



Office of the Anti-Discrimination Commissioner

Celebrating Difference, Embracing Equality

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19 March 2008

Ms Phaedra Eayrs
National Programs Project Officer
Alzheimers Australia
PO Box 4019
HAWKER ACT 2614

Dear Ms Eayrs,

Re: Privacy and Human Rights Legislation that may concern Alzheimer's Australia Project – Dementia Symbol Project

Thankyou for your email dated 18 February 2008 and the opportunity for the Office of the Anti-Discrimination Commissioner (OADC) to comment on discrimination issues regarding Alzheimers Australia's project to determine the viability and impact of introducing a symbol/identifier for people with dementia. Thankyou for your email dated 17 March 2008 clarifying the implementation of the symbol.

The OADC believes it is critical that a human rights perspective and principles of non-discrimination guide the philosophy of use and implementation upon the introduction of a dementia symbol scheme.

As Commissioner, my functions include investigating and seeking to conciliate complaints of discrimination and prohibited conduct under the Tasmanian *Anti-Discrimination Act* 1998 ("the Act") and educating the community about discrimination and promoting attitudes, acts and practices against discrimination and prohibited conduct.

The OADC cannot provide legal advice. This is because if a complaint is lodged, I am required to impartially assess and investigate it under Act. The OADC can, however, provide procedural advice regarding the provisions of the Act.

The Act prohibits discrimination on the basis of the prescribed attributes in s16 of the Act, including disability and irrelevant medical record. Two types of discrimination are prohibited under the Act, direct and indirect discrimination. Direct discrimination occurs when a person is treated less favourably than a person because of a disability, and indirect discrimination occurs when a condition, requirement or practice disadvantages a person or a group of people because of a disability and that condition, requirement or practice is unreasonable in the circumstances. The Act also prohibits a

person, by a public act, from inciting hatred towards, serious contempt for or severe ridicule of a person or a group of persons on the ground of disability.

Discrimination is unlawful if it occurs in an area of activity set out in s22 of the Act. Relevantly, the area of the provision of facilities, goods and services is covered. This includes services provided by government organisations, non-government organisations, health care providers and other service providers.

The Act contains exceptions that, if proven, make discrimination lawful in certain circumstances. Two general exceptions in the Act cover programs and schemes for the benefit of disadvantaged groups:

25. Disadvantaged groups and special needs

A person may discriminate against another person in the area if it is for the purpose of carrying out a scheme for the benefit of a group which is disadvantaged or has a special need because of a prescribed attribute.

26. Equal opportunities

A person may discriminate against another person in any program, plan or arrangement designed to promote equal opportunity for a group of people who are disadvantaged or have a special need because of a prescribed attribute.

The OADC provides the following comments in relation to the recommendations:

Recommendation 1:

The OADC supports a voluntary scheme regarding the wearing or display of a symbol for dementia, on the proviso that the bracelet is discreet. A voluntary scheme to benefit people disadvantaged because they have dementia and to provide assistance to this group in the community is unlikely to be unlawful discrimination under the Act.

Compelling a person without his or her consent to wear or display a symbol for dementia may, however, be discrimination under the Act, as it could amount to less favourable treatment of a person because of his or her disability.

The OADC notes the concerns outlined in the Executive Summary regarding labelling or stigmatisation and recognises the tension between providing support for those that require assistance, for example, in situations of risk, and, on the other hand, the potential for labelling or stigmatisation. Accordingly, the bracelet should be discreet and inscribed with the symbol.

It should be noted that any stigmatisation or less favourable treatment of a person by a service provider because they are wearing a bracelet would be prohibited under the Act.

The OADC endorses the Office of the Privacy Commissioner's comments in the letter dated 11 January 2008 regarding an individual's capacity to consent and the

importance of consulting with a person's guardian, carers or other responsible persons if there is difficulty in obtaining consent because of dementia.

Recommendation 2:

The OADC recognises that training, education and awareness is essential for all service providers, but that priority should be given to essential services, such as health care providers and government agencies such as Centrelink. Other essential services include public transport, including buses, trains, taxis and airlines, and other sectors people are likely to come into contact with on a daily basis, such as food outlets.

Recommendation 3:

The OADC has concerns in relation to the scope of "cognitive impairment." This term is capable of covering a range of conditions, including temporary disabilities, mental illness and minor impairment. Potentially, this term could be defined very broadly and may be problematic.

Recommendations 4, 5 and 6:

The OADC strongly supports the education and training of service providers and stakeholders, a quality assurance process and accompanying policies and procedures. The OADC believes it is critical to incorporate education and training about discrimination on the basis of disability and that principles of non-discrimination are enshrined in the accompanying policies, to avoid the potential for stigmatisation and labelling of persons with dementia.

Recommendation 7:

The OADC supports the adaptation of the MedicAlert ® bracelet if, as stated in the Executive Summary, it is seen as a device with acceptance from the community, is discreet and would not "label" the person.

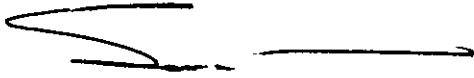
Recommendation 9:

The OADC strongly supports an information and public awareness campaign accompanying the introduction of a dementia symbol. It is important that information is available to a person with dementia, as well as carers, guardians and other responsible people, to enable an informed choice to be made. It is also important to promote attitudes, acts and practices against discrimination towards persons with dementia in the general community.

If you have any queries, please contact Ms Catherine Edwards, Complaints Manager.

I trust this is of assistance.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Sarah Bolt', with a long horizontal stroke extending to the right.

Sarah Bolt
Anti-Discrimination Commissioner