because they were Aborigines or in some cases because they were Aborigines not known to the hotel, or because of some difficulty which publicans had had in the past.

It emerges that if an Aborigine gives trouble then the whole of his race is likely to suffer, and the publicans concerned failed to distinguish between persons of good conduct and persons of bad conduct as they do with members of the white community.

The spurious explanation for this has been that they 'can't tell one Aborigine from another' — itself an offensively racist attitude.

Despite the recurring problems improvements have been seen in country centres frequently visited by my officers. The number of complaints lodged in recent times has decreased and reports of recurring racial discrimination in such areas often reflect changes of licensees, managers and staff.

The complaints of racial discrimination against publicans in the past five years have in the main been resolved satisfactorily by my office. Once the publicans with whom I have dealt have been made aware of the provisions of the law and understand their obligation to accord Aborigines equality in the exercise of their fundamental freedoms and human rights, they have assured the complainants and my office that discrimination will not be practised in their establishments in future, have apologised for offences and in several instances have paid cash damages.

In fairness to publicans, it should be said that a great many had no knowledge of the *Racial Discrimination Act* and that Liquor Licensing agencies in the main had not paid significant regard to racial discrimination, and it is also on record that several courts have disregarded the serious nature of unlawful acts of racial discrimination by publicans in matters within their jurisdiction. Penalties have been light and no further action has been taken.

Hoteliers Associations, on the other hand have been particularly helpful in advising of the provisions of the law and it has been very useful when publicans have consulted their Hoteliers Associations and have been properly advised of the position.

A frequent cause of difficulty in matters of discrimination is the inexperience of people entering the hotel business. While the great majority of publicans involved have co-operated with my office, very often the first approach by my officers has met with hostility and rejection and it has taken patience and understanding to establish that what we are on about is conciliation, not retribution.

I believe it important to help publicans understand their responsibilities by reviewing the law as it stands and as it must be observed.

The *Racial Discrimination Act* prohibits all forms of racial discrimination on the grounds of race, colour, ethnic background, place of birth or descent. So it is just as wrong to deny service to a white Englishman as it is to a black Australian.

At the same time, the general standards required by a publican can be enforced across the racial spectrum so long as this does not discriminate racially. In other words, it is not good enough to have a rule that in a particular bar no thongs can be worn and enforce the rule only for Aboriginal people while whites and others are permitted to break the rule with impunity.

In many cases hotel keepers have a particularly difficult task to maintain standards, to maintain decorum, and in some places, to maintain order. The important point is that whatever standard is set it must apply equally to all, without distinction.

If anyone complains that the standards demanded are too high, then this is a matter for him to pursue with the hotel or with the licensing authorities, but it is not a matter for my office provided that the standards are applied equally to all. It is the experience of publicans who know their profession well that fair standards, once set and consistently applied and observed, bring little or no complaint from the customer, but where standards have been allowed to drop and there is a sudden decision to improve them and as part of that improvement all Aborigines are banned, then the law is broken and my office must be involved.

There is often confusion as to what the *Racial Discrimination Act* provides in terms of procedures. I have mentioned that it prohibits racial discrimination. The procedures are along these lines. A complaint lodged with my office is immediately referred to the publican who is invited to comment

on the complaint and to give us as much information and co-operation as he can. If the matter can be sorted out by correspondence then we are happy to do this, but if it is necessary an informal conference will be held by my officers on the spot and the publican and those complaining sit down with my officers in the conference.

The conference proceedings are designed to conciliate upon the complaint. They are not designed to lead to court proceedings but in fact to avoid them.

The publican who realises that he has broken the law relating to racial discrimination will often apologise, undertake not to have such a policy in future, and if the complainants are satisfied and he is satisfied, then the case is closed. Conciliation has been achieved.

If, on the other hand, the publican refuses to co-operate, then a compulsory conference can be called by me and attendance is required under the law. Failure to attend would attract a summons and a fine of $500 for each refusal.

If the compulsory conference fails to achieve conciliation then I am empowered to issue the complainants with a certificate which enables them to go to the Supreme Court to seek damages, a restraining order or an injunction. I am pleased to say that in five years of operation only once did I issue summonses against a publican and in only two matters has it been necessary to issue certificates to enable the complainants to take the matter to court, but in no instance has any case come before a court. I have outlined in case example No. 5 the instance of the publican who refused to meet with us and who incidentally was wrongly advised by both his solicitor and the local Police Inspector.

The major emphasis is always on conciliation and if publicans can keep this point in mind, then co-operation I think will come much more readily. It has been a weakness in administration that publicans have not been directly advised of the law and how it should be observed. There is no doubt that each and every publican in Australia should have a knowledge of the *Racial Discrimination Act* and its provisions so that in the administration of bar service, restaurant service, and the provision of accommodation, practices of racial discrimination can be avoided as a deliberate policy to avoid breaking the law.

The following cases have been selected to illustrate the kind of complaints received and the end result of them.

Case No. 1

Five Aboriginal men visiting a town were refused service in an hotel, even though they merely ordered lemonades. The manager refused to serve them because another Aboriginal person had misbehaved three weeks previously and the hotel had decided to ban Aboriginal people.

The party discussed the matter with the manager at some length, raising the question of barring all Aborigines when only one had caused trouble. The

discussion had no effect and the manager continued to refuse service.

My officers visited the hotel and found the management had adopted a hard line against all Aborigines because of difficulties experienced with several Aboriginal persons. During the visit other complainants came forward and my officers handled all complaints simultaneously.

After several meetings, the hotel manager provided an apology to all complainants, along with assurances that he would not discriminate against persons because of their race or colour. Bans on several Aboriginal persons were lifted. He reserved his right to deal with people who did not abide by the standards applying in his hotel. The apologies and assurances were given directly to some complainants and in writing to others.

Case No. 2

A Consultative Committee on Community Relations in a capital city received a complaint from two Aboriginal women who had been refused service in a tavern on grounds of their colour. The Committee wrote to the management and followed up its letter with visits on two occasions. The manager said he did not discriminate against Aborigines but had refused service to the ladies as he believed they had been in the company of a man who had been a trouble maker at the hotel and had assaulted one of the staff. The manager indicated that the complainants would certainly be served in the future and apologised to them.

Case No. 3

Two Aborigines visiting a town entered the public bar of an hotel and were served in the company of local Aborigines. Later, one of the visitors moved into the saloon bar but was refused service by the publican on the grounds that he was an Aborigine. On hearing this, the other visitor went into the saloon bar and attempted to purchase drinks. The publican instructed the bar staff not to serve him. The only reason given was that they were Aborigines and were required to drink in the public bar.

The publican stated that separate bars for blacks and whites operated successfully in other towns and that it was also the policy in his hotel.

The publican moved to evict the first person who sought service and in doing so assaulted him.

The complaint was lodged with my office while officers were on a field trip in an adjoining district. I arranged for them to deal with this complaint on the spot. The publican, as is often the case in such circumstances, presented considerable difficulties for my officers, demonstrating a hostile attitude and resisting efforts at conciliation. My officers persisted and it was only after a warning of compulsory conferences that they were able to arrange a meeting.

The policy of the hotel was discussed frankly by all present and it was agreed that a policy which distinguished between patrons on the basis of their

race or colour was an infringement of the *Racial Discrimination Act* 1975 and not in the interests of racial harmony in the town. The publican apologised to the two complainants and indicated that bans on Aborigines would be lifted. The apology was confirmed in writing.

Case No. 4

During another field trip a written complaint was received from 19 Aborigines alleging discrimination against them in a local hotel, by being refused admittance to a dance there. In this instance, the publican had been armed with an iron bar and had held two big dogs on a leash. He had been backed up by a mob of white people behind him barring the door. Another person is alleged to have had a whip or something resembling a whip in his hand. In all, the complaint represented a vicious stance by the publican, with potential violence involved.

A compulsory conference was convened between the publican and representatives of the Aboriginal complainants. An informal conference between the Aborigines and members of the Police Force was also held in order to clarify a point regarding a Police Constable who had said when called to the scene that he could do nothing about it.

The matter was finally resolved to the complainants' satisfaction on the receipt of written assurances about access to the hotel and service on equal terms with other patrons.

Case No. 5

Four Aboriginal men complained that a publican refused them access and service in a bar of his hotel. It was alleged that, after the initial encounter, he had said he would serve them one drink — which they could drink away from the bar — but they were to leave afterwards. This was unacceptable to the Aborigines and they argued with the publican who threatened to call the Police. Further argument occurred in the presence of a Police Inspector.

At the request of the local Consultative Committee on Community Relations, a compulsory conference was convened which the publican, the complainants, the Police Inspector and others were directed to attend. The working day before the conference the publican had a summons served upon a principal complainant for the use of unseemly words during the incident which gave rise to the complaint. He then claimed the matter of the complaint was sub judice and that the conference could not proceed. The Chairman declared otherwise and convened the conference but the publican, on the advice of his solicitor, refused to attend.

A second conference of all parties other than the complainant named in the summons was convened. The publican attended but withdrew claiming the matter was sub judice. On both occasions he was informed that he was leaving himself open to prosecution under the *Racial Discrimination Act* 1975 for

failure to attend a compulsory conference as directed.

Having failed to settle the matter by conciliation I referred the information to the Commonwealth Police in order to institute prosecution proceedings against the publican and, at the request of the complainants, issued certificates to enable each of them to obtain remedies through civil court proceedings.

On a subsequent visit to the town my officers learned that one of the Aboriginal complainants was distressed by the complicated and onerous processes under the legislation and the contemplated court actions. Solicitors had been briefed to institute civil court proceedings for remedies under the Act. The complainant's solicitor had contacted the publican's solicitor with a view to reaching a settlement but had been unsuccessful.

My officers negotiated between the parties privately and achieved settlement on terms acceptable to all complainants and the publican. The terms were apologies and assurances, no publicity, the payment of $250 to each complainant, and the withdrawal of prosecutions by the Commonwealth.

The case was notable for a number of reasons, including:

- The obvious strain which it placed upon the complainants
- The device used to obstruct operations under the *Racial Discrimination Act* 1975: the charge of unseemly words

The clear disadvantages which Aborigines suffer if minded to pursue their rights under the Act

The wide disparity in resources between the complainants and the respondents.

A further factor was that influence had been brought to bear upon the respondent to contest the matter, even to the point of mounting a legal challenge to the *Racial Discrimination Act* 1975. A brief had been sought from a barrister on the *Racial Discrimination Act* 1975 and constitutional matters at a cost of $1500 to the respondent. My officers were informed that this influence was exerted by the local Police Inspector.

Case No. 6

Two Aboriginal women and an Aboriginal man sought to gain entry to a cabaret at a hotel. They were refused because of their race. They complained to me and I conducted an inquiry into the matter.

A compulsory conference was convened at which the matter was settled on the basis of a written public apology and the payment of $1000 divided between the complainants.

RACIAL DISCRIMINATION ACT 1975

EXTRACTS

Racial discrimination to be unlawful.

9. (1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

Access to places and facilities.

11. It is unlawful for a person —

(a) to refuse to allow another person access to or use of any place or vehicle that members of the public are, or a section of the public is, entitled or allowed to enter or use, or to refuse to allow another person access to or use of any such place or vehicle except on less favourable terms or conditions than those upon or subject to which he would otherwise allow access to or use of that place or vehicle;

(b) to refuse to allow another person use of any facilities in any such place or vehicle that are available to members of the public or to a section of the public, or to refuse to allow another person use of any such facilities except on less favourable terms or conditions than those upon or subject to which he would otherwise allow use of those facilities: or

(c) to require another person to leave or cease to use any such place or vehicle or any such facilities,

by reason of the race, colour or national or ethnic origin of that other person or of any relative or associate of that other person.

Provision of goods and services.

13. It is unlawful for a person who supplies goods or services to the public or to any section of the public —

(a) to refuse or fail on demand to supply those goods or services to another person; or

(b) to refuse or fail on demand to supply those goods or services to another person except on less favourable terms or conditions than those upon or subject to which he would otherwise supply those goods or services,

by reason of the race, colour or national or ethnic origin of that other person or of any relative or associate of that other person.

Unlawful to incite doing of unlawful acts.

17. It is unlawful for a person —

(a) to incite the doing of an act that is unlawful by reason of a provision of this Part; or

(b) to assist or promote whether by financial assistance or otherwise the doing of such an act.

Inquiries by Commissioner.

21. (1) Where —

(a) a complaint in writing is made to the Commissioner that a person has done an act that is unlawful by reason of a provision of Part II; or

(b) it appears to the Commissioner that a person has done an act that is unlawful by reason of a provision of Part II,

the Commissioner shall, subject to sub-section (2), inquire into the act and endeavour to effect a settlement of the matter to which the act relates.

Compulsory conferences.

22. (1) For the purpose of inquiring into an act, or endeavouring to settle the matter to which an act relates, in accordance with sub-section 21 (1), the Commissioner may direct the persons referred to in sub-section (2) of this section to attend, at a time and place specified in the direction, at a conference presided over by the Commissioner or by a member of the staff of the Commissioner.

(2) Directions under sub-section (1) shall be given to —

(a) a person who made a complaint to the Commissioner in relation to the act;

(b) the person who is alleged to have done the act; and

(c) any other person whose presence at the conference the Commissioner thinks is likely to be conducive to the settlement of the matter to which the act relates.

Civil proceedings.

24. (1) A person aggrieved by an act that he considers to have been unlawful by reason of a provision of Part II may subject to this section institute a proceeding in relation to the act by way of civil action in a court of competent jurisdiction for any one or more of the remedies specified in section 25.

(3) No proceeding shall be instituted unless the person aggrieved has received prior to the institution of such proceeding a certificate signed by the Commissioner . . . .

Powers of court in civil proceedings.

25. Where, in a proceeding instituted under section 24, it is established to the reasonable satisfaction of the court that a person (in this section referred to as the "defendant") has done an act (in this section referred to as the "relevant act") that is unlawful by reason of a provision of Part II, the court may grant all or any of the following remedies:—

(a) an injunction . . . .

(b) an order .. .

(c) contracts . .

(d) damages against the defendant in respect of —

(i) loss suffered by a person aggrieved by the relevant act, including loss of any benefit that that person might reasonably have been expected to obtain if the relevant act had not been done; and

(ii) loss of dignity by, humiliation to, or injury to the feelings of, a person aggrieved by the relevant act; and

(e) such other relief as the court thinks just.