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Annual Report 2001 - 2002

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From the President

This last year has been a difficult one for the Australian community, in which issues of racism, commitment to multiculturalism, refugees or asylum seekers, the linking of ethnicity and crime, and Australia's place in the international community of nations which respect human rights have all been subject to intense public debate.

Severe damage is done to both individuals and to our community when legitimate debates about public policy descend or are pushed into the gutters of racial discrimination, hatred, abuse and vilification. Throughout this year the Board has received numerous complaints, especially from members of the Islamic and Arabic communities, about the level of hostility, hatred, and verbal and physical abuse which have been directed towards them.

They come to this Board to seek help and redress, but due to the policies of the State Government, we can do little to assist them. In 1991, the New South Wales Law Reform Commission (LRC) was asked to undertake a comprehensive review of the Anti-Discrimination Act 1977, in its time a pioneering piece of legislation, but now seriously out of date. The LRC presented its report to Government in November 1999, but to date there has been no government response or action.

Among the recommendations of the LRC was to include 'religion' as a ground of prohibited discrimination, as the existing provision referring to 'ethno-religious' groups - a term which still lacks a satisfactory definition - is simply inadequate. Every other Australian State and Territory covers religion in their anti-discrimination statutes, other than South Australia where this is currently being discussed.

The LRC also recommended that the President of the Board should be able to initiate complaints 'where the matter involves an issue of systemic discrimination and/or is in the public interest', again in common with most other jurisdictions. This would allow the President to be proactive in the defence of persecuted minority groups or disempowered individuals, who because of their lack of skills or resources are unable to act for themselves. This would be of enormous benefit to the most disadvantaged in our community, for whom the law generally and the *Anti-Discrimination Act* in particular are less than effective tools.

The Board will await with interest the eventual determination of these matters by the State Government, and through that determination the expression of its commitment to human rights protection in this State.

From this Annual Report it will be seen that the Board has taken every opportunity to be proactive where it can. Our *Community Harmony* program, to operate under the title *Advance Australia Fairly*, has been developed during 2002 and will be launched later in the year. I would like to particularly thank the Director General of the Attorney General's Department, Laurie Gianfield AM, for the financing of this initiative and his personal support.

The publication of our report on hepatitis C related discrimination, *C-change*, was a landmark for the Board. We were able to resume the processes of public enquiries after an hiatus of some years, and I thank the members of the Board and the Executive Officer of the Enquiry, Julia Cabassi, for their outstanding efforts. The findings and recommendations of the report are already bringing about much needed, long overdue and positive outcomes in various aspects of public policy, treatment and care related to people who have hepatitis C, Australia's most significant and widespread infectious disease.

I was particularly pleased that the final report of the Council on the Cost and Quality of Government was entirely positive. It found the Board to be efficient, well managed and achieving better outcomes in relation to complaint handling than the benchmarks established from other jurisdictions. The Council made several recommendations to enhance the resources and capacity of the Board, but the Treasury has declined to provide any of the extra funding recommended. Progress will now only be made as a result of the goodwill and commitment of our own Department.

Despite the severe resource restraints under which the Board has operated, I am particularly pleased to be able to congratulate all members of staff for the extraordinarily high level of output which they have achieved, and continue to achieve. The Complaints Branch has once again delivered on our targets, and although the processing of some cases takes longer than any of us would like, I believe the branch's achievements, outlined in this report, are worthy of special attention and praise.

In the Education Services and Legal and Policy Branches we have continued to meet all our targets, in terms of the education provided to clients and the community, revenues generated for the Board, quality responses to government and ministerial requests and submissions on legal and policy developments. Our expanding role in the Industrial Relations Commission continues to allow us to sensitise the industrial parties to their responsibilities to eliminate discrimination and harassment in the workplace.

The Corporate Services Branch has managed our financial and human resource issues with great skill and efficiency. I would also like to thank Board staff who have particularly assisted me as President for the tremendous support they have provided.

I would like to express my continuing gratitude to the Director General and his senior departmental officers for their support, and to the Attorney General (Hon Bob Debus MP) for his personal commitment to human rights promotion in New South Wales.

Although I have been saying it for some years, I now believe that in the year ahead we will see some significant legislative changes and hopefully some enhancement of our resources. Nevertheless, the real challenge for the Board lies in its ability to continue to play a meaningful role in the fight against prejudice and discrimination - in particular within the context of sensitive issues of race, religion and ethnicity in the years ahead. Without success on this front, all else is meaningless.

Chris Puplick
President



28 September 2002

The Hon. R. Debus, MP
Attorney General
Level 25
59-61 Goulburn Street
SYDNEY NSW 2000

Dear Minister,
In accordance with section 122 of the *Anti-Discrimination Act 1977*, the Anti-Discrimination Board of NSW presents its Annual Report covering the period 1 July 2001 to 30 June 2002.

Yours sincerely,

Chris Puplick AM
President

Suzanne Jamieson
Member

Phillipa McDermott
Member

Shaughn Morgan
Member

Hugh Murray OAM
Member



Highlights of 2001/2002

Enquiry into Hepatitis C Related Discrimination

Work continued in 2001/2002 to progress the implementation of recommendations from the Anti-Discrimination Board's Enquiry into Hepatitis C Related Discrimination, which began in February 2001. The report of the enquiry, entitled C-change, was launched on 16 November 2001.

Since then the Board has been disseminating the findings and recommendations, developing a comprehensive implementation plan and giving presentations at several significant conferences in Australia and overseas. Initial monitoring reveals the report is already having a significant impact on government policy, community advocacy and thinking in health care. For more information refer to page 14.



Advance Australia Fairly project

The Board has embarked on a major project to promote greater understanding in the community about the role played in the life of the State by people from different ethnic, cultural and religious backgrounds. The program will be launched in the latter part of 2002 and will include a series of cards, posters and billboard advertisements, a seminar program focussing on issues of racism and the media, and a detailed study of how racism and racial issues have been reported in NSW media over the last twelve months. For more information refer to page 16.

Skool's out

The Board partnered with the Crime Prevention Division of the Attorney General's Department for the third time to contribute to the 2002 Sydney Gay and Lesbian Mardi Gras. The theme for this year was 'Skool's out', with the goal of encouraging effective student, teacher, school and parent responses to homophobic harassment and violence in schools. The program included a stall at Fair Day, an entry in the parade and a forum, which won the Mardi Gras Outstanding Community Event award for the second year running. For more information refer to page 50.

Rural media blitz

The Anti-Discrimination Board maintains good working relationships with journalists throughout New South Wales, and in 2001/2002 has been very successful in making news issues available to rural and regional news media. Effective targeting of rural media entails a good understanding of the issues affecting a particular town, as well as establishing working relationships with local journalists.

The Board's media releases are frequently distributed statewide, and releases for rural districts are often written specifically to make them more relevant to regions. When big issues break, the Board strives to ensure that interviews are allocated equally to city and regional media outlets. For more information refer to page 55.



Flexible Service Delivery

The Anti-Discrimination Board will become much more accessible to people with disabilities as a result of the Board participating in the Attorney General's Department's Flexible Service Delivery (FSD) Program. The Board's FSD team held a consultation with people with disabilities in June 2002 and has identified five key areas for improvement which will be tackled over the next year.

They include physical access to the Board's offices, producing information in alternative formats for those unable to read standard print, improving access to the Board's enquiry and complaint handling processes, and raising awareness about the Board's services in the disabled community. For more information refer to page 19.

Online database access speeds research

The Board's library has made a major shift to accessing legal databases online rather than via CD-ROM, which means staff and Board members can access much more up-to-date information from a variety of locations instead of only from the Board's Sydney office. To accompany this change and ensure all staff can use the systems effectively, the Librarian ran a number of training sessions in online legal research skills, as well as the usual individual library skills training for all new staff, and continuing support throughout the year. For more information refer to page 70.



Increase in complaints finalised

The Board had an excellent result in finalising 16% more complaints in 2001/2002 compared with 2000/2001. Most of this increase is reflected in matters that were settled either with or without a formal conciliation conference. There was a drop in the number of complaints that were not proceeded with, and an increase in the number of complaints that were settled by the Board. For more information about complaints refer to Chapter 2.

Chapter One: What the board does

We aim to prevent discrimination and harassment throughout NSW.

The Anti-Discrimination Board was set up under the NSW *Anti-Discrimination Act 1977* to administer that Act. It is our role to promote anti-discrimination and equal opportunity principles and policies throughout NSW. We are part of the NSW Attorney General's Department.

Functions of the Board

We have three major functions:

- We handle complaints of discrimination. We provide an enquiry service for people who want to know about their rights or responsibilities under anti-discrimination laws. We also accept complaints of discrimination, investigate complaints and conciliate complaints when appropriate.
- We try to prevent discrimination from occurring in the first place. We inform the people of NSW about their rights and responsibilities under anti-discrimination laws, and explain how they can prevent and deal with discrimination. We do this through education programs, seminars, talks, the media, participation in community functions and the production and distribution of written information.
- Finally, when we think legal or policy changes are needed to ensure that particular types of discrimination are being adequately addressed, we make recommendations to Government about what we think needs to be done and by whom.

The *Anti-Discrimination Act* provides a more detailed list of our functions:

- to investigate and conciliate complaints of discrimination;
- to research and formulate policy on discrimination and human rights issues;
- to undertake community education and community relations activities to try to ensure that everyone acts in accordance with the anti-discrimination laws;
- to consult with government, business, industry groups, community groups and organisations to develop ways of improving services and conditions affecting minority and other groups subject to discrimination and unequal treatment;
- to review the laws of NSW to see whether they have a discriminatory effect;
- to hold public inquiries;
- to report on any matter that the Minister refers to the Board;
- to investigate and determine a reference from the Director of Equal Opportunity in Public Employment relating to equal opportunity management plans; and
- to make recommendations to the Minister about applications for exemption from the *Anti-Discrimination Act*.



NSW anti-discrimination law

Under the *Anti-Discrimination Act 1977* (NSW), certain types of discrimination (or unfair treatment), harassment and vilification are against the law. In 2001/2002, these types (or grounds) were:

- sex (including pregnancy and sexual harassment);
- race;
- marital status;
- homosexuality;
- disability (including HIV/AIDS, hepatitis, other infectious diseases);
- age;
- transgender; and
- carers' responsibilities in employment.

It is also against the law to discriminate against or harass a person because of the sex, race, marital status, disability, homosexuality, age or transgender of any of their relatives, friends or associates.

These types of discrimination and harassment are against the law if they happen in one of the following areas or circumstances:

- employment;
- government education (however, sexual harassment and race discrimination are covered in private education);
- goods or services;
- accommodation; and
- registered clubs.



Discrimination can be direct or indirect

Direct discrimination means treating someone unfairly or unequally simply because they belong to a particular group or category of people - for example, refusing to hire a woman because she may become pregnant.

Indirect discrimination means treating someone according to a requirement (or rule) that is the same for everyone, but has an

effect or result that is unequal and 'unreasonable in all the circumstances'.

For example, an employer may have a requirement that a particular job requires a person who is over 180 cm tall. If this is not really necessary, or the job could easily be adapted to suit people who are not that tall, then the employer may be discriminating indirectly against women and people from some ethnic groups, who are less likely to be that height than men or those from other ethnic groups.

Indirect discrimination is endemic in many parts of society and is much harder to spot than direct discrimination. Many seemingly fair rules, requirements and procedures are indirectly discriminatory - for example, inflexible working conditions may discriminate against people with carers' responsibilities and specific health or education requirements could discriminate against Indigenous people.

Indirect discrimination can be insidious. The Board is continually monitoring the types of complaints and enquiries it receives to assess people who are affected by indirect discrimination, even if they have not realised this themselves.

Vilification

Some types of vilification are also unlawful:

- racial;
- homosexual;
- HIV/AIDS; and
- transgender.

Vilification is any public act that incites others to hate, have serious contempt for, or severely ridicule a person or group of people because:

- they are from a particular racial group; or
- they are, or are thought to be lesbian or homosexual, living with HIV/AIDS, or transgender.

Vilification laws allow the Board to deal with anti-racist, anti-homosexual/lesbian, anti-HIV/AIDS or anti-transgender behaviour that happens both within and outside the usual areas of employment, goods and services, and so on. It allows us to look at problems in the media or in public places (for example, graffiti or public abuse).

Looking at bullying

Bullying generally rears its ugly head in the workplace or in schools. In the workplace it can be the domain of the older or stronger person, and can also be the weapon of choice for managers or groups of individuals targeting one worker.

Responses from people who have been bullied are consistent: their self-confidence is undermined, they have little faith in their ability to do their work competently, and they are prone to depression.

Bullying often goes unrecognised in the workplace because of its very nature. Bullies tell their subjects to be tougher, and some managers believe their role is to be unsupportive, stern or outright rude to employees.

Bullying is a form of harassment, and in some cases may be covered by the Anti-Discrimination Act. Like all forms of discrimination and vilification it is steeped in ignorance. Its eradication requires that bullies not only admit that the behaviour is unacceptable - but that there are far better ways to effectively communicate with employees.

Ethnic Affairs Priorities Statement Program

The Board has advanced this program by:

- responding to 1,751 enquiries about race discrimination and racial vilification;
- receiving 317 complaints of race discrimination and racial vilification;
- collecting information about the ethnic background of complainants on a voluntary basis (except in complaints of race discrimination or racial vilification, where the person lodging the complaint must state their race);
- including information about race discrimination and vilification in education programs that the Board provides to employees and the community; and
- producing and disseminating discrimination rights resources for people who do not speak any or much English.



Structure of the Board

The President and the Board

The President, Chris Puplick AM, is the salaried chief executive officer of the Anti-Discrimination Board. The members of the Board are the President as Chair, and four part-time members appointed by the Governor of NSW. The members during 2001/2002 were Father Hugh Murray OAM, Dr Suzanne Jamieson, Ms Phillipa McDermott and Mr Shaughn Morgan.

Staff of the Board

The President heads an organisation with 52 salaried positions employed in Sydney, Wollongong and Newcastle. During 2001/2002 the Board received additional initiative funding from the Attorney General's Department to employ temporary staff to implement the carers' responsibilities amendment to the NSW *Anti-Discrimination Act*, and to carry out the hepatitis C enquiry. Additional funds were also received to employ staff for the Advance Australia Fairly project, along with some funds to employ staff to help reduce the backlog of complaints lodged with the Board.

Student placements

In 2001/2002, the Board benefited from the work of five students on placement, including two law students from Sydney University, one social work student from the University of NSW, one law student from Columbia University (USA) on a human rights internship, and one legal intern from Germany. The students made important contributions to the legal research, policy and complaints work of the Board.

Complaints Resolution Branch

This Branch is responsible for the investigation and conciliation of discrimination complaints received by the Board. Conciliation and Assistant Conciliation Officers are also involved in promoting compliance with anti-discrimination laws and

policy work.
The Manager is Jill Moir.

Education Services Branch

The Education Services Branch oversees the Board's provision of community education and information services, and is responsible for coordinating the handling of initial enquiry phone calls for information or advice about discrimination. The Manager is John Hill.

Legal and Policy Branch

The Legal and Policy Branch provides policy and legal advice to the Attorney General, the President and Board, Board staff, Ministers and Members of Parliament, officers of other NSW Government Departments, and members of the public. It also coordinates the Board's work on legal and policy reform in relation to human rights issues generally. The Manager is Maggie Smyth.

Corporate Services Branch

The Corporate Services Branch provides the support services, especially financial control and information technology, which contribute to achieving the primary aims and goals of the Board. The Manager is Darryl Brown.

Regional offices

As well as the central office in Sydney, the Board has regional offices in Newcastle and Wollongong, which manage complaints and provide education services for those areas. The Newcastle Manager is Kay Jackson, and the Wollongong Manager is Gerardo De Liseo.



Major projects

Enquiry into Hepatitis C Related Discrimination

Why conduct an enquiry into hepatitis C related discrimination?

Hepatitis C is a chronic, blood-borne viral infection which affects over 210,000 Australians, with around 16,000 new infections each year. With more than half of these occurring in NSW, hepatitis C is an important public health issue for the State.

There has long been a sense that hepatitis C related discrimination is a very real phenomenon and a common experience. However, there had been very few studies which have looked at the extent of the problem, let alone documenting, attempting to understand and proposing solutions to prevent and eliminate hepatitis C related discrimination.

About the enquiry

In 2001 the Board undertook a public enquiry into hepatitis C related discrimination. The enquiry investigated the extent and nature of discrimination against people who have, or are thought to have, hepatitis C. The report of the enquiry, entitled C-change, was released in November 2001.

The enquiry was inundated with stories about people's experiences. We received a total of 235 submissions - 110 written and 125 oral submissions made during the course of 13 hearings, with many outlining multiple instances of discrimination. These submissions form the backbone of the enquiry report.

Findings of the enquiry

The Enquiry found that hepatitis C is a highly stigmatised condition and that discrimination against people with hepatitis C is rife. Such discrimination is often driven by irrational fears about hepatitis C infection due to an inadequate understanding of how hepatitis C is transmitted, and its perceived link with illicit drug use.

Hepatitis C related discrimination takes many forms and occurs in many areas of public life. The enquiry found that discrimination is widespread in health care settings, ranging from outright refusal of services to more subtle forms such as making the person feel they are less entitled to quality health care. The resulting alienation from the health care system impacts on the health outcomes of people living with hepatitis C and also on prevention efforts.

Second only to discrimination in health care settings was discrimination in employment. The enquiry heard cases of people with hepatitis C being dismissed from their employment when their status became known, or when an employer made assumptions about a person's status or drug use. In other cases people were forced out of their jobs because of workplace harassment.

Other arenas in which hepatitis C related discrimination is most significant include the prison system, where prisoners do not have access to sterile needles and syringes and safe tattooing services that are available to the rest of the community, and insurance, where applications of people with Hepatitis C are often refused without regard to individual prognoses.



Recommendations

C-change makes wide ranging recommendations to tackle the vast array of concerns presented to this enquiry. They cover a range of administrative, policy and program responses and legislative reform, including:

- improvements in workplace and health care policies and practices;
- reform of public health and privacy legislation;
- changes to anti-discrimination legislation to enable the Board to more effectively address systemic discrimination, without relying solely upon individual complaint mechanisms; and
- a program to enhance the capacity of community based organisations to assist individuals to access anti-discrimination and other complaint mechanisms.

Achieving a C-change

The nature and extent of hepatitis C discrimination in Australia is now clear, and the task ahead is to ensure effective implementation of the report's recommendations. The Board has prepared a comprehensive implementation plan to respond to recommendations for which we are directly responsible, and monitor those relating to other Government departments and agencies.

The Board has also been active in disseminating the findings of the enquiry. Board Legal Officer Julia Cabassi, who was the principal author of C-change, has given presentations at several conferences both in Australia and overseas, including the 6th International Hepatitis C Conference in Portugal and the 3rd Australasian Hepatitis C Conference in Melbourne.

This has provided an important opportunity to increase the debate about the role human rights play in responding to public health threats such as hepatitis C, and to contact key people who can advance this approach.

Case study - Hepatitis C related discrimination

My supervisor called a meeting with me and said 'it has come to our attention that you are on methadone' as I entered the meeting room. My heart sank, my worst nightmare had just come true in those 11 words...

The next few weeks were the worst of my life. Everybody in the office was whispering about me. My nine years exemplary work history, all my hard work, my reputation, everything went out the window. I was no longer a highly respected professional and authority in my field, I was a drug addict - a dirty diseased junkie within their ranks.

An environment of hep C hysteria started to invade our office. There were comments like 'Oh my god, I think I used the staff toilet after her', and 'I drank from the same cup as her - now my whole family will have to be tested for hep C and HIV'...

Finally...I gave two weeks notice and resigned...I went for interviews for a new job but this raised more problems. I was shortlisted for a few jobs, but when they got to the stage of ringing my last employer, my prospective employers were told that I was on methadone and have HCV.

Advance Australia Fairly project

In 2002 the Board was successful in gaining funding from the Attorney General's Department for a major three-part project to promote greater community understanding about the role played by people from a variety of ethnic, cultural and religious backgrounds in the life of NSW. The project was initially developed under the banner of Community Harmony, with the title later refined to its current form.

The project emphasises the contribution of such people to the life of the entire community, not just to activities within their own particular group or community. At the same time it gives everyone the opportunity to confront and discuss the issues of racism and discrimination that have been encountered, and provides a forum to begin discussing possible solutions for such problems.

The project will help develop understanding about how issues of race and racism are reported in the mainstream media, what steps might be taken to ensure that this reporting is balanced, and how positive reporting can contribute to the reduction or elimination of racial stereotyping and racism itself.

Publications

The project includes a series of cards, posters and billboard advertisements. The cards will be based on the Avant-Cards which are widely distributed in theatres, cinemas, bookshops etc.

Each card will feature individuals from an ethnic group or community who are well known to the public and have made major contributions to the life of New South Wales. They will be distributed widely and will also be offered to other NSW State agencies, who will be able to add their own logos or messages to them.

Seminars

Two seminars focussing on issues of racism and the media will be run in conjunction with the project. The first will focus on the stories of younger and older Australians about their experiences of racism, especially with regard to media reporting.

The second will be workshop based, and will bring together media professionals and members of the community to share their knowledge and experience, assist people in developing media skills and develop understanding of the issues involved for all stakeholders.



Reporting racism

The Board will undertake a detailed study of how racism and racial issues have been reported in the NSW media (print, radio and television). The findings will be published in a report which will analyse the way race issues are reported in the media, and the impact on particular communities in NSW. It will also make suggestions regarding representation and reporting of race issues in the media.

Work on this project commenced in the first half of 2002, and will 'roll out' during the latter part of 2002 and early 2003.

Consultations

Gay and lesbian consultation

The Board has convened consultations with gay and lesbian communities for well over 10 years. The consultation met three times during 2001/2002.

This year participants discussed the following issues:

- proposed amendments to the NSW Anti-Discrimination Act following the Law Reform Commission review of the Act;
- discriminatory aspects of census data collection;
- the Human Rights and Equal Opportunity Commission's intervention in the McBain case before the High Court (which involves access to IVF procedures);
- the ACTU test case on parental leave;
- the Catholic Commission for Employment Relations' application to the Industrial Relations Commission to vary the personal/carers leave entitlements in certain State Awards;
- the different age of consent for gay men in NSW;
- the formation of the Human Rights Alliance, an umbrella group interested in human rights issues at State, federal and international levels;
- new anti-discrimination legislation in Western Australia and relationships legislation in Victoria;
- the Board's involvement in the Sydney Gay and Lesbian Mardi Gras and issues around homophobia in school environments; and
- the amendment of 23 State Acts to adopt the definitions in the *Property (Relationships) Act 1984* and provide equal rights for de factos and same sex partners.

Participants included 2010, Access Plus, AIDS Council of NSW, AIDS Trust, Bi Pride Australia Coalition of Activist Lesbians, Community Support Network, Country Network, Gay and Lesbian Counselling Service, Policy Officer (Gay and Lesbian Liaison) Attorney-General's Department, Gay and Lesbian Rights Lobby, Gender Centre, Inner City Legal Centre, Lesbian and Gay Anti-Violence Project, Lesbian and Gay Solidarity, Luncheon Club, Order of Perpetual Indulgence, People Living with HIV and AIDS, People with Disabilities, Pride Centre, Police Consultant to Gay and Lesbian Communities, South Sydney Council, Sydney Bisexual Network, 10/40 Matrix, Vincare, Workers Out, Uniting Network, several individual participants,

representatives from various government departments and unions.



Looking at homophobia in schools

It is widely acknowledged that school children can be cruel to each other, and this cruelty is at its most vehement when it comes to the treatment of gay and lesbian students. Unfortunately, it is not only students who discriminate against their gay and lesbian peers, but teachers and education administrators as well.

Reporting discrimination and vilification is difficult for any person; it is much harder for a student who may still be coming to accept their own sexuality, or who has yet to be able to identify their own sexuality.

The Board strives to inform students through its education programs of their rights and how they can seek redress for any discrimination they have been subjected to. The age of consent also discriminates against gay students, as the heterosexual age of consent is 16, and the homosexual age of consent is 18. Gay students are therefore more vulnerable because of the illegality of acting on their sexual preference.

Homosexual discrimination in private education facilities is not covered by the current *Anti-Discrimination Act*, so gay students in private schools have little formal recourse unless an act against them contravenes a criminal law.

Transgender consultation

The Board held three consultations with the transgender community during 2001/2002.

This year participants discussed the following issues:

- the distinction in the NSW *Anti-Discrimination Act* between 'recognised' and 'non-recognised' transgender people, which the Board recommended for removal in its submission to the Law Reform Commission;
- the Board's submission to the *Births, Deaths and Marriages Registration Act 1995 (NSW)*. Currently people can only alter their birth record if they were born in NSW, are over the age of 18, are not married and have had gender reassignment surgery. The Board submitted that people should be able to alter their record if they identify with a gender other than their birth gender, and have lived as that gender for 12 months or more;
- the need for a consistent national legal framework for the recognition of transgender people, as differences between States present difficulties for transgender people who move from one state to another;
- discussion around transgender participation in the Gay Games due to be held in Sydney in November 2002;
- an exemption from the NSW *Anti-Discrimination Act* granted to Wesley Mission by the Attorney General, allowing them to exclude male to female non-recognised transgender persons from the female section of their accommodation facilities, and female to male non-recognised transgender persons from the male section;
- a recent case in the Victorian Civil and Administrative Tribunal, *Menzies v Waycott & anor [2001] VCAT 415* where the complainant's 'transexualism' was regarded as an 'impairment', and she was found to have been discriminated against in her employment due to this impairment. At the time transgender was not a separate ground of discrimination in Victoria; and
- a recent case in the Family Court of Australia, *Kevin [2001] FamCA 1074*, where a post-operative female to male transsexual was regarded as a 'man' for the purposes of the *Marriage Act 1961*.

Participants included the Gender Centre, Sex Worker's Outreach Project, Sex and Gender Education Foundation, Births, Deaths & Marriages, Attorney General's Department, AIDS Council of NSW, Inner City Legal Centre and individuals from the transgender community.

Looking at transgender discrimination

The NSW *Anti-Discrimination Act* prohibits discrimination against and harassment of transgender people, that is, people who live or seek to live as a member of the opposite sex. One of the main issues for the transgender community is being treated as a member of the sex with which the person identifies, whether or not they have had sexual reassignment surgery.

The law in NSW creates two categories of transgender people - recognised and non-recognised. Legal recognition of a person's change of sex is through an amended birth certificate or an interstate recognition certificate.

However, some people who have had sexual reassignment surgery are unable to have their birth certificate amended, because the registry that issued the original certificate does not issue amended birth certificates. Also, some transgender people may not want to have gender reassignment surgery because, for example, it has risks attached or it is prohibitively expensive.

Non-recognised transgender people represent a significant proportion of the group requiring protection by anti-discrimination legislation in NSW, but they may not be fully protected by the current legislation. It is the Board's view that the distinction between non-recognised and recognised transgender persons should be removed. This view is supported by the Law Reform Commission in its review of the *Anti-Discrimination Act*.

Intellectual disability consultation

The Board hosted an initial forum for advocacy and support organisations working with people with intellectual disabilities in August 2000, in order to discuss how the Board's services, and particularly our complaints service, could be better adapted to suit people with intellectual disabilities.

To implement some of the recommendations of the forum, the Board established a regular consultation with representatives from the intellectual disability community. The consultation met 3 times in 2001/2001.

Participants considered the following:

- the development of suitable material about the Board for people with intellectual disabilities, including an illustrated booklet looking at the concept of discrimination, the role of the Board and how to lodge a complaint;
- changes to the complaints process to assist people with an intellectual disability to make complaints;
- victimisation of people with an intellectual disability; and
- rights-based training.

Participants were also briefed on the following:

- the Flexible Service Delivery program - see below;
- further training for Board staff about disability and communication strategies;
- complaints and enquiries from people with intellectual disabilities about the carers' responsibilities amendment to the NSW Anti-Discrimination Act (ADA);
- the Law Reform Commission's review of the ADA, which recommended changes to the complaint handling process, the requirement for the Board to assist people with disabilities to lodge complaints and the definition of discrimination;
- the work of the Attorney General's Disability Council, including proposals for judicial guidelines and education for the judiciary about people with intellectual disabilities;
- the report of the Enquiry into Hepatitis C Related Discrimination; and
- the increase in the number of complaints.

Participants included the Intellectual Disability Rights Service, NSW Council of Intellectual Disability, People with Disabilities, NSW Disability Discrimination Legal Centre, Illawarra Disability Trust, Self Advocacy Sydney and Citizen Advocacy.



Flexible Service Delivery

The Flexible Service Delivery (FSD) project was set up by the Attorney General's Department to ensure that all department agencies provide accessible services for people with disabilities. The Anti-Discrimination Board/Privacy FSD team was set up in May 2002 and consists of four staff members. Its aim is to implement six strategies that will improve accessibility for people with disabilities by the end of 2002.

To gather information for the FSD project, the Board and Privacy NSW held a joint consultation with people with disabilities in June 2002. The objectives of the meeting were to identify the major issues for people with disabilities when accessing Board and Privacy NSW services, and to make suggestions for improvements to our services.

Addressing the meeting, Board President Chris Puplick emphasised three main areas that should be addressed in ensuring accessible services for people with disabilities: physical access, procedures and the attitudes of staff.

As a result of the meeting, five key issues were identified:

- improving the physical access to and safety of the Board's Sydney office;
- ensuring that information and publications are available in different formats (large print, electronic, website, braille, voice etc);
- improving access to the processes of answering enquiries and handling complaints;
- training staff in disability issues and awareness;
- raising awareness about the Board and Privacy NSW amongst community and disability services.

The FSD team is currently developing an action plan to address these issues. Implementation will continue during the rest of 2002 and early 2003.



Chapter Two: Handling Complaints

we aim to manage complaints as effectively & quickly as possible

We handle three types of complaints or enquiries about discrimination.

- The first are general enquiries about the law. These enquiries tend to be about what the law does and does not cover.
- The second are enquiries from members of the community who need more detailed responses about complex legal issues to do with anti-discrimination law.
- The third are formal complaints of discrimination. These complaints must be investigated and, where appropriate, conciliated or referred to the Administrative Decisions Tribunal.

This chapter describes the types of enquiries and complaints that we received during 2001/2002.



Initial enquiries

Individual members of the public, employers, service providers, managers, employees, advocates, community workers, public servants and others use our advisory service for a number of reasons:

- to find out if the unfair treatment they have experienced is covered by anti-discrimination law;
- to ask our advice about how to handle a discriminatory situation;
- to seek our assistance in developing policies, procedures or guidelines to prevent discrimination or harassment from occurring; and
- to request publications or other services from the Board.

Many complaints about discrimination are resolved at the initial enquiry stage, as the advisory officers inform callers about their legal rights and give them suggestions about how to resolve their situation. In many instances this prevents the need for a formal complaint, thus reducing the number of complaints the Board receives.

The Board provides 3 specialised services - one for general calls, one to advise employers and the other to advise service providers. During 2001/2002 we answered 15,072 enquiries, which is about 60 per day. The majority of enquiries (14,716 or 97%) were made by phone; the remainder were made by letter, telephone typewriter, email or visit to one of our offices. The average length of phone call remains at 8 minutes, but there was an increase in the number of calls taken which go over 15 minutes.

The number of enquiries decreased slightly (3%) from the previous financial year. This reflects the extent to which people are now using the Board's website to access basic information about people's rights under discrimination law, and the consequent

increase in the complexity of enquiry calls. The increasing numbers of employers and service providers contacting the Board for policy advice and assistance with discrimination matters have also impacted on the length of calls.

Where callers' problems are not covered by the NSW Anti-Discrimination Act, advisory officers suggest other ways that they can resolve their problems, either through self help or another agency.

As in the past, women (50% or 7,542 enquiries) continued to use our general enquiry service more than men (36% or 5,362 enquiries). The remainder of calls were made by individuals contacting us on behalf of another person or an organisation.

Employers, personnel officers, human resources managers, service providers and legal advisers all used our Employer and Service Providers Advisory Service, which provides specialised advice and assistance to employers and service providers on anti-discrimination law issues. The number of people using the Employers and Service Providers Advisory Service in 2001-2002 was 2,372. This in part reflects the success of our training program: when organisations we have trained need help, they turn to our advisory service.

The majority of callers (74% or 11,154 enquiries) wanted to discuss a situation where discrimination was occurring. As in 2000/2001, only 8% of people making enquiries (1,308 calls) were advised to lodge a formal complaint of discrimination. This low figure is a result of our policy of empowering and assisting callers to try to solve their problem more directly where appropriate, before making a formal complaint.

Similar to the previous year, the most common types of discrimination people enquired about in 2001/2002 were sex discrimination (2,675 enquiries), disability discrimination (2,235 enquiries) and race discrimination, including racial vilification (1,751 enquiries). Of the sex discrimination enquiries, 1,037 were about sex discrimination, 871 were about sexual harassment and the remainder were about pregnancy related discrimination.

Problems that people experience at work that are not covered under anti-discrimination law accounted for 6% of calls (or 914 enquiries). We generally refer these enquiries to trade unions or to the Department of Industrial Relations, or we give advice about how to resolve the problem within the workplace.

Nearly 5,000 calls related to other problems that are not covered by the law, such as people who were treated unfairly because they have a criminal record, or because of their religion, or because of a personal disagreement.

The majority of enquiries continued to be employment related (57% or 8,595 enquiries). The second largest area of discrimination callers enquired about was the provision of goods and services (14% or 2,049 callers).



Total number of enquiries by ground 2001/2002

Ground	Number	Percentage
Sex (includes sexual harassment and pregnancy)	2675	17
Disability	2235	14
Race	1586	10
Age	876	6
Carers' responsibilities (from 1.3.01)	871	5
Homosexuality	263	2
Marital status	180	1
Racial vilification	165	1
Transgender	64	<1
Victimisation	70	<1
HIV/AIDS	34	<1
Homosexual vilification	31	<1
HIV/AIDS vilification	13	<1
Transgender vilification	7	<1
All grounds	954	6
Not covered by ADA — other problems	4942	31
Not covered by ADA — work, not harassment	914	6
Total	15,880	100

NB: The total number of enquiries by ground is greater than the total number of enquiries received because many enquiries are about multiple grounds.



Total number of enquiries by area 2001/2002

Area	Number	Percentage
Employment	8595	57
Other	2541	17
Goods and services	2049	13
Accommodation	658	4
All areas	557	4
Education	430	3
Registered clubs	202	1
Vilification	164	1
Total	15196	100

NB: The total number of enquiries by area is greater than the total number of enquiries received because many enquiries are about multiple areas.

**Legal and policy enquiries**

The President receives many requests for legal and policy information regarding the application of the NSW Anti-Discrimination Act. The Legal and Policy branch continues to respond to requests from the Attorney General, Members of Parliament, government departments, employers, peak bodies and associations, consumer organisations and advocates, lawyers, researchers, community organisations and others. We are also asked to comment on policy statements, application forms, recruitment or service guidelines and other documents which relate to issues of discrimination and harassment.

**Formal complaints**

Lodging a formal complaint involves the person or people affected by the unlawful conduct completing one of our complaint forms or sending a letter to the President of the Board describing the type of discrimination, harassment, vilification or victimisation that has occurred, and why they think the conduct was unlawful.

If the person is unable to write a letter, for example because they have a disability, or because they are a child, they can get someone else to write it on their behalf or they can be assisted by an officer of the Board itself. That officer will not have carriage of the case. Letters of complaint can be lodged in any language or in Braille.

All complaints are handled confidentially, impartially and free of charge. Complaints are first investigated to see if what is alleged may amount to a breach of the Anti-Discrimination Act. If this appears to be the case, we then attempt to conciliate the complaint, that is, get all the parties to the complaint to come to a confidential agreement or settlement that will resolve the complaint.

Settlements may involve the complainant:

- receiving an apology;
- being reinstated, promoted or interviewed;
- receiving the goods or services required;
- being provided with accommodation;
- receiving monetary compensation; and/or
- receiving another form of compensation.

Many complaints are settled through conciliation. Only 11.8% of all finalised complaints in 2001/2002 were referred to the Equal Opportunity Division of the Administrative Decisions Tribunal (ADT) for a legal determination. For more information about ADT referrals refer to page 32.

In some instances the problems that have led to the complaint affect more than one person and may reflect poor organisational practices. In such cases, the parties may resolve the individual complaint on the basis that the respondent agrees to introduce policy changes or educational programs that will reduce the possibility that discrimination will continue or recur.

**Looking at self help and conciliation**

Contrary to popular perception, many complaints to the Board are resolved at the conciliation level, that is, when the complainant and respondent sit down to talk about the issue.

Many people are unaware of what actually constitutes harassment or discrimination, and are genuinely surprised to learn that things they have said, or the way in which they have said it, have caused grief and suffering to another person.

The role of the Board is that of an independent third party and not in any sense an advocate for either of the parties involved. The Board encourages complainants to first speak to the person with whom they have a grievance, when this is appropriate. Confronting a person who has acted inappropriately can, if nothing else, make them aware of the seriousness of their actions, and can actually contribute to a better relationship in the future.

When notifying respondents of a complaint, the Board encourages them to try to discuss the problem with the complainant before it is allocated at the Board for investigation. We are happy to offer whatever encouragement we can to assist the parties to resolve matters before they become the subject of a formal investigation.

**How many complaints were received?**

We received 1,625 complaints in 2001/2002 compared with 1,587 in 2000/2001, an increase of just over 2%. These 1,625 complaints were divided into the following:

- 173 (10.6%) were complaints that we could not investigate because they were outside our jurisdiction, compared with 207 complaints (13%) outside our jurisdiction in 2000/2001; and
- 1,452 (89.4%) were complaints within our jurisdiction, compared with 1,380 complaints (87%) in 2000/2001.

Possible reasons for the increase in the overall number of complaints, and more particularly the increase in numbers of complaints within our jurisdiction, are:

- the Board's extensive and well developed education programs, which are helping to increase awareness of people's right to complain;
- good publicity and an increasing profile for the jurisdiction as a whole, which has raised public awareness and awareness amongst the legal profession and other advocacy groups about the work of the Board;
- the interventions of the President in a number of matters before the Industrial Relations Commission, which are helping to increase awareness of workers' and employers' rights and responsibilities under anti-discrimination laws; and
- the addition of the new ground of carers' responsibilities to the Anti-Discrimination Act, and the resulting publicity about the Board and its role.

**What were the main grounds of complaint?**

Similarly to previous years, complaints of sex, disability and race discrimination accounted for nearly two-thirds of the 1,625 complaints received in 2001/2002.

Details are as follows:

- sex discrimination (which includes discrimination on the basis of pregnancy and sexual harassment) was again the ground with the highest number of complaints, with 392 complaints (24% of complaints received in 2001/2002). This was similar to the 390 complaints (25%) received in 2000/2001;
- disability discrimination (332 complaints) represented 20.4% of complaints received, slightly less than last year;
- race discrimination (262 complaints) increased slightly, representing 16.1% of complaints compared to 15% (236 complaints) in 2000/2001. However, this is still lower than 1999/2000 where race discrimination complaints made up 19% of all complaints;
- if we include racial vilification complaints as part of the total race discrimination complaints, the total rises to 317 complaints, or 19.5% of all complaints; and
- victimisation complaints have increased slightly over last year and were the fourth most common ground of complaint, comprising 9.1% of all complaints (148 complaints). This is troubling as it suggests that grievance handling processes are not operating to protect people who have made complaints.

**Complaints received by ground 2001/2002**

Ground	Number	Percentage
Sex	392	24
Disability	332	20
Race	262	16
Victimisation	148	9
Other	126	8
Age	88	5
Carers' responsibilities	67	4
Racial vilification	55	3
Unknown +	51	3
Homosexuality	48	3
Marital status	24	2
Transgender	11	1
Homosexual vilification	9	1
Compulsory retirement	4	0.2
Transgender vilification	2	0.1
Total	1625	100

+ No ground specified by complainant - usually out of jurisdiction

**Complaints received by area**

Area	Number	Percentage
Employment	984	61
Goods and services	349	21
Accommodation	61	4
Other	61	4
Education	55	3
Racial vilification	55	3
Clubs	42	3
Homosexual vilification	9	1
HIV/AIDS vilification	5	0.3
Qualifying bodies	2	0.1
Transgender vilification	2	0.1
Total	1625	100

**Complaints received by ground and area 2001/2002**

Ground	Employ	Goods & services	Accom	Education	Clubs	Qual Bodies	Racial vilif	Homosex vilif	HIV/AIDS vilification	Transg'r vilif	Other	Total
Race	101	113	20	8	14	0	0	0	0	0	6	262
Racial vilification	0	0	0	0	0	0	15	0	0	0	0	55
Sex	338	25	0	14	11	0	0	0	0	0	4	392
Marital status	9	7	6	0	0	0	0	0	0	0	2	24

Carers' responsibilities	66	0	0	0	0	0	0	0	0	0	1	67
Disability	183	100	17	17	9	1	0	0	0	0	5	332
Age	59	17	8	1	0	1	0	0	0	0	2	88
Compulsory retirement	4	0	0	0	0	0	0	0	0	0	0	4
Homosexuality	37	8	2	1	0	0	0	0	0	0	0	48
Homosexual vilification	0	0	0	0	0	0	0	9	0	0	0	9
Transgender	2	6	2	0	1	0	0	0	0	0	0	11
Transgender vilification	0	0	0	0	0	0	0	0	0	2	0	2
Victimisation	123	9	0	10	1	0	0	0	0	0	5	148
Other	43	46	4	1	5	0	0	0	0	0	23	122
Unknown	16	17	2	2	1	0	0	0	0	0	13	51
Total	984	349	61	55	42	2	55	9	5	2	61	1625



What type of carers' responsibilities discrimination complaints did we receive?

We received 67 complaints of carers' responsibilities discrimination during 2001/2002, making a total of 87 complaints since it commenced as a ground of unlawful discrimination. Of these, 59 complaints were about current responsibilities, three were about past responsibilities and four complaints were about future responsibilities. 78.8% of complainants were women.

Although a wide variety of relationships are covered by the legislation, a significant majority of complaints received by the Board involved a parent's responsibility to care for a child, and the majority of these related to women being refused part-time work when returning from maternity leave.

The remaining complaints about parental responsibilities were from men or women unable to negotiate flexible work arrangements to fit in with childcare arrangements, changes to shifts and parents needing to work part-time or take leave in order to care for a child with a disability. The remaining complaints involved people needing time off work to care for a relative with a disability such as their spouse, parent or grandparent.

It is anticipated that the numbers of complaints under this ground of the Act will increase significantly over the next one to two years as the provisions become more widely known.

Carers' responsibilities complaints represented proportionally the fifth most common ground. This reflects the fact that carers' responsibilities discrimination is only unlawful in the area of employment, whereas other grounds are unlawful in more areas.



What type of disability discrimination complaints did we receive?

We received 332 complaints of disability discrimination: 223 (67%) concerned physical disability, 37 (11.4%) were about a past or presumed disability, and 36 (10.8%) concerned current psychiatric disability. Only a small proportion of complaints about disability discrimination (5.7% or 19 complaints) were about intellectual disability. These were in the areas of employment (5 complaints), education (4 complaints), and provision of goods and services (9 complaints).

The Board has long been concerned that people with certain disabilities including intellectual disability are deterred or disadvantaged in complaining to and accessing the Board, and several steps are being taken to address this. For information about what we are doing to improve the accessibility of our services refer to page 19 - Flexible Service Delivery, page 18 - Intellectual disability consultation and page 52 - Initiative funding projects.

What were the main areas of complaint?

The largest number of complaints were employment related - 984 complaints or 60.6%. Goods and services complaints (349 or 21.5%) were again the second largest area of complaint. This is comparable with the previous year. The numbers for all complaint areas are shown in the chart on page 25.



What were the main problem areas within employment related discrimination complaints?

The breakdown of employment complaints was very similar to last year. As with last year, by far the majority of employment related complaints were about work environment and/or harassment (475 complaints or 48%). Of those, 205 complaints concerned sexual harassment, which is similar to last year. 187 complaints concerned dismissal (19% of all employment complaints), which again remained higher than in 1999/2000 (128 complaints or 16% of all employment complaints).

There were minimal shifts since last year in the breakdown of employment complaints between grounds:

- 34.3% of complainants (338) claimed sex discrimination in employment compared with 35 % (331 complaints) in 2000/2001;
- 18.6% of complaints (183) were about disability discrimination, slightly higher than 17% (157 complaints) in 2000/2001;
- 10.3% of complaints (101) concerned race discrimination compared to 12% (110 complaints) in 2000/2001; and
- 12.5% of complainants (123) claimed victimisation in employment compared to 13% (118 complaints) in 2000/2001 - this figure continues to be of concern.

Similar to last year, 54.3% of employment-related complaints (534) were about private enterprise and 18 % of complaints (178) were about treatment by State and federal Government employers. As with last year, there was a further rise in complaints against individual males, from 6% of complaints in 1999/2000, to 9% of complaints in 2000/2001, to 10.6% of complaints (104 complaints) in 2001/2002.

This increase reflects the number of sexual harassment complaints being made against individuals, where previously these were more commonly dealt with as complaints against the employer. Some Tribunal decisions in the last two years have suggested that the individual harasser should always be a respondent in these matters as well as the employer. Refer to the chart on page 27 for the breakdown of other employment categories.

Type of employment complaints 2001/2002

Type of complaint	No	%
Work environment & harassment	475	48
Dismissal	187	19
Recruitment/selection	123	13
Classification	71	7
Resignation	40	4
Retirement/redundancy	35	4
Promotion	22	2
Transfer	14	1
Demotion	11	1
Awards & enterprise agreements	6	1
Total	984	100

Where the unfair treatment occurred at work

	No	%
Private enterprise	534	54
Individual male *	104	11
State government	95	10
State statutory body	43	4
Hospital	42	4
Local government	36	4
Educational (public)	30	3
Non-profit association	26	3
Registered club	23	2
Other	17	2
Individual female *	12	1
Education (private)	7	1
Commonwealth dept	4	0.4
Media organisation	3	0.3
Govt bus enterprise	2	0.2
Not known	1	0.1
Trade union	1	0.1
Total	984	100

* In some cases a complaint may be made against both an individual and their employer. These are counted separately.

What were the grounds of goods & services complaints?

We received 349 complaints that related to goods and services delivery - 21.5 % of all complaints, which is slightly less than last year (24%). Race discrimination was the main ground of discrimination in goods and services complaints (113 complaints, which is 32.3% of all goods and services complaints), a shift from last year where disability complaints exceeded race complaints by 5%.

Race discrimination is generally the most frequent ground for complaints of discrimination in goods and service provision. Disability discrimination was the second most frequent ground this year with 100 complaints (28.7%), a figure that falls between the previous two years (33% in 2000/2001 and 22% in 1999/2000).

What type of vilification complaints did we receive?

The increase in racial vilification complaints apparent in last year's figures continued this year, though less dramatically. In 2001/2002 we received 55 complaints of racial vilification, compared with 28 complaints in 1999/2000 and 52 in 2000/2001. The main racial groups complaining of vilification were Indigenous Australians (9 complaints or 16%), Islamic Australians (8 complaints or 14.5%) and Lebanese Australians (7 complaints or 13%).

Indigenous Australians are overrepresented in the number of racial vilification complaints we received, as the total number of complaints from Indigenous Australians in all grounds and areas amounts to just 10.6%. There was a significant increase in the number of racial vilification complaints from Indigenous Australians, from just 4 complaints in 2000/2001 (8%). The complaints from the Islamic community were predominantly lodged by community organisations.

The decrease in homosexual vilification complaints also continued. We received 9 complaints of homosexual vilification this year, compared with 15 in 2000/2001 and 20 in 1999/2000. All but one of these were private disputes, as opposed to issues in the media. We received no complaints of serious homosexual vilification.

We received 2 complaints of transgender vilification, compared with 1 last year and no complaints in 1999/2000. We received 5 complaints of HIV/AIDS vilification, which is a significant increase over 2000/2001 when we received none.

'Serious vilification' is defined in the Anti-Discrimination Act to involve the threat of physical harm towards the complainant. The President considers such complaints and if he believes the vilification has involved such threats, he refers them to the Attorney General for possible prosecution. The Attorney General has delegated this function to the Director of Public Prosecutions. No serious vilification matters were referred in 2001/2002.

Homosexual vilification by area 2001/2002

	No	%
Private dispute	8	89
Public conduct	1	11
Total	9	100

Racial vilification by area 2001/2002

	No	%
Private dispute	15	27
Print media	13	24
Electronic media	8	15
Public conduct	7	13
Other public communication	7	13
Public work	5	9
Total	55	101

Transgender vilification by area 2001/2002

	No	%
Other public communication	2	100

Looking at the implications of Khan case for racial vilification of Muslims

A recent case before the Administrative Decisions Tribunal (ADT), *Khan v. Commissioner, Department of Corrective Services & Anor* [2002] NSWADT 131, has brought into question whether Muslims are covered on the basis of 'ethno-religious origin' under the race discrimination provisions of the ADA. If they are not covered this is of considerable concern, particularly in view of the current increase in racial vilification of Islamic/Middle Eastern people.

The Law Reform Commission Report into the ADA recommended that the ground of religion be added to the Act, and the Board supports this recommendation. If the ADT decision is that Muslims are not covered by the ADA, then the need for this amendment is even more significant.

Did men or women lodge more complaints?

In a return to the general trend of complaints to the Board, women lodged more complaints than men in 2001/2002 (848 complaints or 52% - as opposed to 736 complaints or 45.3% last year). The remaining complaints were lodged by people whose gender was not stated or by organisations. Although women lodged more complaints overall, men lodged more complaints in all grounds except for sex discrimination, marital status discrimination, carers' responsibilities discrimination and transgender discrimination.

There were a total of 392 sex discrimination complaints, of which women lodged 337 or 85% and men lodged 51 or 13%. Complaints of pregnancy discrimination have increased by a dramatic 95% over the last three years, from 43 complaints in 1999/2000 to 60 complaints in 2000/2001 to 74 complaints in 2001/2002. All complaints of pregnancy discrimination related to employment.

Pregnancy discrimination complaints represented 18.9% of sex discrimination complaints, an increase on last year's figure of 15%. This increase is particularly troubling because the Anti-Discrimination Act now includes carers responsibilities discrimination as a separate ground, and some complaints previously dealt with as pregnancy discrimination should now be covered by the new provisions (such as where the complaint involves a return from maternity leave).

This means that the range of complaints coded as pregnancy discrimination is likely to have decreased, making the actual increase in numbers even more dramatic. It is difficult to assess what the reason for this increase could be, but there has been considerable publicity over the last twelve months from the Human Rights and Equal Opportunity Commission Pregnancy Inquiry, and more recently from the public debate about paid maternity leave, which may have led to an increased awareness about maternity rights in the workplace.

The number of sexual harassment complaints in 2001/2002 was 222 - these mainly related to employment (92% or 205 complaints). Women lodged the large majority of sexual harassment complaints (190 complaints, or 85.6%).

As in previous years, in 2001/2002:

- men continued to lodge the greater proportion of complaints received about homosexual discrimination - 73 % or 35 complaints - and all of the homosexual vilification complaints received were lodged by men (9 complaints);
- men predominantly lodged complaints of race discrimination (59% or 154 complaints) and of racial vilification (58% or 32 complaints). Organisations lodged more complaints of racial vilification than women this year - 13 complaints or 23.6%, as opposed to 10 complaints or 18% from women;
- men also lodged significantly more disability discrimination complaints than women (207 complaints or 62% as opposed to 118 complaints or 35%). This difference was consistent across all types of disabilities;
- overall, women lodged more complaints of marital status discrimination than men (16 complaints or 66% as opposed to 7 complaints or 29%), however men lodged marginally more complaints under this ground in relation to employment than women did (5 complaints from men as opposed to 4 from women);
- women lodged all but one complaint of transgender discrimination (10 complaints out of a total of 11); and
- women lodged more complaints of victimisation - 86 complaints or 58%.

As with last year, there has been an increase in the difference between the number of employment complaints lodged by women and men. In 2001/2002 women lodged 571 complaints of employment-related discrimination (61%), and men lodged 362 complaints (39%), whereas in 1999/2000 women lodged 53% of complaints and men lodged 44%.

In 2001/2002, women lodged 612 employment complaints or 62%, and men lodged 367 employment complaints or 37%, an overall difference of 25%. This difference is particularly notable because complaints from men exceed complaints from women in most grounds, and because women made only 6.5% more complaints than men over all the grounds of the Anti-Discrimination Act (848 as opposed to 736).

The difference in numbers of complaints lodged by men and women has shifted significantly in the goods and services area - in 2001/2002, men lodged 205 complaints (58%) and women 131 complaints (37.5%), compared to 51% vs 47% in 2000/2001 and 53% vs 40% in 1999/2000. This means that goods and service complaints from women have dropped about 10% as a percentage of the total number of goods and services complaints in three years.

Women lodged more complaints of discrimination in accommodation than men did (58% as opposed to 41%). This is significantly different from last year where men and women made about the same number of complaints in this area. Men and women lodged similar numbers of complaints about education, and as last year, men lodged almost twice as many complaints as women about discrimination in registered clubs.

Ground of complaints received by sex of complainant 2001/2002

Ground	Male	Female	Other	Total
Sex	51	337	4	392
Disability	207	118	7	332
Race	154	102	6	262
Victimisation	62	86	0	148
Other ground	78	40	4	122
Age	47	40	1	88
Carers' responsibilities	13	52	2	67
Racial vilification	32	10	13	55
Unknown	30	19	2	51
Homosexuality	35	12	1	48
Marital status	7	16	1	24
Transgender	1	10	0	11
Homosexual vilification	9	0	0	9
HIV/AIDS vilification	4	1	0	5
Compulsory retirement	3	1	0	4
Aiding Unlawful Act	3	0	0	3
Advertisement	0	2	0	2
Transgender vilification	0	2	0	2
Total	736	848	41	1625

Sexual harassment complaints by area 2001/2002

Area	Male	Female	Total
Employment	27	178	205
Goods and services	2	7	9
Education	1	3	4
Total	30	188	218

Looking at pregnancy discrimination

Confinement was once a common term used to describe the last months of pregnancy. Confinement meant that pregnant women stayed at home and out of public view until their baby was born. The term and its practice smacks of ignorance, and is amongst the worst kinds of sex discrimination.

One of the most common forms of discrimination the Board hears about is discrimination on the grounds of pregnancy (sex discrimination). Employers often believe that a pregnant woman is more frail and less capable than a woman who is not pregnant, or that a pregnant woman cannot work in jobs where she deals with the public.

Contrary to popular (and very dated) belief, pregnant women have no more trouble in undertaking normal work activities than other people.

The Board believes that pregnant women are completely capable of assessing and managing their own care during pregnancy. If a pregnant woman decides she would like to continue playing contact sport or managing a staff of four hundred people during her pregnancy, and her doctor does not object, there is no reason why she shouldn't.

What was the complainant's ethnic background?

The Board collects information about the ethnic background of complainants on a voluntary basis except in complaints of race discrimination or racial vilification, where the person lodging the complaint must state their race and/or demonstrate that they belong to the group that has allegedly been vilified.

This year 32% of individual complainants (518 people) gave us information about their ethnicity. 7.3% of complainants (119) identified themselves as Indigenous people and 11.3% (183) identified their background as 'Australian'. The other most commonly identified backgrounds were Lebanese (22 or 1.4%), Phillipino (17 or 1%) and Chinese (16 or 1%).



How many complaints were finalised?

The Board has had excellent results this year in finalising complaints. 1482 complaints were finalised, which was 205 more than the previous financial year, and represented a 16% increase.

Most of this increase was in complaints that were within the Board's jurisdiction, and most of this increase is reflected in matters that were settled either with or without a formal conciliation conference. There was a drop in the number of complaints that were not proceeded with, and an increase in the number of complaints that were settled by the Board.

How were complaints finalised?

The Board is only allowed to investigate complaints that come within our legal jurisdiction. So the first decision to be made after we receive a complaint is whether that complaint appears to come within the provisions of the Anti-Discrimination Act.

Of the complaints finalised during 2001/2002, 217 (14.6%) were considered to be outside our jurisdiction, compared to 193 (15%) in 2000/2001. Some of these complaints are either covered by other laws or are able to be dealt with by another agency. When we decline these complaints, we inform the complainant about any other possible avenues they could pursue.

When complaints fall within federal rather than State anti-discrimination legislation, we refer them directly to the federal Human Rights and Equal Opportunity Commission (HREOC). We referred 14 complaints (1%) to HREOC in 2001/2002.

Of the remaining 1,251 finalised complaints (that is, those that were within jurisdiction), 38.5% (482) were settled either by the Board negotiating with the parties, assisting them to negotiate with each other, or as a result of a conciliation conference. This was a significant increase from the previous year, where settled complaints represented 32% of all finalised matters within jurisdiction.

The complaints most likely to be settled were victimisation (53.5%); sex discrimination (48%); carers' responsibilities discrimination (42.5%); disability discrimination (35.2%); age discrimination (34.6%); and homosexual discrimination (32%).

The complaints least likely to be settled were transgender vilification (0%), race discrimination (25%), racial vilification (25%), and marital status discrimination (26%). Please note that the overall complaint numbers for transgender vilification complaints were so low (2 complaints) that the statistics are not meaningful.

Overall, 44.6 % (558) of complaints within jurisdiction were not proceeded with in 2001/2002, a significantly lower number than the previous year (50%). There are many reasons why a complaint may be withdrawn. For example, investigation may reveal that unlawful discrimination has not been the cause of the problem, or for personal reasons the complainant may decide that they are not prepared to pursue the matter.

In some instances the Board has assisted complainants by suggesting avenues where they could resolve the complaint themselves, especially in the industrial area. When a complainant succeeds in using an alternative method to resolve their complaint, the person then withdraws the complaint. Where appropriate, the Board has also continued to encourage complainants to sort out their complaints themselves.

In addition, when the Board notifies the respondent that a complaint has been made against them, we encourage them to talk with the complainant to see if they can resolve the problem. If the complainant successfully resolves the problem, the complaint is withdrawn and is counted in our statistics as withdrawn even though the matter has been resolved. If we include these settled matters in the total of complaints that have been settled, it means that 42.7% of complaints that fall within jurisdiction are resolved, and 40.4% are not proceeded with.

The complaints least likely to proceed, including matters that were settled outside the Board, were:

- transgender discrimination (50%);
- race discrimination (53%);
- homosexual vilification (64%);
- marital status discrimination (55%); and
- homosexual discrimination (61%).

Of complaints within jurisdiction, 27 or 2.6% were formally declined as lacking in substance or as not revealing a contravention of the Anti-Discrimination Act, often after lengthy investigation. This is a decrease from the previous two years, where 40 complaints or 4% were declined in 2000/2001, and 84 complaints or 9% were declined in 1999/2000.

The referral rate of complaints within jurisdiction for hearings in the Administrative Decisions Tribunal remained about the same at 14% (175 complaints). This includes matters that were declined on the basis that they lacked substance, but where the complainant requested referral to the Tribunal under section 91 of the NSW Anti-Discrimination Act). The complaints most likely to be referred to the ADT were transgender discrimination (31.5%), victimisation (22 %) and disability discrimination (18.3%).

**Outcome of 1,482 complaints finalised 2001/2002**

	No	%
Not proceeded with	505	34
Settled at or after conciliation	327	22
Outside jurisdiction	217	15
Referred to ADT	163	11
Settled before conciliation	155	10
Formally declined	27	2
Referred to HREOC	14	1
Formally declined and referred to ADT	12	1
Not accepted out of time	9	1
Total	1482	101

**How quickly were complaints finalised?**

The Board's business plan aims for:

- 20% of allocated complaints to be finalised in two months;
- 60% of allocated complaints to be finalised within six months; and
- 85% of allocated complaints to be finalised in 12 months.

This year we met all of these targets with:

- 25% of allocated complaints finalised in one month;
- 38 % of allocated complaints finalised in two months;
- 48% of allocated complaints finalised in three months;
- 65% of allocated complaints finalised in six months; and
- 87% of allocated complaints finalised in 12 months.

Complaints queue

In the first half of 2001/2002, complaints staff continued to try to reduce the number of unallocated complaints in the queue by adopting more efficient and effective practices. However, decisions from the Administrative Decisions Tribunal about out of time matters, declinations and procedural fairness have impacted on the length of time taken to deal with some complaints.

At the beginning of 2002, the Board received six months funding from the Attorney General's Department to employ additional staff in Sydney and in the Newcastle regional office to reduce the queue of unallocated complaints. There was an undertaking that additional funding would be granted provided the project was successful.

This project began in March 2002, and has proved very successful in the short period until the end of the financial year. At this stage it is difficult to quantify the number of complaints the project has finalised, because it is still in the relatively early stages of assessing and attempting conciliation of complaints. However, preliminary figures are very promising, with about 100 matters being finalised between March and the end of June. The Board is waiting to hear whether the funding has been approved for the second stage, which would begin in September 2002.

The Attorney General's Department has also agreed to fund two complaint handling positions recommended in a review of the Board by the Council on the Cost and Quality of Government in 2000/2001. These positions will assist the Board to avoid the buildup of an additional backlog.

**Rural trips**

Complainants and respondents from rural areas may be unable to travel to one of the Board's offices for conciliation conferences for various reasons. In recognition of this, and in order to increase our service delivery to regional NSW, conciliation officers arrange conferences in rural areas when appropriate. Although there is an ongoing demand for the Board's services in rural and regional areas, we continue to experience resource difficulties in arranging travel to rural NSW.

Examples of conciliated complaints**Sex (pregnancy) discrimination and victimisation in employment**

The complainant alleged pregnancy discrimination and victimisation in employment. She had been working for the company for 12 years, eventually becoming a team leader. She became pregnant and went on maternity leave, believing that she would be back in her old position upon her return.

She said that when she returned she was given a lower position, and that changes made while she was away were not explained to her. She also said she was denied training and opportunities and given a small workspace that was unsafe. When she complained about all these matters, she was victimised.

The company denied the allegations and said that the complainant had problems adjusting to her return to work. There were also a number of staff changes in the workplace at the time. The matter was settled when the company agreed to give the complainant \$5,000.

**Cases from the Tribunal****Farmer v Dorena Pty Ltd****Transgender discrimination in employment**

Date of decision: 17 May 2002

The complainant alleged that Mr Ron Foley, the managing director of the respondent company, discriminated against her because of her transgender status when she sought employment agency services. She alleged that Mr Foley did not follow his usual practice and failed to put forward her name to the person who was responsible for placing people with clients of the respondent.

After a period of time waiting for the respondent to contact her, Ms Farmer sought a referral to a specific position being advertised by the respondent. Mr Foley advised the complainant that the employers wanted a woman. When Ms Farmer reminded the respondent that she was now a woman, Mr Foley said that the flexible working conditions reflected the employer's desire for a woman with children, and when pushed by the complainant, he added that the employer wanted a 'vanilla woman'.

Mr Foley claimed this term was used to describe a woman 'with no complications'. Ms Farmer considered this to be a reference to either homosexuality or to the practices of bondage/discipline and/or sadomasochism.

The Tribunal found that Ms Farmer satisfied the definition of transgender and that Mr Foley was aware at the relevant time that Ms Farmer was a transgender person. The Tribunal was satisfied that Mr Foley did not take any action to place Ms Farmer in any position. He did not seek a reference from Ms Farmer's former employer, did not process her application with the company and did not forward her application to one of his consultants. The Tribunal also concluded that Mr Foley's reference to a 'vanilla woman' was a reference to the client's transgender status.

The respondent's failure to action the complainant's application, combined with his insensitive approach to the complainant, demonstrated that he had treated her less favourably than he would have treated a person who was not transgender in the same or similar circumstances.

The Tribunal referred to submissions it had received in the context of another complaint by Ms Farmer: *Farmer v Jan James Recruiting Pty Ltd* [2002] NSWADT 82. In that matter, the respondent argued that there was no breach of s.38J(a), as the agency was providing a service to the client employer, but was not providing a service to the individual applicant. The Tribunal was not convinced, and even putting this argument in its best form for the respondent, was still prepared to accept that the agency was providing a service to the applicant as well as providing a service to the client employers.

Mr Foley had undertaken to get back to the complainant after checking with her most recent employer. In doing so, he undertook to provide her with a service and by implication undertook to continue providing her with a service subject to receiving a favourable reference. The respondent failed to provide the service.

The Tribunal awarded the complainant \$6,000 for stress and humiliation. No award could be made for economic loss, as she had not produced evidence of this.



Burns v Dye
Homosexual vilification
Date of decision: 12 March 2002

Mr Burns lived in a block of units, and his unit was directly below Mr Dye's. He alleged homophobic harassment at the hands of Mr Dye between August 1999 and October 1999.

The respondent conceded that he had used the terms 'faggot' and 'poofter', and that he may have used the term 'f—ing c—t'. He conceded he used the term 'f—ing c—sucking Burns' to describe the complainant, but denied using this term to his face.

The Tribunal found that:

- the respondent had on at least two occasions used abusive names in connection with the complainant; and
- the abuse occurred in a hallway open to residents and guests of the complex and was capable of being overheard, and was thus a form of communication to the public.

The Tribunal concluded that it would have been apparent that Mr Burns was the target of Mr Dye's abuse. However, it was not satisfied that the abuse incited hatred, serious contempt or severe ridicule of the complainant, as Mr Dye was visibly drunk at the time of the abuse and 'from outward appearances would not appear [to the public] to enjoy any position of respect or influence'. This part of the complaint was therefore dismissed.

The complainant also alleged that during the long weekend of October 1999 the respondent smashed bottles against his property, tampered with his door lock and drew a large penis on the complainant's door along with the words 'fag lives here, faggots should die'.

The Tribunal did not decide whether the first two allegations were true, but it was satisfied that the respondent had drawn the penis with the accompanying words. It found that because the graffiti was on display in the hallway it was a communication to the public. It held that this act amounted to vilification because the message was not only an indication of hatred but was implicitly addressed to passers-by.

The act also implied that killing homosexuals was a worthwhile endeavour. It was self-evident that the complainant's sexuality was the cause of the respondent's conduct and the Tribunal found that the conduct could indeed have incited others to hate, have serious contempt for or to severely ridicule the complainant on the basis of his homosexuality.

The complainant also alleged a series of incidents involving the respondent depositing faeces and urine on the complainant's doorstep. The Tribunal was not satisfied they could be capable of inciting the necessary responses.

Without any written or verbal communications connected to the acts, there could not be the necessary causal link between the acts and any feelings they might provoke on the one hand and the complainant's sexuality on the other. This part of the complaint was dismissed.

The complainant was awarded \$1000, and the respondent was required to provide an apology in specified terms.



Cargill Australia Ltd v Higginson - Appeal Panel Decision
Disability discrimination in employment
Date of decision: 7 June 2002

Original case

Mr Higginson was employed as a maintenance fitter at an abattoir operated by the respondent. Mr Higginson had an operation on his leg in July 1998, and his doctor advised that he could return to work in August 1998.

However, Mr Higginson's employer held the view that he was unable to carry out the work safely, and they had no other position to offer him, so they did not allow him to return to work until 17 May 1999. Mr Higginson complained to the Anti-Discrimination Board that he was being discriminated against on the basis of disability.

The Tribunal found that the respondent's refusal to allow Mr Higginson to return to work constituted less favourable treatment compared to someone without a disability, and that this amounted to both a discriminatory condition of employment and a detriment.

Appeal case

On appeal, Cargill argued that the Tribunal had made two errors of law. The Appeal Panel did not accept either of the arguments and found there were no errors of law by the Tribunal.

The second argument raised by the appellant raises interesting issues regarding the interrelationship between anti-discrimination legislation and NSW occupational health and safety legislation. Cargill alleged that the Occupational Health and Safety Act (OH&S Act) required the employer to discriminate and therefore a defence existed under s.54 of the NSW Anti-Discrimination Act. (This states that an action is not unlawful if it was necessary in order to comply with any other Act.)

The Panel examined whether s.15 of the OH&S Act required an employer to refuse work to an employee if that person was more susceptible to injury than other employees or potential employees. Having considered relevant industrial law cases, as well as a range of anti-discrimination cases, the Panel concluded that there will be occasions where it will be lawful for an employer to refuse an employee permission to work in a particular role, or to work at all, because of OH&S legislation.

The Panel listed a number of factors that needed to be considered when determining the lawfulness or otherwise of these decisions. It then applied these factors to the facts in this case and concluded the following:

- that Mr Higginson was fit for work, despite the restrictions placed upon him by his own surgeon;
- that he had not slipped over in 20 years, and there was no more likelihood of him slipping over than any other employee; and
- while Mr Higginson may suffer a more severe injury than an employee without a similar disability if he did slip, the likely nature or extent of such an injury was unknown.

The Panel agreed with the Tribunal's reasoning and conclusion and no error of law was detected. The appeal was therefore dismissed.



Carroll v Zielke & Ors **Sexual harassment in employment** **Date of decision: 12 September 2001**

Ms Carroll was employed by Zielke Investments as an apprentice pastry chef. She was a teenager at this time and this was her first job. She made a complaint of sexual harassment against Wayne Zielke and Nick Favell, who were also employees of Zielke Investments. The Tribunal also made the employer, Zielke Investments, a respondent to the inquiry.

The Tribunal found the evidence of Ms Carroll more compelling than that of Mr Favell and Mr Zielke. It found that Mr Favell had said to Ms Carroll such comments as 'I'd love to f— you and f— you hard'.

Mr Favell denied saying this and said that he would never speak to a woman like that, and that it was not his style of dealing with women. To illustrate this point, Mr Favell had said 'If I wanted to have sex with Gemma (Ms Carroll) I would have tried to get her drunk, not just come and tell her, I would have taken her out and tried to get her drunk and seduce her'.

The Tribunal stated that 'In our view the conduct of which Ms Carroll complains, and which Mr Favell denies, is entirely consistent with Mr Favell's character, habits and attitudes towards women as he described them to us'.

Similarly with regard to Mr Zielke's evidence, the Tribunal found that Mr Zielke had made remarks such as asking Ms Carroll to wear shorter, tighter shorts and saying her legs looked 'tall and sexy and good'. It found that he had asked her to join him swimming naked and to go back to his house, and had left newspaper clippings for escort agencies and brothels on her workbench and invited her to call them.

The Tribunal also considered the liability of Zielke Investments as the employer. The Tribunal found that there was no sexual harassment policy in place, and held that the company had not taken all reasonable steps to prevent employees from contravening the NSW Anti-Discrimination Act. Zielke Investments was therefore deemed liable for the conduct of Mr Zielke and Mr Favell.

The Tribunal found in the complainant's favour and awarded damages of \$14,669 apportioned 20/80 between Mr Favell and Mr Zielke, with Zielke investments being jointly and severally liable with Mr Favell and Mr Zielke.



Indigenous outreach

The Indigenous Outreach Program allows the Board to provide culturally appropriate services to Indigenous communities and people in NSW.

Complaints

The Board is committed to ensuring that where necessary and possible, complaints from Indigenous Australians are dealt with by an Indigenous Complaint Handler. As with all complaints currently lodged with the Board, there may be a substantial waiting period before an Indigenous complaint can be investigated. This is exacerbated by the fact that the Board has only one Indigenous Complaint Handler, and we receive more complaints each year than they can handle.

Recently the Board has received funding approval from the Attorney General's Department to create a new Team Leader position for the Indigenous team. It is not yet clear whether this position will involve some complaint handling or not, but in any event, as the team leader functions have previously been performed by the Complaint Handler, the new position should allow the Complaint Handler to work full time on complaints.

During 2001/2002, 119 complaints of discrimination were made by Indigenous people, a 54.5% increase over the number of complaints received last year (77 complaints). There was a significant reduction in complaints in 2000/2001 over the previous year, so a more balanced comparison is given by comparing 1999/2000 to 2001/2002, in which case the increase in complaints is 30.7%. Indigenous complaints made up 10.6% of all the complaints received by the Board.

As in previous years, by far the majority of complaints from Indigenous complainants in 2001/2002 were about race discrimination or racial vilification - 76.5% or 91 complaints compared to 19.5% of overall complaints.

The area of complaints received in 2001/2002 from Indigenous people differed from the overall pattern of complaints:

- 31.9% of complaints (38) were about employment-related discrimination, compared with 60.6% of overall complaints;
- 43% of complaints (51) were about discrimination in the provision of goods and services, compared with 21.5% overall; and
- 8.4% of complaints (10) were about discrimination in accommodation, compared with 3.8% overall.

There was only a slight difference in the number of complaints from men and women, with 59 complaints from women (49.6%), 57 complaints from men (47.9%), and three complaints from organisations. Men and women generally complained about similar issues, though women were significantly more likely to complain about accommodation and goods and services, while men were slightly more likely to complain about employment issues.

**Education**

In 2001/2002 the Indigenous education team continued its program to raise awareness among Indigenous people and those advising them about discrimination issues. The team connects with Indigenous people through enquiry calls and also through community networks to assist people to develop strategies to deal with situations and issues on a local level. Areas covered include Mt Druitt, Minto, Bathurst, Sydney, Cranebrook and Riverstone.

The team's work included:

- conducting rights-based talk/training sessions with government and community organisations such as the National Aboriginal & Islander Skills Development Association, the Career Development Education Program and the Department of Fair Trading;
- holding an information stall at Survival Day;
- working in partnership with the Department of Fair Trading from centres in Penrith and Orange, as well as the Department of Industrial Relations in Sydney;
- attending a number of Careers Expos and information days; and
- attending interagency meetings within the Sydney area, which provided a good context for advising people how to deal with issues of discrimination.

**Community Seminar Program**

The Outreach team have been focussing on our Community Seminar Program on conducting training sessions entitled Rights, Advice & Strategies and Non-Discriminatory Community Management for Aboriginal & Torres Strait Islander community workers and others who work in this area.

Aboriginal & Torres Strait Islander Advisory Committee

The Advisory Committee members met three times in 2001/2002 and discussed issues of concern to Aboriginal & Torres Strait Islander communities. These included:

- an intoxicated persons' protocol for South East Sydney;
- issues around systemic discrimination;
- the Anti-Discrimination Act's new ground of carers' responsibilities;
- issues related to potential discrimination based on DNA testing for 'Aboriginality'; and
- law reform.

**Complaints received from Indigenous men by ground and area 2001/2002**

Ground	Emp	Goods & Servs	Accom	Educ	Clubs	Race vilif	homo vilif	Other	Total	%
Race	11	20	1	3	1	0	0	3	39	33
Racial vilification	0	0	0	0	0	6	0	0	6	5
Victimisation	3	0	0	0	0	0	0	0	3	3
Disability	2	0	0	0	0	0	0	0	2	2
Age	1	1	0	0	0	0	0	0	2	2
Sex	1	0	0	0	0	0	0	0	1	1
Homosexuality	0	1	0	0	0	0	0	0	1	1
Homosexual vilification	0	0	0	0	0	0	1	0	1	1
Other	0	0	0	0	0	0	0	1	1	1
Unknown	0	0	0	0	1	0	0	0	1	1
Total	18	22	1	3	2	6	1	4	57	49

**Complaints received from Indigenous women by ground and area 2001/2002**

Ground	Emp	Goods & Servs	Accom	Educ	Clubs	Race vilif	Homo vilif	Other	Total	%
Race	8	25	9	0	0	0	0	0	42	35
Sex	9	0	0	0	0	0	0	0	9	8
Racial vilification	0	0	0	0	0	3	0	0	3	3
Victimisation	1	0	0	1	0	0	0	0	2	2
Marital status	0	1	0	0	0	0	0	0	1	1
Disability	1	0	0	0	0	0	0	0	1	1
Unknown	1	0	0	0	0	0	0	0	1	1
Total	20	26	9	1	0	3	0	0	59	51

**Looking at reconciliation**

In the last 12 months there have been few practical steps taken by Governments to address the issues impacting on the lives of Indigenous people. There has also been little progress made by any Government towards formalising an agreement or treaty with Indigenous Australians.

Unfortunately, Aboriginal people continue to rank poorly in terms health, housing and employment; something that we as a nation should be ashamed of. The number of complaints the Board receives from Aboriginal and Torres Strait Islander people alleging race discrimination may indicate that some in the NSW community do not support the concept of reconciliation with Indigenous Australians.

The Council for Aboriginal Reconciliation suggests that Indigenous rights are based on the principle that all Australians should share equal social and economic conditions, equal rights and responsibilities as citizens, and equal access to decision-making. This concept is supported by the NSW *Anti-Discrimination Act*, which makes it unlawful to treat an Indigenous person less favorably than another person because of their race.

The Board is working to promote reconciliation with Indigenous communities by seeking redress for discrimination, and by educating employers, industry groups and members of the public about their responsibilities under the Act.



Example of Indigenous Conciliated Complaint - Race discrimination in provision of goods and services

An Aboriginal man alleged that he was discriminated against in accommodation and the provision of goods and services when he was advised by a real estate agent that there were no suitable properties available for him.

He alleged that his sister, who he described as 'looking white', was given the addresses of several properties 20 minutes after he had attended the office of the estate agent.

The matter was settled when the complainant accepted undertakings from the agent that they would assist him to find suitable accommodation.



Newcastle Office

Complaints

The Newcastle office received 250 complaints in 2001/2002, which is a 12% increase over 2000/2001 (222 complaints), and a 77% increase from 1999/2000 (141). This can be partly explained by a change in the method of counting complaints.

There continue to be some significant differences in the type of complaints received in the Newcastle office from the overall pattern of complaints:

- 33% of complainants (83) alleged sex discrimination, compared with 24% of overall complaints received;
- 24% (60) alleged disability discrimination, compared with 20% overall;
- 8% (21) alleged age discrimination, compared with 5% overall;
- 7% (18) alleged race discrimination compared with 16% overall;
- 67% alleged discrimination in employment, compared to 61% overall; and
- 14% alleged discrimination in provision of goods and services, compared with 22% overall.



How were complaints finalised

The Newcastle office finalised 169 complaints in 2001/2002, which is an increase of 69% over 2000/2001 (100). There were few significant differences in the way complaints within jurisdiction were finalised in Newcastle compared to overall complaints:

- the proportion of complaints referred to the Administrative Decisions Tribunal was 10% (17 complaints) compared to 25% (19 complaints) the previous year. This is only slightly higher than 9% of overall complaints;
- complaints were marginally less likely to proceed - 48 complaints or 28% did not proceed compared with 29% overall;
- complaints were slightly more likely to be settled through our conciliation process - 57 complaints or 34% compared with 33% overall; and
- of those Newcastle complaints which did proceed, 69% were conciliated.



Education

In 2001/2002 Newcastle office staff continued to offer a range of education services to the people of the Northern, Central Coast and Hunter regions of NSW. These services included responding to enquiries from people who believe they have been discriminated against; responding to enquiries from employers, service providers and other potential respondents; and reviewing policies and procedures to ensure they comply with current best practice and assist employers in becoming an 'employer of choice'.

Employer and service provider education program

Demand for this program proved so strong in the past year that additional staffing has been committed to the program for 2002/2003. In addition to a very heavy commitment to on-site workplace training, an Employers' Seminar Series was delivered in November 2001 with programs for Contact Officers and on Grievance Handling.

In our on-site training program, demand continued to be strongest for Harassment Awareness (for employees and for supervisors/managers), Contact Officer and Grievance Handling programs. An increasing number of organisations have implemented training cycles which include discrimination/harassment training as an integral element.

A number of training programs were delivered to individual law firms and regional branches of the Law Society to enable lawyers to comply with Legal Profession Regulation 69C, which requires them to have training in equal opportunity and occupational health and safety issues.

Community sector education program

The filling of the part-time Education Officer position for this program in October 2001 has enabled the delivery of many training programs to community based organisations and programs in the Central Coast, Hunter and North Coast regions, as well as extensive regional outreach.

Staff continued to participate in disability networks on the Central Coast and in the Hunter, as well as the Rural Multicultural Workers' Network. The Education Officer has provided resources and/or training to a range of services including Indigenous youth services; women's refuges and health centres; HIV/AIDS services; aged care services; women with disabilities who

experience domestic violence; and Vocational Education and Training programs in state and private schools.

We continued to work with the Department of Fair Trading to provide regular information/education sessions at a rehabilitation program on the Central Coast, and are now involved in a new program located in the Hunter Valley. The Board also provided resources and training for the Department of Fair Trading's Gonyah Project for Indigenous community workers.

Despite the filling of the Education Officer position, staffing and funding constraints still limit our capacity to provide a comprehensive community education program to people outside the largest population centres in our region.

EEO Network

This Network was established at the request of people who attended the very first Employer Seminar Series conducted in Newcastle and has been operating ever since. Members are usually human resources staff from organisations who have used the Board's on-site training service or attended our Employer Seminar Series, including representatives from a range of private and public sector organisations.

The Network is convened by the Board's Senior Workplace Relations Advisor. It met three times in 2001/2002, with each meeting hosted by a different organisation. On the agenda for each meeting is an exchange of information by the participants; an update from Board staff about current issues including recent decisions handed down by the various Tribunals and Courts dealing with discrimination matters; and in- depth discussion of an issue of interest to the participants.

Discussion topics this year included 'What are reasonable steps [for an employer to take to limit their liability in discrimination and harassment complaints]?', 'Bullying in the workplace' and 'Employing people with a disability'.

Newcastle - complaints received by ground 2001/2002

Ground	No	%
Sex	83	33
Disability	60	24
Age	32	14
Race	18	7
Victimisation	17	7
Homosexuality	12	5
Other	11	4
Carer's responsibilities	8	3
Marital status	7	3
Racial vilification	5	2
Transgender	1	<1
Homosexual vilification	0	0
Total	250	100

Newcastle - complaints received by area 2001/2002

Area	No	%
Employment	167	67
Goods and services	35	14
Education	13	5
Accommodation	9	4
Clubs	9	4
Racial vilification	5	2
HIV/AIDS vilification	3	1
Other	9	4
Total	250	100

Wollongong office

Complaints

In 2001/2002, the Wollongong office received 186 complaints out of the total of 1,625 complaints received by the Board. This is a decrease in the number of complaints received in 2000/2001 (206), but is an increase over the complaints received in 1999/2001 (152 complaints).

There were some minor differences in the types of complaints received in Wollongong from the Board's overall pattern of complaints:

- 9.7% (18) of Wollongong complainants alleged race discrimination, compared with 16.1% of overall complaints received;
- 28% of Wollongong complainants alleged sex discrimination compared with 24.1% of all complaints, and most notably, pregnancy discrimination complaints made up 11.3% of complaints in Wollongong, and only 4.5% of all complaints; and
- 23.7% (44) of Wollongong complainants alleged disability discrimination, compared with 20.4% of overall complaints received.

Victimisation complaints were also higher in Wollongong - 16.7% of complaints compared with 9.1% of overall complaints received.

Complaints of discrimination in employment totalled 68.8% of complaints received in Wollongong, which was higher than the figure of 60% overall. Only 17.2% of complaints received in Wollongong were about goods and services compared with 21.5% of overall complaints.



How were complaints finalised?

The Wollongong office finalised 181 complaints in 2001/2002. Of these, 175 were within jurisdiction. There were some significant differences in the way complaints within jurisdiction were finalised in Wollongong to the way complaints were finalised overall:

- complaints were less likely to be referred to the Administrative Decisions Tribunal - 10 complaints or 5.7% in Wollongong compared with 14% of overall complaints;
- complaints were more likely to be settled, largely through formal conciliation - 86 complaints or 49 % in Wollongong compared with 38.5 % overall; and
- complaints were less likely to not be proceeded with - 35.6% in Wollongong compared with 44.6% overall.

Complaints management

During the year, the President approved a proposal from the Regional Manager for a pilot project relating to the management of the regional office complaints caseload.

The project's aim was to maximise efficiencies in the complaint handling function in order to enable all staff to better manage both individual caseloads, as well as the backlog of unallocated complaints. The project involved a restructuring of position functions to assign the Grade 7/8 Conciliation/Education Officer to a full-time complaint handling role.

As a result of this, the office conciliated more complaints in both absolute and relative terms in comparison with the previous year.



Education

The position of Senior Workplace Relations Consultant was vacant for four months after the departure of the previous officer. The position was filled in late 2001 on a part-time basis.

The education program has delivered on-site training tailored to the specific needs of individual clients. Clients are mainly drawn from employers in the following sectors: state and local government, tertiary education, non-government welfare, financial institutions and large manufacturing corporations.

There continues to be a steady flow of enquiries from employers who seek advice and guidance from the Board in relation to workplace disputes. Many of these disputes concern matters which do not fall within the Board's statutory jurisdiction, although they may involve issues related to discrimination and harassment on grounds outside the Act's current statutory framework.

The regional office also conducted an effective media campaign in the central Wollongong area in response to many complaints regarding alleged race-based discrimination in service provision by nightclubs. The main issue concerned discriminatory enforcement of dress codes in order to exclude particular ethnic groups or individuals who were deemed to be 'of ethnic appearance'.



Wollongong — complaints received by ground 2001/2002

Ground	No	%
Sex	52	28
Disability	44	24
Victimisation	31	17
Race	18	10
Carer's responsibilities	7	4
Racial vilification	7	4
Age	6	3
Homosexuality	6	3
Marital status	5	3
Unknown +	4	2
Other	3	2
Aiding an unlawful act	3	2
Total	186	102



Wollongong - complaints received by area 2001/2002

Area	No	%
Employment	128	69
Goods and services	32	17
Racial vilification	7	4
Clubs	6	3
Other	5	3
Education	4	2
Accommodation	3	2
Qualifying bodies	1	1
Total	186	101

**Examples of Conciliated Complaints****Homosexual discrimination and victimisation in employment**

A gay man alleged that he was harassed on a number of occasions by members and guests of the registered club where he was employed.

The complainant said that although he had recorded a number of incidents in the club's incident book, these were not adequately dealt with and were frequently ignored. He also claimed that he was threatened with legal action by a board member after one incident he recorded. He was off work on stress leave and did not feel able to return to the workplace.

In conciliation, the complainant was able to clearly explain to the respondent that he believed their procedure for dealing with grievances was inadequate. He said he had come to the Board only because the processes used by the club were not effective in dealing with the harassment he had complained about, and he would have preferred to resolve the matter directly with his employer.

The matter was resolved with the payment of \$10,000 to the complainant in exchange for his signing a deed of release. The club has sought assistance from the Board in reviewing its discrimination and harassment policies and grievance procedure, and has made enquiries about training for staff and board members.

**Race discrimination in goods and services**

A man of Spanish background had recently returned from a trip to his country of birth. He required medical treatment during his holiday, and made a claim on his travel insurance policy.

He alleged that he provided medical certificates and receipts to support his claim, but these were written in Spanish, and the insurer advised him that his claim would not be accepted unless he provided certified translations. This would have involved considerable cost to the complainant and did not appear to be a condition of the policy.

The matter had been going on for some time, as the complainant had some difficulty dealing with the insurer because his English is not fluent. After the ADB contacted the insurer, they agreed to have the documents translated at their expense.

There remained some details of the claim which required clarification. The insurer provided a list of these items to the Conciliation Officer, who was able to obtain the information required by the insurer in a face-to-face interview with the complainant. Within a few days the complainant had received a cheque for the amount of his claim, minus the excess stipulated in his policy.

Sexual harassment in employment

A young woman alleged she was sexually harassed by a male co-worker when he grabbed her buttocks while they were cleaning the restaurant where they worked. She alleged that when she complained to management they failed to handle the matter appropriately and rostered her to work with the alleged harasser when she had been assured that this would not occur. She alleged that this failure to appropriately handle her grievance ultimately led to her dismissal.

The alleged perpetrator denied he had grabbed the complainant but admitted that he had accidentally brushed her buttocks and that he had made the comment "Did you enjoy that?" He stated that he had apologised to the woman following the incident and did so again.

The employer denied any liability for the conduct. They asserted that they had a sexual harassment policy and had attempted to deal with the matter, but later had to terminate the complainant's employment due to her behaviour towards customers.

The matter was settled when the complainant accepted \$3,000 from the employer to settle the matter, along with written apologies from the alleged perpetrator, her supervisor and the employer, and a statement of service. The employer also agreed to provide a copy of its policy to the Board for comment

**Disability discrimination in employment**

A woman alleged disability discrimination when her work was terminated by her employer (a labour hire agency), after her host employer (a bank) discovered that she was unable to lift bags of coins due to a limitation with her back arising from a prior injury.

The employer asserted that it had not terminated her employment but could not continue with the placement while she was unable to lift the bags which the bank asserted was an inherent requirement of a bank teller's position. The bank denied it had any liability and vigorously opposed the notion that they may have been potentially liable for aiding and abetting the discrimination.

The matter was conciliated when the complainant accepted the employer's proposal that she provide a detailed report setting out her limitations and an undertaking that it would continue to look for suitable work for her.

**Systemic sexual harassment in employment**

Ten female employees alleged that their employer, the owner/operator of a motel, sexually harassed and discriminated against them on the ground of their sex. The discrimination and harassment was alleged to have occurred on a regular and ongoing basis over a period of three and a half years.

The complaints contained numerous allegations that the employer persisted with inappropriate contact such as touching, poking and slapping. Allegations were also made that the employer used offensive and sexist language when delegating duties to the female staff and on other occasions in the workplace. Some female staff also alleged their employer regularly made salacious remarks about what he would like them to do for him and some male patrons of the motel.

A conciliation conference was held, and, after protracted negotiations following the conference, the employer agreed to provide financial compensation (varying amounts to each complainant), to introduce a sexual harassment policy which would be explained to new employees in an induction to the workplace, and to provide a written apology.

Disability discrimination in employment

The complainant alleged disability discrimination on the part of his previous employer because he had been subjected to

ongoing harassment from his immediate supervisor, who repeatedly humiliated him because of his stutter.

The matter was conciliated on the basis that the respondent agreed to pay the complainant an ex-gratia payment of \$13,000 for pain and suffering, provide the complainant with a statement of employment and an apology, and undertake training of all staff.

Sex discrimination in employment

A female shop assistant alleged sex discrimination when an alleged offer of promotion to store manager was retracted after she announced that she was pregnant. She also alleged that prior to going on maternity leave, her hours of work were gradually reduced.

The respondent denied that they had ever made an offer of direct appointment, but rather had sought her expression of interest for the position. They said that after considering the merits of the two potential applicants for the position, it was awarded to the other applicant because they felt that the complainant was focusing all her energy on her own retail business, which she ran part-time. With regard to the hours, the respondent said it was common for sales to drop off seasonally.

The complaint was resolved when the respondent allowed the complainant to nominate the amount of hours she wanted to work on her return from maternity leave. The complainant also accepted a \$1,000 ex-gratia payment.



Chapter Three - Educating the People of NSW

we aim to reduce breaches of anti-discrimination law through education

Resolving complaints about discrimination is only one of the ways that discriminatory attitudes and behaviour can be changed. Another approach is to give people enough information and advice so that they can:

- recognise discrimination and harassment in our community;
- understand the many positive benefits of non-discriminatory behaviour; and
- prevent, confront and resolve incidents of discrimination themselves.

Our education initiatives are targeted in two main directions: those groups about whom we receive the most complaints, and those groups that are most likely to experience discrimination, but have little contact with the Anti-Discrimination Board.

To do this, we use a number of strategies, such as:

- delivering talks, information and training sessions all over NSW, including presenting papers and workshops at major conferences;
- networking, consulting and developing 'outreach' projects;
- developing and distributing a wide range of targeted publications;
- providing a wide range of information on our website;
- using all forms of media to get our message across; and
- having a specialist library linked with other libraries.

Talks and training programs

As expected, our talks and training program continued to be a great success. Some of the highlights over the year included:

- delivering 781 information and training sessions attended by over 16,600 people, an increase of 11% on last year's sessions and 4% on last year's participants;
- continuing acclaim for our employer seminar programs, once again held successfully in Sydney, Parramatta and Newcastle; and
- raising \$590,937 from our training fees and publications sales, which fully funded the education services we provided to employers and service providers (including the seminar series, the cost of five trainers on staff, casual trainers and an administrative assistant). It also funded the travel, venue hire and other costs associated with all our community sector training.

There are two aspects to our talk and training programs: services targeted towards potential respondents (employers and service providers) and services targeted towards potential complainants (employees, clients and customers).



Services for employers and service providers

Our approach to training employers and service providers involves a number of components:

- we attempt to target those groups that our statistics show need to do more to prevent discrimination or deal more effectively with discrimination complaints;
- we help organisations develop policies and procedures;
- we support organisations striving for best practice to fulfill their obligations to take reasonable steps to stop harassment;
- we respond to requests for 'on-site' training sessions, that is, training within a particular organisation; and
- we run a seminar program for employers and service providers on how to use anti-discrimination law to their organisation's advantage.

In 2001/2002 we conducted over 680 sessions for employers, service providers and staff from the private, public, local government, community and welfare sectors. This is a similar number to the previous year.

We received so many requests for on-site training and information sessions that at times we were unable to meet demand. The course most in demand for on-site training was Equal Employment Opportunity (EEO) training for both managers and staff. Our range of standard on-site seminars is detailed in our publication Training Sessions for Employers and Service Providers (refer to page 75 for details). However, all our training is adapted to produce a tailor-made approach for each client.

**Training overseas and interstate**

Many companies now have staff based overseas and interstate. Several of our clients see value in offering training to these staff which is consistent with that provided to their staff in NSW. In 2001/2002 we were engaged to deliver training in Hong Kong, Singapore, Tokyo and Wellington, as well as in Brisbane, Melbourne, Adelaide and Perth.

Seminar program

We ran our seminar program again this year, and regularly offered a number of half day and one day courses for employers, managers, employee relations professionals, human resource managers and EEO practitioners in Sydney, Parramatta, and Newcastle. These courses aim to increase participants' understanding of how to maintain a workplace free of all forms of discrimination and harassment. The seminar program was attended by 167 people throughout the year.

The seminars covered a number of topics relating to discrimination and employment, including an introduction to EEO, EEO for managers, recruitment, preventing harassment and bullying, skills training for contact officers, key skills in grievance handling and grievance resolution.

**Consultancy service for checking EEO related policies and procedures**

We continued our free consultancy reviewing service for employers and service providers during 2001/2002, reviewing organisations' EEO related policies and procedures at no cost to any employer or service provider. We examined policies on eliminating harassment in the workplace, grievance procedures, promoting diversity in the workplace and handling recruitment.

This reviewing service has proved to be very popular and yet another way of establishing ongoing contact with many employers. It has also been responsible for a large number of significant and positive changes to policies and procedures in many organisations.

During the year we reviewed 87 procedures and policies from 46 organisations - a 23% decrease compared to 2000/2001. Part of this decrease can be attributed to organisations adopting the Board's model policies and procedures, which are available in our published guidelines and on disk.

Union project

In 2002 we completed our project with the NSW Labor Council to produce the publication Guidelines for union delegates. The guidelines were launched by Board President Chris Puplick at the Labor Council on 21st March 2002. They will be distributed by the Labor Council to its affiliates, and the Board will work with the Council to develop a training program to accompany them.

Although unions normally use industrial laws to protect workers' rights, sometimes it will be more appropriate to use anti-discrimination law to help ensure that the workplace is free of discrimination and harassment. Anti-discrimination law also provides for unions to be made legally liable for discrimination and harassment, and for individuals who cause discrimination or allow it to occur, such as union officials, to also be made legally liable for it.

The guidelines explain the types of discrimination that are illegal under anti-discrimination law, give examples of how these might occur in the workplace, and provide a detailed framework for how union representatives can tackle discrimination and harassment, including educating members, negotiating on workplace agreements, and assisting members with complaints.

**Some of the organisations we trained in 2001/2002**

ANA Hotel
 Australian Foundation for the Disabled (AFFORD)
 Blue Mountains City Council
 Colgate-Palmolive
 Deutsche Bank
 First State Financial Services
 Independent Pricing & Regulatory Tribunal
 Department of Community Services
 Department of Sport and Recreation
 Director of Public Prosecutions
 Office of State Revenue
 Salomon Smith Barney
 Shinagawa Thermal Ceramics
 Thomson Legal and Regulatory
 Transport Workers Union
 UBS Warburg
 Waverley Council

What people have said about our training

'Well presented, informative and interesting, good to see employers taking steps to improve the workplace environment.'
 'Now I know and feel good that I have rights in the office, to feel comfortable and confident to stand up for myself should I feel that something is inappropriate.'
 'I know what circumstances give rise to what would be regarded as discrimination and/or harassment and then how to deal with those issues.'
 'I thought the presenter was a very good facilitator, very clear and precise.'
 'Very well presented from a knowledgeable speaker.'
 'It was very informative and made me look at things differently.'
 'Very professional - an example of why I should leave this type of training to the experts, rather than battle through on my own.'
 'A good course overall - I think all staff should attend, no matter what level.'

**Training in rural areas**

We have continued to extend our training to rural areas in NSW. Country areas we visited this year included:
 Albury
 Blue Mountains
 Coffs Harbour
 Camden

Campbelltown
 Cessnock
 Chittaway Point
 Coffs Harbour
 Dubbo
 Forster
 Gosford
 Kempsey
 Kurri Kurri
 Lake Macquarie
 Lismore
 Lithgow
 Maitland
 Mittagong
 Moruya
 Moss Vale
 Muswellbrook
 Nowra
 Orange
 Port Macquarie
 Port Stephens
 Scone
 Shellharbour
 Tamworth
 Taree
 Tuggerah
 Ulladulla
 Wagga Wagga
 Wingecarribee
 Wyong
 Yass



Services for potential complainants and their advisers

The second part of our training strategy is to target those groups of people most likely to experience discrimination, and particularly their advisers. The way we do this is to respond to requests for training sessions, and develop specially targeted outreach and training programs.

Over the year we conducted more than 100 training sessions targeted towards complainants and their advocates from all sectors of the community. Examples of general rights-based education sessions conducted include:

- educating school student representatives about their rights and responsibilities; and
- training staff from residential services, employment services, community centres, migrant centres and disability networks.

Our community outreach projects and training seminars included:

- Community Workers Seminar Program;
- Indigenous Outreach Program; and
- Regional Outreach Programs.



Community Workers Seminar Program

The Board continued to run its training program targeted at community workers. Community workers have been broadly defined as anyone who is a 'first point of contact' for individual members of the community.

This training program provides an update on anti-discrimination law for community workers so they can advise individuals about their rights. The program also focuses on developing advocacy strategies that can empower individuals and communities to sort out discrimination problems themselves.

The courses were detailed in the training calendar we published in September 2001. In 2001/2002 a total of 11 seminars were held across NSW, including:

- discrimination rights, advice and strategies;
- train the presenter; and
- non-discriminatory community management.

Outreach Programs

For more information about the Indigenous Outreach Program please refer to page 39. For more information about Regional Outreach Programs please refer to pages 42 and 44.

Skool's Out

In 2001/2002 the Board partnered with the Crime Prevention Division of the Attorney General's Department for the third time to contribute to the 2002 Sydney Gay and Lesbian Mardi Gras, this time with the theme 'Skool's Out'.

The Skool's Out program included a forum held in partnership with the NSW Department of Education and Training, a stall at Fair Day and an entry in the parade. The main goal was to encourage effective student, teacher, school and parent responses to homophobic harassment and violence so that all students, teachers and parents can feel safe and secure in the school environment.

The Skool's Out Forum won the Mardi Gras Outstanding Community Event award - this was the second year in a row that the Board has won this award. Held at Marrickville Town Hall and hosted by media personality Vanessa Wagner, the forum was attended by over 200 people. A report from the forum will be released in late 2002.

In the parade, around 50 people, including lawyers, teachers, parents, school- aged young people, children, staff from the Attorney General's Department and the Board, and a nun, marched and skipped with the mythical 'Heartfelt High Skool', where everyone is welcome regardless of their sexuality or lifestyle. 'Open Hearts, Open Minds' was the school motto.

Blackboards displayed slogans such as:

- The 3 R's: Respect, Rights and Recognition;
- No more teasing;
- No more dirty looks;
- Expel homophobia;
- Queer teacher here;
- Canteen queen;
- Rainbow families welcome;
- I want my Harmony - Security - Community; and
- Diversity: a class act.

The Board has also joined with the Crime Prevention Division and Violence against Women Specialist Unit of the Attorney-General's Department, the Lesbian and Gay Anti-Violence Project and the Gay and Lesbian Rights Lobby to produce a wallet-sized z-card called SKOOL'S OUT !

This card gives young people information on how to deal with homophobia in schools, including how they may be covered by the law, tips on how to deal with bullying, and who to contact if they need help.



Anti-discrimination advocacy project with ACON

In 2001/2002 the Board partnered with ACON (the AIDS Council of NSW) and Southern Cross University in a project to train community workers in anti-discrimination law and conduct ongoing activities and research on discrimination issues.

The project involves training community workers in the law and applying advocacy skills to this aspect of their work. Some workers have been trained in the Train the Presenter program as part of their ongoing advocacy work, enabling them to conduct presentations to colleagues and clients in anti-discrimination issues.

This is followed by focus groups which use an action learning model to resource workers in actions supporting people with discrimination complaints. These are conducted by ACON and supported by community legal centres and the Board. The projects also provide an opportunity to research people's experiences of discrimination and the process of making a complaint.



Video training resource

The Community Education Officer has continued overseeing the production of a 10-minute training video for use by community groups, which is being made in conjunction with the University of Technology, Sydney. The video, which will be distributed with guidelines for use, is near completion and is planned for release in late 2002.

The video will help explain people's rights under anti-discrimination law, and the strategies they can use to resolve discrimination and harassment problems. It will be a useful tool for stimulating discussion on discrimination issues.

Initiative funding projects

The Board received additional funding from the Director-General of the Attorney General's Department to enable us to expand our discrimination rights resources for people with visual impairments and other print disabilities, people who do not speak fluent English and people with low literacy and/or intellectual disabilities. The Board appreciates the Department's support for these initiatives.

Seven of the Board's most popular and relevant factsheets have been recorded on audio cassette for people who are unable to read print because of vision impairment or other disabilities. These have been distributed by the Royal Blind Society to outlets such as blindness organisations, public libraries and legal resource centres. They were also advertised through the Society's media channels and provided to individuals on request.

Introductory information about people's rights under anti-discrimination law has been translated into 24 languages and is being placed on the Board's website. With the assistance of SBS Radio, we have also produced recordings of introductory information in ten languages, which are suitable for broadcast as community service announcements on radio programs in those languages. These will be broadcast on SBS and will also be sent to a number of other radio programs throughout NSW via a specialist distribution service.

Work has also begun on a picture booklet for people with intellectual disabilities and/or low literacy explaining their rights under anti-discrimination law. The booklet will be prepared with specialist assistance from the Intellectual Disability Rights Service, and will be completed in late 2002.

Information exchange

In conjunction with the Women's Information and Referral Service, the Board co-ordinates a forum for the exchange of information between government agencies that provide enquiry services to the public. The forum allows participants to inform other government and community organisations about the services they provide, and participants can also familiarise themselves with the numerous government and community services that assist the public.

Community involvement

In 2001/2002, the Board continued its policy of participating in public events to provide information about people's rights under anti-discrimination law and answer specific enquiries. We had stalls at:

- AIDS Trust Food & Wine Fair 2001;
- Bathurst Indigenous Careers Day 2002;
- Lloyd McDermott Rugby Union Tournament;
- Mardi Gras Fair Day 2002;
- Moree Croc Eisteddfod 2001;
- NAIDOC week - various activities;
- Survival Day 2002; and

- Toongabbie Funday 2001.

The Board usually participates in Arabic Fair Day each year, but this year's fair was cancelled due to security concerns. The Board regrets the development of a climate in the community which led to this important event being cancelled.



Looking at discrimination against people with intellectual disabilities

It is unlawful to discriminate against a person on the basis of a real or assumed disability.

Discrimination isn't always blatant and distinct - it can mean treating one person less favourably than another. Discrimination against people with an intellectual disability can involve speaking to them in a patronising manner, or assuming that they don't understand everyday procedures or cannot make decisions for themselves.

Making an assumption about the level of a person's intellectual disability is a common form of discrimination. Bank tellers might assume that a person with an intellectual disability cannot fill out a form correctly, or a doctor might think that they are unable to manage their health issues.

Society has some understanding of physical disabilities, such as not grabbing a vision impaired person by the arm and trying to lead them, or not taking the handles of a wheelchair without asking the person using it. The same level of courtesy and respect is long overdue for people with intellectual disabilities.

The Board has a regular consultation with people who have intellectual disabilities and their advocates. This enables us to better understand the kinds of issues that affect their lives, and also to understand how to be more proactive in ensuring that they are aware of their rights.



Publications

The Board's publications program continued to provide information and educate employers, service providers, and members of the public about their rights and responsibilities under NSW anti-discrimination law.

The first copy of Board publications is generally available free, while multiple copies are charged for. Publication sales covered approximately 70% of the cost of printing and reprinting all Board publications in 2001/2002.

The Board produces two types of publications, factsheets and guidelines. Factsheets are for people who may have complaints of discrimination. They explain various types of discrimination under NSW law and the procedure for lodging a complaint. The other major type of publication is guidelines for employers and service providers, who are responsible for ensuring that their businesses and services are free from harassment and discriminatory practices.

In 2001/2002 we sold almost 6,000 copies of our publications. In addition, we distributed over 10,000 copies of our employer guidelines to people who attended our employer training sessions, whether in-house or as part of our seminar program. We also freely distributed copies of our publications at information days and in response to enquiries from the general public.

All of the Board's information on people's rights under anti-discrimination law is downloadable free of charge from our website. This increases the availability of our publications and assists the Board in reducing costs for printed copies of our factsheets.

We continued to reprint our existing stock of publications to meet demand, making necessary revisions such as incorporating information on the carers' responsibilities amendment as required.



Website

The Board's website is a complete guide to people's rights under NSW anti-discrimination law. As part of Lawlink NSW, it is a gateway into legal resources on the Internet. Use of the Board's website has increased during 2001/2002, averaging 104,507 hits per month. This is a 5% increase over the average 99,229 hits per month in 2000/2001.

The Board's website has consistently been one of the five most popular sites on the Lawlink network, generally ranked in 3rd or 4th position. This is reflected in the popularity of the word 'discrimination' as a search term by customers of Lawlink, showing that discrimination is an issue that interests people accessing Lawlink.

The Board's website is user friendly and written in plain English, which gives people easy access to information about their rights and responsibilities under discrimination law. The information on the site explains:

- what the Board does;
- what discrimination and harassment are;
- the responsibilities of employers and service providers under anti-discrimination law;
- how to make a complaint to the Board; and
- how the Board handles complaints.

The site contains all our factsheets, extracts from some of our workplace guidelines, information about our seminar and training programs, introductory information about people's rights in 25 community languages, and links to other human rights agencies which are useful for researchers and students. People can also download forms to order publications.



Metadata project for Board website

The Board has been invited by LawAccess Online to participate in a trial metadata project. LawAccess Online is a unique partnership between Government, the community sector and industry designed to provide the first point of contact for Government and related legal assistance services for people in NSW.

The LawAccess Online website is a search facility that enables people to easily access quality plain language legal resources and services that provide legal assistance via the Internet.

As the Board's website continually rates in the top five of the Attorney General's Department's most popular websites, the publications unit was invited to participate in developing metadata as part of a pilot project to be used by LawAccess Online. Metadata is information embedded in the page description language for each web page, which gives the subject matter of

each page, including its title, publication date and content.

This information can then be used by specialised search engines such as LawAccess Online to search and locate information in response to requests from the general public, with a higher degree of accuracy than generalist Internet search engines.

So far the publications unit has provided feedback to LawAccess Online on the effectiveness of writing metadata, which will assist in developing metadata guidelines. The project will continue in 2002/2003.

New publications

We produced 13 new publications this year:

- Annual report 2000-2001
- C-change: Report of the enquiry into hepatitis C related discrimination
- Skool's out wallet card
- Equal time newsletter (4 issues)
- Guidelines for employers: Carers' responsibilities discrimination
- Guidelines for union representatives
- Seminar program brochure (3 issues)
- Community sector training program

For a complete list of all Board publications, refer to page 75.

Media liaison

The media provides an important tool for informing people in NSW about discrimination and human rights, and coverage of Board issues and policies has been very consistent over the last twelve months. Stories on anti-discrimination issues are appearing more frequently in the mainstream media, and journalists are more receptive to story ideas that reflect the work of the Board.

About half of the media enquiries the Board receives are reactive - journalists will ring for a response to a Tribunal decision, or to discuss a local or international incident. These enquiries range from the wording of the Anti-Discrimination Act (ADA) through to a call from BBC Scotland about the reluctance of an Australian scientific organisation to rename the Nigger Beetle, which has caused offence to some people.

The rest of the enquiries are based on ideas and issues relating to discrimination - for example, journalists who write for the employment sections in daily newspapers ring frequently for interviews and information for stories about the rights of job applicants or employees.

The relevance of the ADA in the workplace is an increasingly popular topic in both mainstream media and specialist publications. Modern reportage demands definite information, and one of the Board's greatest challenges is to provide succinct answers to enquiries about a complex piece of legislation such as the ADA. Because of this, many of the Board's media briefings are prepared in conjunction with the Legal and Policy branch.

The most common request to the media desk is an interview with the President. The Board strives to make information available to as broad an audience as possible, so such requests are fulfilled whenever feasible. As many radio and print newsrooms in Sydney are syndicated with outlets in rural NSW and interstate, an interview recorded for a Sydney network will often be transmitted via a number of outlets.

In some cases, media coverage can lead to significant breakthroughs in issues important to the Board. Early in 2002, ABC Radio in Central West NSW alerted the Board to a proposal by the Norfolk Island Legislative Council to ban the migration of people with HIV or hepatitis C to the island. Subsequent media interest in this topic led to an invitation to the President to visit the island, during which he was able to set in place a number of initiatives that led to the Council reviewing and ultimately abandoning the proposal.

The degree of coverage is paralleled by the broad range of topics that the President is asked to comment on. As well as frequent enquiries that relate to the general application of the ADA, the most popular issues in the last year have included the release of the C-change report into discrimination against people who have hepatitis C, a housing development that sought to exclude children, and the ongoing debate about ethnicity and crime.



Chapter Four - Improving the Law

We seek to eliminate discrimination in NSW through legal & policy initiatives

2001/2002 was another busy year for the Board's Legal and Policy Branch. This year the Legal and Policy Branch has:

- provided legal advice on complaints;
- provided legal updates for Board Staff;
- provided legal advice to the President and represented the President in litigation;
- responded to requests for policy advice from people outside the Board;
- provided advice to the Attorney General's Department, the Attorney General's office and other government departments;
- participated in a variety of committees aimed at eliminating discriminatory practices; and
- undertaken a wide range of law reform and policy initiatives to improve the effectiveness of law and policy in eliminating discrimination and advancing the human rights of individuals and communities covered by the NSW Anti-Discrimination Act (ADA).

This chapter discusses some of the highlights of our work in the past year.



Review of the Anti-Discrimination Act

In December 1999 the NSW Law Reform Commission's (LRC) Report 92 - Review of the Anti-Discrimination Act 1977 (NSW) was released. This report proposes significant changes to anti-discrimination legislation in NSW.

During 2000/2001 the Legal and Policy Branch made extensive submissions to the Attorney General in response to the LRC's recommendations. In the last twelve months we have been working closely with the Attorney General's Department and the Attorney General's Office, providing extensive advice about proposed amendments to the ADA.



Amendments to the Anti-Discrimination Act (ADA)

The Anti-Discrimination Amendment (Drug Addiction) Act 2002 amended the ADA from 15th April 2002. The amending Act inserts s.49PA, which is an exception to the prohibition against disability discrimination.

The new section provides an exception from the ADA for discrimination against a person on the ground of disability if:

- the discrimination relates to the person's addiction to a prohibited drug; and
- the person is actually addicted to the prohibited drug at the time of the discrimination.

The Drug Misuse and Trafficking Act 1985 defines a prohibited drug as any substance, other than a prohibited plant, specified in Schedule 1. Section 49PA of the ADA provides that the drug treatments methadone and buprenorphine are not prohibited drugs. This means that the exception does not apply where a person is discriminated against in the area of employment on the basis that they are addicted to methadone or buprenorphine.

The exception only applies in relation to some aspects of the area of work, including applicants and employees (s.49D), commission agents (s.49E), contract workers (s.49F), partnerships (s.49G) and employment agencies (s.49K).

The exception does not apply where the discrimination against a person is on the ground of the person having hepatitis C, HIV infection or any other medical condition other than addiction to a prohibited drug.

In order to make out the exception, the onus is on the respondent to prove:

- the discrimination related to the person's addiction;
- the person's addiction was to a prohibited drug; and
- the person was actually addicted to that drug at the time of the discrimination.

The Board did not support these changes to the ADA, and is of the view that the amendment was unnecessary, as the ADA already provided that an employer is not required to hire a person who is manifestly unfit for or incapable of doing the job required by the employer.

A person's drug dependence should not be used as a basis upon which to arbitrarily determine whether a person can perform the requirements of a job. In our view, the amendment perpetuates stereotypes of what a person who is or was drug dependent can or cannot do. As such it is an inefficient and unfair way of determining people's access to employment.



Legislative reform and policy initiatives

Carers' responsibilities

The Branch has contributed to the successful implementation of the carers' responsibility amendments to the Anti-Discrimination Act, by continuing to provide information regarding the new provisions and relevant case law and give talks on the new provisions.

We have prepared an issues paper that develops the legal and policy framework for carers' responsibilities as a ground of discrimination. The paper looks at the changing nature of the workforce, in particular the increasing numbers of women in paid work, and debates about the responsibilities of government, the role of employers and the rights of workers.

The paper also focuses on the relationship between flexible and family-friendly work practices, industrial changes that have impacted on workers' abilities to manage their work and family responsibilities, patterns of debate in Australia and overseas and the main public policy issues for the future. It should be available in August 2002.

Genetics discrimination submission

In the context of rapid advances in human genetic technology and the scientific and medical application of human genetic information, the Australian Law Reform Commission (ALRC) and Australian Health Ethics Committee (AHEC) have been asked to enquire into the protection of human genetic information. The President of the Anti-Discrimination Board is a member of the Advisory Committee to this inquiry.

There are real concerns that people will be less willing to undergo genetic testing if they fear they will be discriminated against on the basis of the results, particularly in the context of employment and insurance.

This has obvious implications for both individual and public health outcomes if people are deterred from undergoing testing for conditions which have effective treatments. People must therefore be confident that privacy and anti-discrimination laws will be adequate to ensure their confidentiality and human rights.

The Board has prepared a submission in response to an Issues Paper released by the ALRC and AHEC in October 2001. This submission examines whether existing anti-discrimination laws are adequate to protect people against discrimination on the basis of their genetic makeup or assumed genetic makeup, and makes a range of legislative and policy recommendations to ensure that genetic discrimination is adequately addressed.

We argue that there is no need for separate legislation, as existing anti-discrimination legislation can provide coverage of genetic discrimination with a range of amendments. Such an approach will support uniformity, or at least greater harmonisation, of federal, State and Territory anti-discrimination legislation, which means people will have equal protection under Australian law, regardless of which state they live in.

It would also ensure that the law does not give different levels of protection to people with disabilities diagnosed by genetic testing, or future or imputed disabilities based on predictive genetic testing, compared with people with other types of disabilities.

Rather than acting as an impediment to the development and application of genetic technology, effective anti-discrimination and privacy legislation are critical to realising the public health benefits of genetic information. If we fail to provide such

protection, discrimination and privacy concerns will act as disincentives to testing and research participation, and have negative consequences for individual and public health outcomes.



Review of the Status of Children Act 1996 (NSW)

The Attorney General's Department is reviewing the Status of Children Act 1996 (NSW). We have made a submission to the review which focuses on the role that this Act can play in providing for the non-discriminatory treatment of ex-nuptial children, by declaring their legal status to be unaffected by the marital status of their parents. We also examine the need for reform of the Act to better address the treatment of ex-nuptial children born within non-traditional families, including lesbian and gay parents.

Review of the Jury Act 1977 (NSW)

The NSW Law Reform Commission has a reference to consider the issue of the eligibility of potential jurors who are hearing or vision impaired to participate in jury duty. The Board has made preliminary submissions to assist the Commission's development of a consultation paper.

Review of the Property (Relationships) Act 1984 (NSW)

The NSW Law Reform Commission has recently released Discussion Paper 44: Review of the Property (Relationships) Act 1984. We are currently preparing a submission in response to this discussion paper which will focus on reform to the Act to eliminate discrimination against people on the ground of their marital status. The aim must be to ensure that the law affords the same rights to people in de facto relationships, whether they are heterosexual or same sex couples, as the law affords to married couples.

Improving legal recognition for transgender people

The Board has continued to pursue both a nationally consistent approach to legal recognition of transgender people, and reform of NSW law in this area.

The Board is encouraged by the Attorney General's commitment to progressing a national approach with his counterparts in other States and Territories through the Standing Committee of Attorneys General (SCAG). We assisted the Attorney General's Department in preparing briefing materials for the SCAG.

The need for reform is not just a matter for other States and Territories, but is also an issue in NSW. The NSW Attorney General's Department is reviewing the Births Deaths and Marriage Registration Act 1995 (NSW). The Board has made a submission to that review, proposing reforms to improve the legal recognition of transgender people living in NSW.



Other initiatives

The Legal and Policy Branch has also prepared a number of other submissions, many of which are available on the Board's website. They include:

- submissions to the Attorney General's Department review of the Married Persons (Equality of Status) Act;
- a submission to the Attorney General's Department discussion paper on the Pilot Program for Community Justice Conferencing for Adult Offenders; and
- a submission to the NSW Law Reform Commission's review of sentencing of young offenders.

The President's involvement

The Board's President is involved as a member of a number of high-level advisory committees working across agencies and portfolios. Among the more significant of these in 2001/2002 were:

- Disability Advisory Council (Attorney General's Department)
- DNA Reference Laboratory Oversight Committee (Department of Health)
- DNA Reference Advisory Committee (Australian Law Reform Commission)
- Innocence Panel (Department of Police)
- Industrial Relations Users Group (Industrial Relations Commission)
- Anti-Violence Committee (Department of Corrective Services)
- Small Agencies Forum (Chief Executive Officers' Group)
- Ombudsman's Network (CEOs of Watchdog Agencies)

The President also participates in a number of Commonwealth-State consultation groups, in particular the regular meetings of all Commonwealth/State and Territory Commissioners for Equal Opportunity or Anti-Discrimination.



Talks and presentations

Legal and Policy Branch prepared and delivered a number of papers during 2001/2002, including:

- a paper on carers' responsibilities for the NSW and ACT Association of Aged Services;
- a paper for the Human Rights and Equal Opportunity Consultation in the leadup to the World Conference on Racism;
- a paper on the impact of discrimination law on health care professionals for a conference on the top 10 legal issues for health care professionals, organised by Australian Corporate Research;
- a paper presented on the Australian perspective of gay, lesbian, bisexual and transgender rights at the World Gay, Lesbian, Bisexual and Transgender InterPride Conference in New Zealand;
- papers presented at several conferences on recent developments in discrimination law and pregnancy and maternity;
- Hepatitis C Enquiry presentations, including the 6th International Hepatitis C Conference in Portugal, the 3rd Australasian Hepatitis C Conference and the National Discrimination Legal Officer's Conference; and
- in conjunction with the Board's Indigenous team, a speech on racial vilification for the State Aboriginal Women's Gathering in Morpeth.

The Branch also prepared papers and speech notes for many of the President's speeches.

**Industrial relations initiatives**

The Industrial Relations Act 1996 (NSW) requires the NSW Industrial Relations Commission (IRC) to take into account the principles of the Anti-Discrimination Act in carrying out certain of its functions. The Industrial Relations Act also gives the President of the Anti-Discrimination Board the ability to intervene in matters before the IRC which involve unlawful discrimination.

The President of the Board continues to intervene in major cases to help ensure discrimination issues are put before the industrial parties and the IRC. However, in the last financial year the President declined to intervene in a number of industrial cases due to resource constraints.

The Board was involved in several cases, including two major cases before the IRC - the conclusion of the Catholic Commission for Employment Relations Application for Award Variations - Catholic Personal Carers' Leave, and the Review of the Principles for Approval of Enterprise Agreements 2002.

**Catholic Personal Carers' Leave**

This was a case where the Catholic Commission for Employment Relations asked the IRC to remove the standard Personal Carers Leave clause from certain awards, and insert a 'Catholic personal carers' leave' clause instead. The standard clause provides an entitlement for employees to access their sick leave to care for a certain class of persons, and is generally in all NSW awards.

The Catholic employers' objection to having the standard clause in their awards was that the class of persons it specifies includes heterosexual defacto partners and same sex defacto partners. They did not want to make express reference to defacto partners.

The President intervened in the case because it raised an important public policy issue about the right for a large number of employees to be treated without discrimination in the terms and conditions of their work.

As religious organisations are one of the largest employers in NSW, particularly with the outsourcing of government services to such organizations, the case raised the extent to which such employers should be able to treat employees less favourably on the basis of characteristics such as their marital status, homosexuality and race. For example, we were concerned that excluding express reference to defacto partners in the proposed carers leave clause could constitute discrimination.

During the course of the case over the last 2 years, the Catholic employers moderated their position and agreed that employees in defacto relationships should have an entitlement to access their sick leave to care for their partner. However, they wished to introduce a definition of 'family' into the award, and exclude people in defacto relationships from the definition.

The Catholic Commission's final position asked the IRC to grant a carers leave clause that provided an employee with an entitlement to carers leave to care for a 'family member or other person', where family is exclusively defined to exclude defacto relationships and extended relatives and kinship networks. The Board argued that this discriminates on the ground of marital status, homosexuality and race.

Our argument was that section 56(d) of the ADA did not assist in making that discrimination lawful. In the alternative, we said that even if s 56(d) was made out, the IRC should give it little weight as the Industrial Relations Act is concerned not only with unlawful discrimination under the ADA, but also with the prevention and elimination of discrimination more broadly.

During the hearing, the IRC expressed concern that the proposed clause also required employees to disclose to their employer the nature of their relationship with the person who they wished to care for. The Board argued that there was evidence of disclosure of sexuality resulting in discrimination and victimisation in workplaces generally, and that some employees may not wish to disclose the nature of their relationship, particularly because of the known stated position of their employer towards people in defacto relationships. The industrial parties agreed to delete that provision, and now the employee just needs to state that the person they wish to take leave to care for requires their care or support.

The Commission handed down its decision in this matter on 23 November 2001, rejecting the submissions of the President and making the award variations in the terms sought by the industrial parties. See *Nursing Homes & Nurses' (State) Award & Anor* [2001] NSWIRComm 298.

**Review of Principles for Approval of Enterprise Agreements**

The President intervened in this case to seek to amend the model anti-discrimination clause as referred to in the review of the Principles for the Approval of Enterprise Agreements 2000 (2000)101 IR 332 at 338, to make reference to discrimination on the ground of a person's responsibilities as a carer. All industrial parties agreed with this proposal and the hearing is scheduled for November 2002.

Submissions and information

In 2001/2002 the Board continued to provide information to industrial parties on their rights and responsibilities under the ADA. The Board also made a number of submissions in relation to issues of discrimination regarding proposals for industrial law reform such as the Review of the NSW Industrial Relations Act 1996.

Study tour on public sector discrimination

In April/May 2002, Maggie Smyth and Angelene Falk of the Legal and Policy Branch undertook a study tour funded by the SGE Travelling Fellowship in Public Sector Management, which they received in 2001. Sponsored by the State Government Employees Credit Union in partnership with the Premier's Department, the fellowship is awarded on a competitive basis for research which will contribute to the public sector reform process in NSW.

The purpose of the tour was to visit relevant Commissions for Human Rights in the United Kingdom and Canada and to visit members of the European Union in Brussels to gain insight into the international experience of:

- the operation and utility of specific provisions of applicable anti-discrimination legislation in addressing systemic discrimination in the public sector;
- the role of the European Union in advancing anti-discrimination protections internationally;
- the development of initiatives aimed at improving compliance with anti-discrimination legislation and outcomes, particularly in relation to employment and service provision in the public sector.

Maggie and Angelene also visited public sector agencies and non-government organisations in order to gain an understanding of public sector and non-government responses to both the legislative regime and the development of pro-active approaches to the prevention and elimination of discrimination.

A range of organisations were consulted, such as the Chief Inspector of Fire Services of HM Fire Service Inspectorate, the Commission for Racial Equality, the Metropolitan Police - Scotland Yard Race Unit, the Chair of the Disability Rights Commission, the Equal Opportunity Commission, and the Human Rights Unit and Race Equality Unit of the Home Office in London.

In Brussels, Maggie and Angelene met with the Directorate General for Employment & Social Affairs (Immigration & Asylum) of the European Union, the Directorate for Anti-Discrimination, the Employment & Social Affairs Directorate, the Directorate General for Employment, the International Lesbian and Gay Association Europe, and the Belgian Centre for Equal Opportunities and Opposition to Racism.

In Canada, they visited the Canadian Human Rights Commission and the Pay Equity Task Force in Ottawa, and the British Columbian Human Rights Coalition, the British Columbian Human Rights Commission, the British Columbian Public Interest Advocacy Centre and Nitya Iyer, an academic who has recently completed a large study on pay equity issues in Vancouver.

A range of innovative processes are in place around the world to deal with systemic discrimination, and the research undertaken as part of the study tour will assist the Board in developing proposals for legislative reform and implementing those reforms. The study provides an opportunity to reconsider methods for addressing systemic discrimination in the NSW public sector during 2002/2003. A report of the trip will be published by the Board shortly.

Legal resources for Board staff

We have prepared legal materials to be used as resources for Board staff, the President and members of the Statutory Board. This year we have undertaken extensive work revising our cases and materials on legal issues that arise in complaints handling, as well as preparing a comprehensive guide to case law and materials on interpreting the disability discrimination provisions of the ADA. Work is also nearing completion on another comprehensive guide to cases and material on interpreting the carers' responsibilities provisions of the ADA.

Development of self-funding service

In 2001/2002 we have continued to work on the issue of developing a range of new legal products which can be self-funding. A feasibility study has been undertaken and the report from this study recommended that the Board develop and market a new line of legal products and services to the community on a cost-recovery basis. A business plan is now being developed.

External involvements

Legal and Policy is involved in a number of external committees and working groups which relate to the core work of the Board. Some examples include the Law Society Human Rights Committee, the Joint Initiative Group of the Ombudsman's Network and the Network of Government Agencies (working on homophobic violence). The staff of the Legal and Policy Branch take part in the National Discrimination Legal Officers Network, and also have regular liaison meetings with the Administrative Decisions Tribunal and other similar bodies.

Exemptions

There are two types of exemptions available under the Anti-Discrimination Act (ADA) - s.126 and s.126A.

Section 126A exemptions apply when employers or service providers wish to run a special needs programs or activities that would be discriminatory on a ground covered by the ADA. Applications for Section 126A exemptions must be made to the Attorney General.

Section 126 exemptions are needed when an organisation seeks to redress past disadvantage or discrimination experienced by a particular group on any of the grounds covered by the ADA, for example by designating a job for a person of a particular race or gender. The initial period of exemption can be up to ten years, with the possibility of renewal for another ten years. To gain this exemption, applicants should write to the President of the Anti-Discrimination Board, setting out the nature of the exemption sought and arguments in support of it. The Statutory Board decides whether to recommend to the Attorney General that an exemption be granted.

In making their recommendation, the Board takes into account the purpose of the ADA as legislation designed to promote equality of opportunity.

Exemptions granted in 2001/2002 under section 126A of the Anti-Discrimination Act

Department or organisation	Special needs program or activity	Period of exemption
Armidale and District Women's Centre	welfare service for women only	18.7.2001 for 10 years
Body Image	health and fitness centre for women only	1.5.2002 for 5 years
Fernwood Fitness Centre	fitness centre for women only	22.1.2002 for 5 years
Health for Her Fitness and Lifestyle Centre	health and fitness centre for women only	14.5.2002 for 5 years
New Image Fitness and Health Centre	health and fitness centre for women only	1.5.2002 for 5 years
Playworks	script development program for women only	22.5.2002 for 10 years
Regional Violence Prevention Specialist - Illawarra, Violence Against Women Unit, NSW Attorney General's Department	speaker series for women only	6.11.2001 for 1 year
Soul Fitness	health and fitness centre for women only	16.4.2002 for 5 years
Tweed Shire Women's Service	health centre for women only	28.1.2002 for an indefinite period

Exemptions granted in 2001/2002 under section 126 of the Anti-Discrimination Act

Applicant	Program	Sections	Date granted	Expiry
Australian Business Industrial	To all industrial organisations, all employers and employees in NSW, in relation to provisions in industrial instruments which entitle employees aged over 45 years terminated at the initiative of the employer to additional notice, and employees aged over 45 years who are made redundant to additional severance pay.	49ZYB (2), 49ZYC, 49ZYD & 51	26.4.2002 (5 years)	25.4.2007
Australian Council of Social Services	To designate and recruit for a position as a Senior Policy Officer for an Indigenous person	8 & 51	8.5.2002 (10 years)	7.5.2012
Co.As.It	To designate and recruit for a position for a male facilitator to run a support group targeting older Italian migrant men	25 & 51	22.5.2002 (2 years)	21.5.2004
Department of Education and Training, Elsa Dixon Aboriginal Employment Program	To provide funding to other agencies or private employers to designate and recruit for up to 50 positions for Indigenous people	8, 19 & 51	6.11.2001 (10 years)	5.11.2011
Dr Maysa Eddie	To provide dental services to females, and males under 10 only, for 2 days per week	33, 49ZYN & 51	28.8.2001 (1 year)	27.8.2002
Emapine Pty Ltd	To restrict access to the premises of the Midnight Shift Hotel to men only	33 & 51	27.03.2002 (6 months)	26.9.2002
Glen Innes Local Aboriginal Land Council	To designate and recruit for the positions of Coordinator/Office Manager and Office Receptionist for Aboriginal people	8 & 51	14.3.2002 (10 years)	13.3.2012
Hunter Mental Health Service	To designate and recruit for the positions of Consumer Coordinator and three Consumer Consultants for people who have been primary consumers of a mental health service	49D & 51	22.2.2002 (10 years)	21.2.2012
Immigrant Women's Speakout Association NSW	To provide services specifically to migrant and refugee women from non-English speaking backgrounds, and to designate and recruit for women only	8 & 51	6.7.2001 (10 years)	5.7.2011
Mature Staffing Solutions	To provide services to people aged over 40 years only, and to enable employers to recruit people aged over 40 years through Mature Staffing Solutions	49ZYN, 49ZYH & 51	14.3.2002 (5 years)	13.03.2007
Motor Traders Association of NSW on behalf of General Motors Holden	To specifically recruit women to positions as vehicle salespersons in the motor vehicle industry and to implement a program of training, support and mentoring for female vehicle salespersons	33, 49ZYN & 51	28.8.2001 (5 years)	27.8.2006
Mountains Outreach Community Service	To run up to 10 community education workshops for men only	31A, 33 & 51	12.3.2002 (2 years)	11.3.2004
New England Credit Union	To designate and recruit for a traineeship for an Indigenous person	8 & 51	24.1.2002 (5 years)	23.1.2007
NRMA Ltd	To allow 13 Patrol Officers over the age of 55 who are currently exempt from working set midnight shifts pursuant to past industrial agreements to continue enjoying that exemption	49ZYB (2)	22.5.2002 (5 years)	21.5.2007
Port Stephens Council	To designate and recruit for 2 traineeship positions for Indigenous people	8 & 51	5.10.2001 (5 years)	4.10.2006
Redfern Legal Centre	To designate and recruit for a position as Assistant Coordinator of the Women's Domestic Violence Court Assistance scheme for an Aboriginal woman	8, 25 & 51	22.5.2002 (5 years)	21.05.2007
Southern Cross University	To designate and recruit for 29 general staff positions and 8 academic staff positions for Indigenous people	8 & 51	22.1.2002 (5 years)	21.1.2007
South West Sydney Legal Centre	To designate and recruit for a position for a female solicitor	25 & 51	7.9.2001 (10 years)	6.9.2011
Sydney Water	To designate and recruit for a maximum of 40 positions as traineeships/cadetships, graduate or undergraduate positions for Indigenous people, and implement a program of training, support and mentoring	8 & 51	23.10.2001 (5 years)	23.20.2006
Thomson Marconi Sonar	To designate and recruit for up to 10 positions as work experience students for women only	25 & 51	20.11.2001 (2 years)	20.11.2003
University of NSW, Faculty of the Built Environment	To designate a position and recruit for an Indigenous person as coordinator of the Faculty for the Built Environment Preparatory Program for Indigenous Students	8 & 51	6.11.2001 (10 years)	5.11.2011



Grounds (or types) of discrimination specifically covered under Commonwealth & State/Territory law

Ground	Cth	NSW	ACT	Vic	Qld	NT	SA	WA	Tas
Sex/gender	x	x	x	x	x	x	x	x	x
Sexual harassment	x	x	x	x	x	x	x	x	x
Pregnancy	x	-	x	x	x	x	x	x	x
Marital status	x	x	x	x	x	x	x	x	x
Race	x	x	x	x	x	x	x	x	x
Racist harassment	-	-	-	-	-	-	-	x	-
Racial vilification/hatred	x	x	x	x	x	-	x	in crim. code	x
Disability/impairment	x	x	x	x	x	x	x	x	x
Disability harassment	x	-	-	-	-	-	-	-	-
Disability vilification	-	-	-	-	-	-	-	-	x
Irrelevant medical record	(1)	-	-	-	-	x	-	-	x
HIV vilification	-	x	-	-	-	-	-	-	-
Sexual preference/ lawful sexual activity/ sexual orientation/ sexuality	(1)	-	x	x	x	x	x	-	x
Homosexuality	-	x	-	-	-	-	-	-	-
Homosexual vilification	-	x	-	-	-	-	-	-	x
Transgender	-	x	x	x	-	x	x	-	x
Transgender vilification	-	x	-	-	-	-	-	-	x
Ethno-religion	-	x	-	-	-	-	-	-	-
Religion	(1)	-	x	x	x	x	-	x	x
Religious vilification/hatred	-	-	-	x	x	-	-	-	x
Age	(1)	x	x	x	x	x	x	x	x
Compulsory retirement	-	x	x	-	-	-	-	-	-
Social origin	(1)	-	-	-	-	-	-	-	-
Criminal record	(1)	-	-	-	-	x (irrelevant)	-	(1) (spent convictions)	x (irrelevant)
Political belief/ conviction/ activity	(1)	-	x	x	x	x	-	x	x
Union activity	(1)	(2)	x	x	x	x	-	-	x
Employer assoc. activity	-	(2)	x	x	-	x	-	-	x
Profession, trade, occupation or calling	-	-	x	-	-	-	-	-	-
Parental status	-	-	x	x	x	x	-	-	x
Carers' responsibilities	dismissal only	(1)	x	x	-	-	-	x	-
Family status/ parental status/ family responsibility	-	-	x	x	-	-	-	x	x
Breastfeeding	-	-	-	x	x	x	-	-	x
Physical features	-	-	-	x	-	-	-	-	-
Relatives & associates	-	x	x	x	x	x	-	x (not all grounds)	x
Offensive, humiliating, intimidating, insulting, ridiculing conduct on grounds of gender, marital status, pregnancy, parental status, breastfeeding, family responsibility	-	-	-	-	-	-	-	-	x

(1) Employment only

(2) Under Industrial Relations law

**Conciliated Complaint Disability discrimination in service provision**

A woman alleged that she was discriminated against because of her psychiatric disability when the Disability Support Unit of her tertiary institution did not provide her with an adequate level of service to enable her to continue her studies.

The complainant was enrolled in two courses at separate campuses. She alleged that she was provided with an adequate level of support and assistance to continue with the course at one campus, but this was not the case at the other. The respondent asserted that they had tried to implement an appropriate level of support, but miscommunication between the parties had meant that consultation was delayed and the complainant discontinued the course at that campus before this was

finalised.

The matter was resolved when the respondent agreed to review their procedures for providing disability support, and provide the complainant with a statement of regret and an ex-gratia payment of \$2,000.

Conciliated Complaint Sex (pregnancy) discrimination in employment

A woman alleged that her employer discriminated against her because of her pregnancy after she notified Workcover about safety concerns in the workplace and was subsequently prevented from entering her work site on the grounds that it was 'too dangerous' for her.

She alleged that when a Workcover inspector asked the employer why she was sitting outside the workshop, the manager said that it was because she was pregnant. This was despite the fact that the safety issues, although numerous, were of a minor nature, and other workers who she was required to supervise were allowed to continue working. She further alleged that she was victimised when she complained to her employer that she had nothing to do.

The matter was resolved when the employer agreed to provide the complainant with a written apology, a reference and an ex-gratia payment of \$5,000 to settle the matter. The complainant also provided the employer with her written resignation.



Chapter Five - Supporting the Board

we aim to ensure the efficient operation of the Board by providing excellent support services

The Corporate Services Branch ensures the efficient running of the Anti-Discrimination Board's core activities by providing advice and support to the President and members of the management team in the areas of human resources, information technology, financial management, purchasing, management of premises and administration.

This occurs in a context of stringent external and internal public and departmental accountabilities, and a greater demand from the public and from public sector leadership to get more value for money from corporate services functions.

The Corporate Services Branch coordinates with a number of areas of the Attorney General's Department, including human resources, capital works, finance, corporate training and development, communications and information technology.

The Board achieved a small budget surplus in 2001/2002, for the sixth year in a row. This resulted from the achievement of income targets, in particular from our highly successful self-funded education program, income generated by external activities performed by the President, and savings achieved in operating expenses.

This year Corporate Services Branch focussed on improving operational procedures relating to recruitment, induction and training, to meet the needs of new and existing staff and ensure they are working at optimum effectiveness.

The branch has also been developing a more consistent system for managing the administrative affairs of the Board. This has involved migrating administrative systems from individual software packages over to the corporate software, which is Microsoft Access. Updated procedures are being developed for areas, such as travel, training and recruitment.



Information technology

The Information Technology Officer provides network management and user support to ensure that Board staff are able to operate with maximum effectiveness. Apart from ongoing support and management functions, the main activities in 2001/2002 were preparing for a major upgrade of our primary complaint handling database, and preparing for the four-year cyclical upgrade of all Board computer equipment to be completed in the second half of 2002.



Library

The Board's library provides research and information services to the President, Statutory Board members and staff of the Board, as well as assisting with information retrieval and legal research training.

In 2001/2, the Librarian continued evaluating the library collection to better reflect the current work of the Board and make the information resources more accessible to the regional offices and staff working at home.

One of the major changes was that many databases previously received on CD-ROM are now accessed online. This means the information is more up to date and can be accessed more easily from outside the Board's head office. The change was made in consultation with other libraries in the Department and the government sector generally, to take advantage of possible consortia and adopt the right balance between fast timely access and financial constraints.

The catalogue of holdings of all libraries within the Attorney General's Department was loaded onto the Department's internal website, known as the Intranet, in 2002. This means the staff of the entire Attorney General's Department have better access to the Board's library collection.

The Librarian's reference service supported the work of the Board by providing information on a broad range of topics including evaluative articles on racial vilification and free speech, flexible work practices in Australia, the comparative costs of discrimination complaints overseas, books on alternative dispute resolution and correct business details for respondents.

The Librarian also provides a 'current awareness' service to all Board staff, which includes recent articles and books received by the library as well as details of recent discrimination cases and relevant legislative changes. This allows Board staff to keep abreast of events which may influence the Board's policy or practice on a particular issue.

The Librarian ran online legal research skills classes for the Legal and Policy Branch, as well as many other staff from other branches. This was in addition to individual library skills training for all new staff, and continued support throughout the year.



Financial statements

In the 2001/2002 financial year, the Board's financial position was as follows:

Income	\$(000)
---------------	----------------

Revenue earned	721
Government funding	*4,071
Total	4,792
Expenditure	\$(000)
Salary related	3324
Other expenses	1170
Total	4494
Surplus	298

Notes: includes funds provided for initiative projects 2001/2002, Advance Australia Fairly project and backlog reduction

Initiative funding	\$(000)
Total initiative funds	370
Funds expenses (2000/01)	75
Rolled over to 2001/02	295
Net surplus (surplus rolled over funds)	

Conciliated Complaint Sex discrimination in employment

The complainant alleged that she was dismissed while on maternity leave, and was in fact summoned to the workplace while she was in hospital giving birth. When she went to the workplace she was given a letter announcing her redundancy and a cheque, which the company stated was a genuine redundancy caused by an internal restructure.

She became quite depressed as a result of having no job to which she could return to after her maternity leave. She and the company reached an agreement for payment of \$8,000 and a reference.

Appendices

Our guarantee of service

Why is there an Anti-Discrimination Board?

Anti-Discrimination Board of NSW was set up in 1977 under a NSW law, the Anti-Discrimination Act. It is part of the NSW Attorney General's Department. The Board's purpose is to make sure that everyone in NSW gets a 'fair go'.

What do we do?

We administer the NSW Anti-Discrimination Act. Approximately 50 staff work for the Board. It is their job to:

- inform and educate the people of NSW, employers and service providers about their rights and responsibilities under anti-discrimination law;
- help resolve individual complaints of discrimination, harassment or vilification; and
- let the NSW government know when the anti-discrimination law needs changing to make sure that more people get a fair go.

How can the Board help me?

The Board provides the following main services:

- general enquiry service;
- Employers Advisory Service;
- discrimination complaints service;
- publications; and
- talks and training sessions.

How will the Board's staff treat me?

We aim to treat all our clients fairly in a friendly, helpful and efficient way - at all times. We aim to meet your needs whenever it is within our power to do so.

What can I expect from each of your services?

General Enquiry Service & Employers Advisory Service

The staff on our general enquiry service can help answer any general or legal enquiry about your (or other people's) rights or responsibilities under anti-discrimination law. They can also give you more information about how the Board works.

If you are an employer, manager, supervisor or other employer representative, you can use our specialist Employers Advisory Service for help with any employment-related enquiry to do with discrimination or harassment. For example, we can provide advice on a particular discrimination problem, or on more general personnel policies and procedures.

You can use either of these services by phoning any of offices (in Sydney, Wollongong or Newcastle) between 9 am and 5 pm, Monday to Friday or visiting any of our three offices between 9 am and 4.30 pm. You can also write to us. You can expect accurate, prompt, sympathetic, confidential and free advice. You do not have to give us your name if you do not want to. If you visit us, a duty officer will see you as soon as possible. You do not need an appointment in the Sydney office. However, as our Newcastle and Wollongong offices are very small, it is probably best to phone before you visit.

**Discrimination Complaints Service**

If you think you've been discriminated against, it is a good idea to phone our general enquiry service first for advice before you lodge a written complaint with us. This is for two reasons - firstly, we may not have the power to handle your complaint because it may be outside the current NSW anti-discrimination law. If this is the case we may be able to refer you to somewhere else that can help. Secondly, we may be able to advise you how to sort out the problem yourself, so that you do not need to lodge a complaint to us.

If you want us to help resolve your discrimination complaint, you must generally write us a letter about it, and mail, fax or bring it in to us. In your letter you should explain what type of discrimination has happened to you, and when and where it happened, and give us your contact address and phone number.

You can expect us to handle your discrimination complaint confidentially, efficiently, fairly, free of charge and as quickly as possible. If your complaint is urgent (for example, you are about to lose your job or your accommodation), either phone us, or make sure your letter says 'urgent' at the top. We give priority to these types of urgent complaints.

If your complaint appears to be covered by the anti-discrimination law, we will generally try to conciliate it. This means we will help you and the person or organisation you're complaining about try to reach a private settlement. Most complaints can be settled in this way.

It is impossible to say exactly how long any complaint will take to settle as this depends on the nature of your complaint and the other people involved. We must also be fair to the organisation or person you're complaining about, and they must get the chance to explain things from their point of view. This often takes time. The officer handling your complaint may be able to give you an estimate of how long your particular complaint could take to settle.

**Publications**

We have a wide range of publications to suit different people's needs. For example, we have factsheets which explain your rights, and guidelines which explain different groups' responsibilities under the anti-discrimination law. We also publish a quarterly newsletter Equal time. We try to make our publications as easy to read and useful as possible.

Many of our publications are free - at least for the first copy. If there is a charge for the publication(s) you want, we will tell you before we send them to you so that you can decide if you still want them. To help students and others who need information about anti-discrimination law, we have a website. Our website address is: <http://www.lawlink.nsw.gov.au/adb>

Anyone else who wants any of our printed publications can write, phone or call in at any of our offices.

**Publications List****Factsheets**

- Age discrimination
- Anti-discrimination law and the small business owner
- Carers' responsibilities discrimination - your rights
- Disability discrimination - your rights
- Discrimination, EEO & affirmative action
- Discrimination & the Anti-Discrimination Board of NSW (general factsheet)
- Harassment & sexual harassment - your rights
- Homosexual discrimination - your rights
- How does the Anti-Discrimination Board deal with complaints?
- How to make a complaint about discrimination to the Anti-Discrimination Board
- Discrimination against people with infectious diseases - your rights
- Introductory factsheet in 25 community languages (website only)
- Lesbian discrimination & harassment & anti-lesbian behaviour
- Marital status discrimination - your rights
- People living with HIV/AIDS discrimination
- Pregnant women and discrimination
- Race discrimination - your rights
- Sex discrimination - your rights
- Strategies factsheet - How to deal with discrimination or unfair treatment?
- Transgender discrimination - your rights
- Treated unfairly because you are an Indigenous person?
- Vilification - your rights
- What you can do if you are treated unfairly (low literacy)
- What you need to know about anti-discrimination law (for people from non-English speaking backgrounds)

**Posters**

- Harassment is not welcome here
- Know your rights
- Multilingual
- Speak out against harassment
- Together we can beat harassment
- You have rights



Guidelines

- A guide for respondents
- Anti-discrimination guidelines for hoteliers
- Anti-discrimination guidelines for local government councillors
- Anti-discrimination guidelines for managers of local councils
- Anti-discrimination guidelines for people providing goods & services
- Anti-discrimination guidelines for people who advise clients, consumers and members of the community about their rights
- Conciliation - a guide for complainants and respondents
- Exemption guidelines
- Guidelines for advertisers
- Guidelines for media (vilification)
- Guidelines for providers of financial services
- Guidelines for real estate agents
- Guidelines for registered clubs
- Transgender discrimination guidelines



Workplace guidelines

- Anti-discrimination and EEO guidelines for managers, supervisors & team leaders
- Anti-discrimination and EEO guidelines for small business owners and managers
- Carers' responsibilities discrimination - guidelines for employers
- Discrimination, harassment & EEO - a guide for non-supervisory staff
- Grievance procedures
- Harassment in the workplace
- How to implement EEO in any organisation
- Identifying and eliminating discrimination from industrial awards and agreements
- Sample policies and procedures disk
- Guidelines for union representatives
- Sample guidelines for Contact and Support Officers
- Grievance Investigator guidelines



Other publications

- Anti-Discrimination Board Annual Report 2000–2001
- Charities and anti-discrimination law
- Discrimination and harassment: The rights and responsibilities of employees (training kit for vocational teachers)
- Equal time (quarterly newsletter)
- Guarantee of service
- Know your rights: A guide for Aboriginal and Torres Strait Islander people
- Indigenous rights wallet card
- Pre-employment medical tests
- Services for employers brochure
- Training sessions for employers and service providers
- Community sector training program
- Skool's Out wallet card (with the Crime Prevention Division of the Attorney General's Department)
- C-change - Report of the enquiry into hepatitis C related discrimination



Obtaining a publication from the Board

Single copies of factsheets are free, and there is a small charge for bulk orders. All factsheets are also available on the Board's website and can be downloaded as required.

Posters, guidelines and other publications can be ordered from the Board at a very reasonable charge. To place an order, phone Milly Stylli on (02) 9268 5555, call in to one of the Board's offices (see back cover for details), or download an order form from the Board's website and fax to (02) 9268 5500.

The most popular factsheets are also available on audio cassette for people who are unable to read print. For more information contact the Royal Blind Society on (02) 9334 3452, or 1800 644 885 from outside Sydney.



Conciliated Complaint Race discrimination in employment

A security guard alleged he was constantly harassed by his immediate supervisor on the ground of his race. He alleged his supervisor made disparaging comments towards him, provided him with no supervisory assistance or training, and on his first day at work said 'here's another bimbo Yugoslav joining us'.

He further alleged that when the harassment was brought to the attention of management, he was victimised by being transferred to another location. He alleged that this transfer and lack of support from management caused him to seek alternate employment and resign from his job.

Although he had suffered no loss of wages as he found immediate employment at higher wages, the complainant requested payment of out of pocket expenses associated with his transfer and general damages regarding the distress caused to him.

The employer denied liability but the matter was resolved when the complainant accepted payment of \$3,930, a statement of service, and an undertaking from the employer to train employees about harassment and discrimination.



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