

# Equal Time

Newsletter of the Anti-Discrimination Board of New South Wales



Number 73 Spring 2008



## Government to increase compensation cap

# \$100,000

The NSW Government is planning to increase the cap on damages for discrimination matters **page 2**

## Carers' responsibilities

*Try this quick quiz*



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The contents of this publication are for information purposes only and should not be substituted for legal advice.

# From the President



## Government to increase discrimination compensation limit

*The Attorney-General, John Hazistergos, has announced that the NSW Government is planning to increase the cap on damages for discrimination matters to \$100,000.*

Currently the cap on damages that can be awarded by the Equal Opportunity Division of the Administrative Decisions Tribunal (ADT) is \$40,000. This is below that of most other jurisdictions in Australia. The increase will allow the ADT to make compensation awards that reflect the seriousness of the consequences of unlawful discrimination and are more in line with other jurisdictions.

The increase in the cap was recommended by the Law Reform Commission in its review of the Administrative Decisions Tribunal Act. As President of the Anti-Discrimination Board I have also recommended the change, as have other stakeholders, including

members of the ADT, the President of the NSW Bar Association and the President of the Law Society of NSW.

The Attorney-General said 'by increasing the cap in damages available to individuals who have been unlawfully discriminated against, the Government is demonstrating its strong commitment to promoting consistency in the State's anti-discrimination complaints system and guaranteeing the right of all people in this State to a fair go'.

Earlier this year Mr Hatzistergos proposed through the Standing Committee of Attorneys General that all States and Territories and the Commonwealth move

towards the harmonisation of anti-discrimination laws. Anti-discrimination is one of the few areas in which both State and Federal laws apply simultaneously. There are a number of inconsistencies between the systems, and that causes confusion and encourages forum shopping.

A working group has been formed to get the initiative started. 'However, in the meantime, the government will get on with the job of promoting consistency within its own laws', Mr Hatzistergos said. 'One of the key inconsistencies is the relatively low cap on damages that the ADT can award.'

*Stepan Kerkyasharian AM*

### For more information

The following Anti-Discrimination Board publications are available for a small charge:

- Guidelines for Managers and Supervisors: Preventing discrimination and harassment
- Guidelines for non-supervisory staff: Discrimination, Harassment and Equal Opportunity
- NSW Anti-Discrimination and EEO Guidelines for small business owners and managers
- Grievance Procedure Guidelines

To order, contact Milly Stylli on (02) 9268 5530

### Need help with grievance handling or discrimination, harassment and bullying issues?

*The Anti-Discrimination Board can provide on-site training in your workplace, custom-designed to meet your individual needs.*

*For more information contact:*

*Sydney: Sharmalee Elkerbout on (02)9268 5520*

*Newcastle: Julie Garry on (02) 4927 8476*

*Wollongong: Lesley Coombs on (02) 4224 9960*

# Carers' responsibilities

## Try this quick quiz

**Under the NSW Anti-Discrimination Act, it is unlawful to discriminate against an employee or job applicant because of their carers' responsibilities. To test your knowledge of the law try this quick quiz**

### Questions

- When did discrimination based on carers' responsibility become part of the NSW Anti-Discrimination Act?
- Which of these family members are **not** covered by the carers' responsibility provisions?
  - Sister       Uncle       Grandparent
  - Child       Ex-spouses parent       Grandchild
  - Brother       Same sex de facto       Parent
  - Grandchild       Spouse/partner       Foster child
  - Niece
- Does the law only cover 'primary carer(s)' of the family member (i.e legal guardian/full time carer/ living with carer)?
  - yes       no
- The law requires the employer to consider requests for flexible work arrangements from employers due to their carers' responsibilities and provide these wherever possible.
  - What sort of flexible arrangements might you be asked to consider or suggest?
- Is the employer obliged to grant all or any request for flexible work arrangements made due to carers' responsibility?
- If you refuse the employee's request, either totally or partly, what two defences for your decision are available to you which may have to justify if the employee is not satisfied and makes a formal complaint externally?
- Do you have recruitment and employment policies and procedures in place covering issues related to handling carers' responsibility matters or requests?
  - yes       no
- Is it unlawful for an employee to target jokes or snide comments to a fellow employee because of their carers responsibilities and/or flexible arrangements granted to them?
  - yes       no

**Answers**

1 1 March 2001

2  Uncle       Niece

3 No. This is often different to the carer's leave provision in an industrial award or employment agreement

4 • Work from home – full or part time  
• Change to hours or work days – start/ finish times  
• Change to time of breaks  
• Reducing hours – going part-time or job sharing  
• Reschedule current hours over fewer days

5 No but you should be able to clearly demonstrate that you have seriously considered the request, explored all possible options by taking into account all circumstances including benefits to the employee and workplace generally and how it will affect the employee, the person they care for and others in the workplace to meet the criteria of the two available defences

6 Is the person unable to meet the inherent requirements of the job – that is what has to be done (how it is done can be part of a flexible arrangement)

7 Unjustifiable hardship which cause extreme financial or operational difficulties or impediments

8 Congratulations if you answered yes. These are considered a critical part of "all reasonable steps" employers are required to have in place to reduce risk of liability for discrimination

9 It could be – any form of harassment based on someone's carer's responsibilities is unlawful. You therefore need to be careful in what arrangements you put in place to cater for an employee carer's responsibilities so that you don't cause a flow on effect of unfairness which may erupt as a legitimate backlash.

# Anti-Discrimination Board of NSW *Training Calendar 2008*

## Upcoming Seminars

Case law update	\$319	9am–1pm	20 Nov
EEO for CEOs	\$396	12.30pm–2.30pm	18 Sep
Grievance handling skills	\$632.50	9am–5pm	19 Nov
Harassment and bullying prevention	\$319	9am–1pm	12 Nov
Managing psychiatric disabilities	\$319	9am–1pm	11 Nov
Recruitment and termination	\$319	9am–1pm	13 Nov
Skills for Contact Officers	\$632.50	9am–5pm	18 Nov

For more information on our training program visit:  
[http://lawlink.nsw.gov.au/lawlink/adb/ll\\_adb.nsf/pages/adb\\_employment\\_seminars](http://lawlink.nsw.gov.au/lawlink/adb/ll_adb.nsf/pages/adb_employment_seminars)

To register for courses contact Milly Stylli on (02) 9268 5530 or 1800 670 812 or download the brochure from our website

## In-house training programs

The Board also provides an extensive series of training programs designed to be delivered in-house. We come to you! We can design and deliver a program specifically for your organisation and industry.

Our training sessions are highly interactive and use a range of scenarios, exercises and activities to stimulate interest and discussion.

Our in-house training sessions range from a two-hour awareness program for non-supervisory staff to one or two-day sessions for senior managers and supervisors.

All sessions are competitively priced with non-supervisor two-hour sessions starting at \$44 (+GST) per participant and full-day sessions for managers starting at \$140 (+GST) per participant.

The fee for our on-site training programs also includes reviewing your policies and procedures, all preparation and delivery time, and publications for each participant.

For more information please call the Manager Education Services, Sharmalee Elkerbout, on (02) 9268 5520 or 1800 670 812.

# Legal developments

## Sacking of bully upheld

The Australian Industrial Relations Commission has found that Coles was justified in dismissing a store manager.

Ms Sinapi was a store manager who had worked for Coles for 24 years. She was sacked for serious misconduct after a number of complaints of bullying against her were investigated.

The behaviour complained about included: pulling an employee along by the ponytail when she was upset about where the employee had put some stock; using offensive language to a sales rep; and inappropriate physical contact with a male employee in her office that was caught by surveillance cameras.

Ms Sinapi claimed these actions were justified in the circumstances.

She was sacked for bullying.

The AIRC upheld her dismissal. It found that Coles would have been justified in sacking her for any one of these incidents. The dismissal was 'fair, reasonable and warranted'.

*Karen Sinapi v Coles Supermarkets Australia Pty Ltd [2008] AIRC 405 (14 May 2008)*

## Father told to choose between job and daughter

The Queensland Anti-Discrimination Tribunal has found that a timber worker was directly and indirectly discriminated

against on the basis of carers' responsibilities when he was denied leave on short notice to care for his sick daughter.

Mr Bishop, a father of five, received a call at work asking him to come home because his daughter needed to be taken to hospital. It was suspected that she had been bitten by fire ants and was unwell.

He asked his manager for time off. The manager refused, to let him go home saying that he had to choose between his job and his daughter. He also commented that fire ant bites were not serious and that his wife could do it. Mr Bishop said that she could not because she had to care for the other children.

Mr Bishop had previously been denied a training opportunity because he had had to go on leave at short notice because of family responsibilities. On this occasion, he had sick leave due which he could have used for caring responsibilities and told the manager he could 'shove your job up your arse' and went home. His daughter was later diagnosed with a potentially life threatening illness.

A few days later Mr Bishop's solicitor called the employer to ask that Mr Bishop be re-employed and a second manager refused. Mr Bishop argued that he had been discriminated against on the ground of carer's responsibilities.

The claim was accepted by the tribunal. It said that while he didn't want to encourage employees to 'throw in' their jobs, in the circumstances it was reasonable. The managers had made no attempt

to reverse Mr Bishop's decision.

The tribunal found that Mr Bishop had been discriminated against both directly and indirectly. He was awarded \$40,000 in damages and the employer was ordered to apologise.

*Bishop v Gedge & Rudd [2008] QADT 17 (5 August 2008)*

## Presumption of mental illness discriminatory

The ACT Discrimination Tribunal has found that ACT Health discriminated against an employee when it presumed she was mentally unfit to work and suspended her on full pay.

Ms Kwesius complained that she was being denied training opportunities. Other employees, however, had complained about her conduct. She had, in 1999, been hospitalised with a diagnosis of bi-polar mood disorder. She had returned to work on condition that she continue with her treatment.

In 2006 she was suspended on full pay on the basis that her state of health rendered her a danger to other officers or the public. She was then required to obtain a report on her condition. This report stated that she may not have bi-polar, but had manic episodes. It said she was fit for work. The doctor stated, however, that she had an anxious personality which made her obsessive and suggested a 'plan of action' to diffuse her anxiety and allow her to return to work.

The health service, however,

## Legal developments *continued from page 5*

suspended her again the day they got the report, citing recent behaviour and other issues (eg she had told her supervisor that if she killed herself it would be the supervisor's fault). A psychiatric assessment was required and the psychiatrist reported that she didn't have a mental illness but had paranoid thinking in relation to work. He said she was fit for work, that people should treat her with more patience and respect, and that she should be given training opportunities.

She complained to ACT Discrimination Tribunal, which agreed that she had been treated unfairly and less favourably than other people. She had been suspended before ACT Health got a doctor's report. They had merely presumed that she had a psychiatric disability.

The tribunal said that she had been denied procedural fairness in failing to revoke the suspension after the medical reports found her fit for work.

She was reinstated and compensated \$5,000 for hurt and humiliation.

*Kwesius and ACT Health [2008] ACTDT 3 (28 April, 2008)*

### Tax office wrongly imputes hypertension

The Federal Court of Australia discriminated against a prospective employee when it wrongly imputed he had hypertension.

The Australian Tax Office (ATO) had offered Mr Gordon a job pending him a medical assessment. It withdrew the offer on the grounds that he had hypertension. The medical assessment found that he had high blood pressure and the ATO argued that an inherent requirement of the job was extensive

driving and that enabling him to do the job would cause unjustifiable hardship.

Mr Gordon claimed that he had been discriminated against on the ground of his disability.

The court found that the reason the offer was withdrawn was Mr Gordon's imputed hypertension and that another person without hypertension would have got the job. It also found that the ATO had failed to prove that he was unable to fulfil the inherent requirements of the job.

A 24-hour monitor done after the job offer was withdrawn showed that Mr Gordon had a much lower blood pressure than had been recorded at the medical assessment. The court found that his blood pressure was elevated during the assessment because of the well-known fact that the anxiety of undergoing medical tests can result in increased blood pressure.

It also found that Mr Gordon did not have to do 'extensive driving' until after he was trained and that any hypertension could have been brought under control by then.

He was awarded \$121,762 to cover loss of salary, mental anguish and interest.

*Gordon v Commonwealth of Australia [2008] FCA 603 (6 May 2008)*

### Neurosurgeon sexually harasses trainee

The Victorian Civil and Administrative Tribunal (VCAT) has made one of the largest damages awards ever made in a sexual harassment case. The case involved a leading neurosurgeon molesting a trainee.

Dr Tan, a neurological registrar

training to be a surgeon, claimed she had been sexually harassed by the head of her team at Monash medical Centre. She gave evidence that she had gone to his room, at his invitation, to go over some of her training. While in the room, he suddenly approached her from behind, spun her around and embraced her. He kissed her on the lips, and put his hand down her breasts, pinning her against the desk. As she twisted around to get out of his grasp, she saw his erect penis out of his fly, and said he then asked her, 'do you want to go down on this'. She said she blurted out 'how could you?' then ran out of the room to her car.

Dr Xenos, a leading neurosurgeon, denied that the incident had occurred, claiming Dr Tan had made up her complaint because her performance had been unsatisfactory and she needed an excuse to claim special consideration in her final assessment. Dr Tan failed her last assessment and would not, therefore, be allowed to become a neurosurgeon.

He called, as witnesses, the Chairman of the Board of Neurosurgery, and a number of other senior professors, doctors and nurses. The judge said that it was 'disappointing that none of the witnesses called appear to have taken Dr Tan's claim of harassment seriously. It is disappointing that the Board never considered the claims to be sufficiently grave to warrant consideration of the need to reassess her capacity in the last assessment period. It reflects badly on the profession of neurosurgery that only two neurosurgeons who gave evidence in this case were prepared to take a serious view of an allegation made by a trainee about a surgeon in a position of power over her.'

## Legal developments *continued from page 6*

The judge, found Dr Tan to be a credible witness and noted that she had been terribly affected. Her complaint was consistent with all the evidence and 'had the ring of truth about it'. The judge found that it was more probable than not that the sexual harassment had occurred in the manner Dr Tan had described.

The judge found that the neurosurgeon had exploited his position of power over her and her vulnerability because of her performance. He was a highly regarded neurosurgeon and was able to determine her future career prospects. He knew that, in the eyes of their peers, he would be believed, not her, and had deliberately set out to smear her character.

Dr Tan was awarded \$100,000 in damages.

*Tan v Xenos (No3) (Anti-discrimination)[2008] VCAT 584 (11 April 2008)*

### Race discrimination

The NSW Administrative Decisions Tribunal has found that Fluor Australia racially discriminated against a long-term employee when it demoted him because of his low literacy levels.

Mr Tanevski migrated to Australia in 1967 and had worked as a rail maintenance supervisor for 31 years. There had never been any safety incidents relating to Mr Tanevski and he had glowing references. His English literacy was not high, but he could read straightforward work reports and compensated by using his own judgement or asking other people to read or write materials for him.

When the company introduced its new health, safety and environment program (HSE), however, he was

demoted to a non-supervisory role. The company believed that his low literacy levels posed an unacceptable safety risk. The HSE identified low English literacy standards as a critical area for improvement. Mr Tanevski left work suffering from stress and did not return.

The tribunal found that the new standards posed under the HSE indirectly discriminated against Mr Tanevski on the ground of his race. It found that a substantially higher proportion of Anglo-Australians could comply with the literacy requirement than comparable employees of Macedonian origin.

While it accepted that the companies safety concerns were reasonable it said that it was not reasonable to impose the standard on Mr Tanevski in all the circumstances.

It decided that training him in the HSE forms and assisting him with duties such as report writing were practical and cost effective alternatives to demoting him.

The case is to be listed for a directions hearing on remedies.

*Tanevski v Fluor Australia Pty Ltd [2008] NSWADT 217 (7 August 2008)*

### Dismissals for racial taunts justified

The Australian Industrial Relations Commission has found that Coles was justified in dismissing a storeman for racially taunting a colleague, while another worker who was also dismissed for laughing at the comments has been awarded five weeks pay in lieu of reinstatement.

Mr Brown and Mr Fatialofa were dismissed for racial and religious harassment of a Mr Zuhair. Mr Zuhair was regularly taunted by

Fatialofa with comments such as 'camel fucker', 'like Saddam Hussein'. He called him 'hairy arms', used threatening facial expressions aimed at him and on several occasions poked in the stomach using his size to intimidate him. Brown laughed at the way Mr Zuhair was treated.

The Commission heard that the storeman had made such remarks on the day of a bomb scare at the warehouse, and that he had (wrongly) accused the co-worker of being a Muslim. (He was in fact Catholic.)

Mr Zuhair said he felt embarrassed, intimidated, humiliated, excluded and 'ganged up on'.

Brown and Fatialofa claimed their dismissals were unfair and that their behaviour was just 'friendly banter' typical of their workplace.

The Commission disagreed. The Commissioner claimed the comments were inappropriate in any workplace, insulting and disparaging on the grounds of race and religion.

Fatialofa's dismissal was upheld. While the Commissioner found that Brown's laughing was harassment, it found that the dismissal was disproportionate to the seriousness of his conduct. The Commissioner ordered Coles to pay him five weeks' salary in lieu of reinstatement - calculated on an estimate that Mr Brown (who had 14 months service) would have remained in the job for only another eight weeks due to his disciplinary history, with three weeks deducted on account of his misconduct as a contributing factor in the termination of employment.

*Brian Brown v Coles Group Supply Chain Pty Ltd & Poasa Tyrone Fatialofa v Coles Group Supply Chain Pty Ltd [2008] AIRC 1127 (24 July 2008)*

# Community events

## Brown Nurses

ADB Community Education Officer, Gabe Morahan, has been involved in training community workers from Brown Nurses. The Brown Nurses (Our Lady' Nurses for the Poor), were founded in 1913 and work with disadvantaged and marginalised people within the local government areas of Sydney and Randwick. The Brown Nurses and their volunteers offer holistic care to the sick poor in their own homes and work with people who are isolated or homeless, or suffering with mental illness or living in impoverished circumstances or are unable to access health and welfare services.

Facilitating this training has been a step forward in community capacity building as these workers are working with some of the most disadvantaged and discriminated members of our community. By informing workers of rights and responsibilities under the Anti-Discrimination Act, they can then assist to empower and guide their clients in making a complaint to the Board.



Brown nurses

## Sudanese Open Day

ADB officers attended an open day for the Sudanese Community at Blacktown on 3 July 2008. The purpose of the day was to provide information to the Sudanese Community about various services available to them in NSW.

The day was held in Blacktown Local Court with around 50 Sudanese attendees and a welcome addresses by Peter Ryan, Senior Registrar for West Sydney Local  
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Sudanese open day

## Community events *continued from page 8*

Courts and Mr Ajang Biar, Chairman of the Southern Sudanese and Other Marginalised Areas Association. Information stalls were in the main foyer for people to access factsheets, brochures and contact information for a variety of services. Presentations were also run throughout the day and were interpreted from English into both Arabic Juba and Dinka. The presentations included information regarding how the court system works, the role of the NSW police, how to get legal help, your rights as a victim of crime and your rights and responsibilities under the Anti-Discrimination Act.

The community and service representatives came together to share a hearty lunch and enjoy a lively performance by The Light of Christ, a Sudanese choir.

### Sexual Harassment of Young Women

Elizabeth Broderick, the Federal Sex Discrimination Commissioner, has made it her priority to drive down the incidence of sexual harassment of women and improve gender equality in Australia.

Reported in the Sydney Morning Herald on 22 July 2008, Ms Broderick commented on the results of a year-long consultation process that examined the condition of gender relations across Australia. The results showed that large numbers of young women are still being harassed, even though it is against the law.

Ms Broderick also stated that she would like to see a National campaign to educate employers and employees about what is

### Profile – ADB Community Education Officer

**Gabe Morahan** is working in the Community Education Officer's position whilst Claire Williams is on maternity leave. Gabe is based in the ADB's Sydney office.

Gabe has worked in training roles, social work and in the education field in Australia and internationally. Before joining the ADB she worked in the north-west of England as the Drug Education Coordinator for the Lancashire Youth and Community Service where she trained community workers, youth workers and police officers in drug education for young people.

Her training experience also includes teaching adults youth work skills, training exam invigilators for the Higher School Certificate and School Certificate and teaching young people in peer education projects in Australia and the UK. Having travelled extensively across over 40 countries and having lived and worked for ten years in four different countries, she has knowledge of and skills in cross-cultural communication.

Gabe has a Bachelor Degree in Youth Work and the English equivalent of Cert IV in Workplace Training and Assessment.



inappropriate behaviour in the workplace. She said "You still have people [employers] who either don't understand or don't care that it's unlawful".

Ms Broderick launched the national action plan on a visit to Sydney Girl's High School. She hopes the plan will assist in ensuring women are treated in an equitable way.

The action plan includes:

- A public education campaign on sexual harassment
- Boosting women's retirement savings
- Encouraging family-friendly work practices
- A review of sex discrimination laws, and

- Promoting women in leadership roles

The Anti-Discrimination Board can assist in the education of young women, ensuring they understand the Anti-Discrimination Act and are aware of their rights and responsibilities in relation to sexual harassment.

Our community education worker, Gabe Morahan, offers free training to various groups but in light of the above information, she has been trying to target young women to ensure they are educated in the law. If you know any groups of young women who require training in anti-discrimination law, please contact Gabe on 9268 5518 or email [gabe\\_morahan@agd.nsw.gov.au](mailto:gabe_morahan@agd.nsw.gov.au)



## Anti Discrimination Board

# Conciliations

### Carers' responsibilities and disability discrimination

A man was the primary carer for his wife, who had severe epilepsy and regularly had severe seizures, which meant that he often needed to leave work urgently to return home to look after her.

After medical advice that he needed to work close to home, his employer had transferred him, on compassionate grounds, to a work location ten minutes from his home. However, after more than two years of this arrangement, the complainant was transferred to a new location much further away. It now took him 45–60 minutes to get home to his wife when needed.

The man alleged discrimination on the grounds of his responsibilities as a carer, and on the ground of disability by association. His employer claimed it could not create vacancies or positions where no work existed and that he had failed to apply for permanent positions when they arose. The man claimed that the employer had failed to advertise any permanent positions and insisted that he would have applied if any had been made known to him.

The matter resolved through conciliation when the employer offered to transfer the complainant back to the closer work location, until a permanent transfer could be arranged. A permanent transfer on compassionate grounds was subsequently authorised.

### Carers' responsibilities

A woman was nearing the end of her three-month probationary period with her employer when she had to take a few days off to care for her two young children who were ill. On her return to work she was informed that she was unlikely to pass her probationary period due to her work performance. This surprised her as she believed she had been performing well. She believed she was terminated because she had taken time off to care for her children.

Her employer maintained that the dismissal was performance related and provided specific examples of issues that had been raised in meetings with the woman. The company claimed these meetings were intended as performance-counselling meetings, but she argued that this had never been explained to her. The employer also claimed the woman owed it some money as she had been overpaid.

At conciliation, the company agreed to make an ex-gratia payment of \$2,700 to the complainant, and to waive an \$800 debt. It also agreed to provide a statement of good service.

### Carers' responsibilities discrimination

A husband and wife, are employed as process workers on alternate shifts. They share responsibility for the care and support of their young child. The couple allege that their employer discriminated

against them on the ground of their responsibilities as carers, when it refused their requests for more flexible start and finish times so as to provide them with some overlap between shifts. They need this overlap to provide continuity of care for their child. The matter was resolved when, following a letter from the Board, the employer's Manager of Human Resources contacted the Board and sought advice and was then able to reach agreement with the couple about flexible start and finish times.

### Sex and carers' responsibilities discrimination

A woman unsuccessfully applied for employment with a company in an administrative role. She alleged that the company had discriminated against her on the grounds of sex and carers' responsibilities in the arrangements it made for determining who should be offered employment. She alleged that the company's application form collected unnecessary information about whether applicants had children and the children's age. The company asserted that the information collected had not been used adversely against the complainant nor any other female applicants and that the successful applicant was a woman with young children. The woman accepted the company's response, but requested that it amend its application form to remove any provision for the collection of information about

*continued on page 11*

## Conciliations *continued from page 10*

an applicant's children and their ages. The respondent agreed to this request.

### Disability and carers' responsibilities discrimination

A man was employed as a machine operator and had sustained a back injury at work. The man also has responsibility for the care and support of his wife who suffers from night blindness. He alleged that the respondent discriminated against him on the ground of disability and responsibilities as a carer, when it dismissed him from employment. The employer refuted the allegations and asserted that the man resigned when it advised him to vacate premises, which it had provided for the purposes of accommodation for site supervisors. The employer asserted that it had allowed the man to be accommodated in the premises normally provided to site supervisors on the understanding that if a new supervisor required the accommodation he would have

to move out. The man accepted an offer of \$2000 as settlement of the complaint.

### Sexual harassment and Sex discrimination

A woman lodged complaints against several respondents including the alleged perpetrator of sexual harassment, his employer and a corporation with which she was seeking employment.

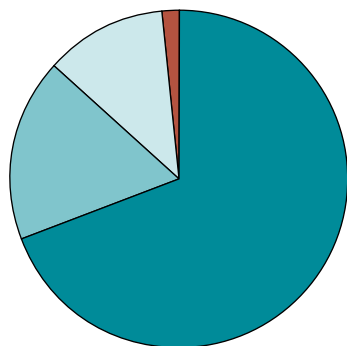
The corporation offering employment had contracted a separate company to conduct physical assessments of applicants as part of determining who should be offered employment. The woman alleged that the person conducting the assessment engaged in unwelcome conduct of a sexual nature when he asked her questions of a personal nature and asked her for a date. She alleged that following his invitation and after a further call received from him after the assessment, she advised him by email that she did not think his invitation was a good idea.

She further alleged that following her complaint to his employer, it then victimised her when it failed to progress her employment application. The alleged sexual harasser admitted asking the woman out on a date and acknowledged that his behaviour had been unprofessional and unethical. The woman acknowledged that the alleged harasser had immediately apologised to her, following her rejection of his advances.

The man's employer refuted that the conduct was unwelcome. It pointed to the language used by the complainant in her email where she describes the alleged harasser as sweet and sensitive, as evidence of consensual conduct. It further asserted that the complainant's application was not progressed further because she had scored poorly in a personality profile. It refuted that it had victimised the woman in any way.

The matter was resolved when the woman accepted a joint offer of \$2000 from the respondents in settlement of her claims.

## ADB Complaints Finalised *Complaints closed between 1 July 2008 and 26 August 2008*



143 complaints closed since 1 July 2008

69% (99) closed within 6 months of receipt of complaint

87% (124) closed within 12 months of receipt of complaint

99% (141) closed within 18 months of receipt of complaint

1% (2) longer than 18 months.

■ within 6 months    ■ within 12 months    ■ within 18 months    ■ longer than 18 months

Complaint handling staff have continued to achieve excellent results in finalising complaints within the target timeframes, with no backlog, and with very few complaints at the Board more than 18 months old

# The Anti-Discrimination Board of NSW



## What types of discrimination do we deal with?

The NSW Anti-Discrimination Board can only deal with discrimination complaints that are covered by the NSW Anti-Discrimination Act. This means that we can only deal with a discrimination complaint if:

- it is based on any of the grounds listed below and happens in one of the areas of public life listed below; or
- it is racial, homosexual, transgender or HIV/AIDS vilification, that is, a public act of incitement to hatred, serious contempt or severe ridicule.

The laws do not allow us to deal with discrimination complaints based on other grounds (e.g. religion, political conviction), or based on events in your private life.

## Grounds

- Sex (including sexual harassment, pregnancy and breastfeeding)
- Race (including colour, nationality, descent, and ethno-religious or national origin)
- Marital status
- Homosexuality (male or female, actual or presumed)
- Disability (past, present, future, actual or presumed)
- Age
- Transgender (transsexuality)
- Carers' responsibilities (in employment only)

## Areas

- Employment
- Education
- Obtaining goods and services (e.g. credit, access to public places, entertainment, government or professional services)
- Accommodation
- Registered clubs

## Where we are

### Sydney

Level 4, 175 Castlereagh Street, Sydney NSW 2000  
PO Box A2122, Sydney South NSW 1235  
ph (02) 9268 5555, fax (02) 9268 5500, TTY (02) 9268 5522  
Enquiries/Employers Advisory Service (02) 9268 5544

### Wollongong

84 Crown St, Wollongong NSW 2500  
PO Box 67, Wollongong NSW 2520  
ph (02) 4224 9960 fax (02) 4224 9961  
TTY (02) 4224 9967

### Newcastle

Level 1, 414 Hunter St  
Newcastle West NSW 2302  
ph (02) 4926 4300 fax (02) 4926 1376  
TTY (02) 4929 1489

Toll free number — 1800 670 812

Website — <http://www.lawlink.nsw.gov.au/adb>