

ANTI-DISCRIMINATION
BOARD OF NEW SOUTH WALES

annual report

2002-2003



editing and design

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photos

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28 September 2003

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 2002 to 30 June 2003.

Yours sincerely,

Laurie Glanfield
Acting President



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Ali Roude from the Islamic Council of NSW (left), Sheikh Yahya Safi (centre) and Attorney General Bob Debus at the launch of the first series of 'Advance Australia Fairly' postcards at Sydney Hospital.



from the president

In taking over as Acting President of the Anti-Discrimination Board of NSW following the resignation of Chris Puplick in May 2002, I have assumed immediate responsibility for an organisation that performs an important role in promoting respect for human rights and addressing discrimination in NSW. Since then I have been working closely with the Board's dedicated and professional staff, who have contributed to another positive year of activities on the Board's part.

A major focus this year was the **Advance Australia Fairly project**, which aimed to promote greater understanding about the role played by people from a variety of backgrounds in the life of NSW.

The project included two highly successful series of postcards featuring people from a variety of cultural backgrounds, two seminars on how to improve the representation of people from migrant and refugee backgrounds in the media, which also received a very positive response, and a study on racism in the media. The launch of the second series of postcards in Young, NSW was particularly well received, with Board members and staff travelling to Young for the event

and taking the opportunity to consult with local community leaders.

Another highlight was the **'Neglected Communities' Forum**, which was held as part of the 2003 Sydney Gay and Lesbian Mardi Gras Festival. Hosted by New Zealand MP Georgina Beyer, this forum aimed to further discussion about discrimination against transgender, transsexual, intersex and bisexual people. All participants agreed that the event was very successful in addressing the issues affecting these communities, and was long overdue.

Our **education program** has continued its highly successful work in informing the community about their rights and obligations under anti-discrimination law. The workplace remains one of the main areas from which complaints of discrimination are received, and we run a comprehensive program to inform both managers and employees about discrimination and harassment issues on a fee-for-service basis. This program raised over \$600,000 in 2003-2003 and covered all costs for the relevant salaries, on-costs, venue hire and some publications costs.

This year the Board ran a special **Arabic/Islamic community training**



(L-R) Elizabeth Riley, Rachael Wallbank and Georgina Beyer at the 'Neglected Communities' Forum.

program to improve awareness in this community about discrimination issues. During the five-month program, two Arabic-speaking Education Officers delivered 26 training sessions addressing 1,672 participants, as well as six more sessions for community workers and service providers. This provided a very effective introduction for a group who have reportedly been particularly subject to discrimination and vilification in the last two years, and may not have been confident about the law's ability to support them.

Our Aboriginal and Torres Strait Islander team continues to do an excellent job in providing culturally specific services for the Aboriginal and Torres Strait Islander community. This year saw the development of a very successful **combined information forum** run jointly by the Board, the Office of Industrial Relations, the NSW Workcover Authority, the Office of Fair Trading and the NSW Working Women's Centre. The first forum was held in Dubbo and received a very positive response, and the agencies are planning to hold similar forums throughout the state in the coming year.

Use of the Board's **website** has increased by 38% since 2001-2002, reflecting the increasing importance of this medium for providing

information. In 2002-2003 we began a major upgrade of the site, with our design of a new structure currently being set up by the Attorney General's Department. The restructure will be based around the needs of the various types of people who are likely to use the site, and will provide clearer paths to the variety of information it contains.

The Board's Complaints Resolution Branch has achieved a **21% increase in the number of complaints finalised** this year over the 2001-2002 figure. The complaints team has implemented a number of strategies to streamline the process of handling complaints, and these will be developed further in the coming year.

The Legal and Policy Branch produced a number of **papers and submissions** on current discrimination issues in 2002-2003.

These included two submissions to the Australian Law Reform Commission and the National Health and Medical Research Council's inquiry into the protection of human genetic information, a detailed background paper and follow-up recommendations for the 'Neglected Communities' Forum, and a report on models for addressing systemic discrimination in the public sector (based on a study tour undertaken by two Board staff in 2002). The team also continued its work to eliminate discrimination at a collective level by providing advice to industrial parties and intervening in major industrial cases.

While recognising the Board's achievements, I believe it is also an opportune time to review its activities. This review is occurring in the early part of 2003-2004, and will focus on developing the most effective structures and procedures for the Board's core functions of handling complaints and educating the community. This process will provide a blueprint for the Board to move forward under a new President in 2003-2004, continuing its service to the people of NSW and its crucial work in promoting equal opportunity and reducing discrimination in NSW.

LAURIE GLANFIELD
Acting President

Participants in the government agencies' combined information forum at Dubbo (L-R): Rae Fernando from Coonamble Local Aboriginal Land Council, Lorraine Wright from Western Aboriginal Legal Service, Phillip Wright from WALS, Claude Gordon from CDEP, Neville Merritt from Gilgandra LALC, and Colin Fuller from the Department of Corrective Services.





about the board

The Anti-Discrimination Board was set up under the NSW *Anti-Discrimination Act 1977* (NSW) 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 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 consultations, education programs, seminars, talks, liaison with the media, participation in community functions and the production and distribution of written information.

We make recommendations to Government when we think legal or

policy changes are needed to ensure that particular types of discrimination are being adequately addressed, and report on particular discrimination and human rights issues as required. We also make recommendations to the Attorney General about applications for exemption from the *Anti-Discrimination Act*.

nsw anti-discrimination law

Under the *Anti-Discrimination Act*, certain types of discrimination (or unfair treatment), harassment, victimisation and vilification are against the law. Discrimination on the basis of sex (including pregnancy and sexual harassment), race, marital status, homosexuality, disability (including HIV/AIDS, hepatitis and other infectious diseases), age and transgender status is against the law if it occurs in employment, government education (sexual harassment and race discrimination are also illegal in private education), the provision of goods or services, the provision of accommodation and in registered clubs. Discrimination on the ground of carers' responsibilities is also prohibited in employment.

Direct and indirect discrimination

Discrimination can be direct or indirect. Direct discrimination means treating someone unfairly or unequally simply because they belong to a particular category of people.

Indirect discrimination can occur when a requirement or condition is imposed generally but has a disproportionately negative effect on people from certain groups. The Board is continually monitoring the types of complaints and enquiries it receives to assess whether people have been affected by indirect discrimination.

Vilification

Vilification is any public act that is capable of inciting others to hate, have serious contempt for, or severely ridicule a person or group of people on the basis of certain characteristics. Vilification because of a person's racial background, homosexuality, HIV/AIDS status, or transgender status is illegal under the *Anti-Discrimination Act*.

Vilification laws allow the Board to deal with behaviour that occurs outside the usual areas of employment, goods and services etc, for example in the media or in public places.



The management team for most of 2002-2003 (clockwise from bottom left): Chris Puplick, Jill Moir, Darryl Brown, John Hill, Maggie Smyth.

structure of the board

The President and the Board

Chris Puplick was the salaried chief executive officer of the Anti-Discrimination Board until the NSW Attorney General accepted his resignation on 2nd May 2003. The Director General of the Attorney General's Department, Laurie Glanfield, has acted as President since this date.

The members of the Board are the President as Chair, and four part-time members appointed by the Governor

of NSW. The members during 2002-2003 were Father Hugh Murray, Dr Suzanne Jamieson, Ms Phillipa McDermott, Mr Shaughn Morgan until February 2003, and Mr Cameron Murphy from March 2003.

Staff of the Board

In 2002-2003 the President headed an organisation with 52 salaried positions employed in Sydney, Wollongong and Newcastle. During the year the Board received additional funding from the Attorney General's Department to employ staff for the Advance Australia Fairly project, to implement the Arabic/ Islamic community education initiative, along with some funds to employ staff to help reduce the backlog of complaints lodged with the Board.

Student placements

In 2002-2003 the Board provided three student placements, for students from Boston University and Columbia University in the USA, and Wollongong University. The students contributed to the legal research, policy and complaints work of the Board.

ethnic affairs priorities statement program

The Board has advanced this program by:

- responding to 1,453 enquiries about race discrimination and racial vilification;
- receiving 317 complaints of race discrimination and racial vilification;
- conducting a targeted training program for the Arabic/Islamic community, with special purpose funds from the Attorney General's Department (refer to page 30);
- 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.

Complaints Resolution Branch

This branch was responsible for the investigation and conciliation of discrimination complaints received by the Board. Conciliation and Assistant Conciliation Officers were also involved in promoting compliance with anti-discrimination laws and policy work. The Manager in 2002-2003 was Jill Moir.

Education Services Branch

This branch oversaw the provision of training, community education, information, publication and website services, and was responsible for the handling of initial enquiries and calls for advice about discrimination. The Manager in 2002-2003 was John Hill.

Legal and Policy Branch

This branch provided 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 coordinated the Board's work on legal and policy reform in relation to human rights issues generally. The Manager in 2002-2003 was Maggie Smyth.

Corporate Services Branch

This branch provided the support services that assisted in achieving the primary aims and goals of the Board, especially financial control and information technology. The Manager in 2002-2003 was 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 Wollongong Manager is Gerardo De Liseo, and the Newcastle Manager was Kay Jackson until January 2003. Paul Santone has acted as Newcastle Manager since then.

the statutory board

Laurie Glanfield

Laurie has been the Director General of the NSW Attorney General's Department since 1991. He has been the Secretary of the Standing Committee of Attorneys General since 1998, is a deputy president of the Australian Institute of Judicial Administration and has recently been appointed a Member of the Council of the National Judicial College of Australia.

Suzanne Jamieson

Suzanne is a Senior Lecturer in Work and Organisational Studies at the University of Sydney. She has completed a doctorate in women and occupational health safety, and has done extensive research in gender and discrimination issues in the workplace.

Phillipa McDermott

Phillipa is the Manager of Communications at ATSIC NSW. Her main professional interests are Indigenous media and arts and Indigenous and human rights. She is on the board of the Gadigal Information Service, the Lloyd McDermott Rugby Development Team and the Tullagulla Aboriginal Cultural Centre. She has been a radio broadcaster for the past 12 years, and has represented Indigenous media interests at the United Nations.

Father Hugh Murray

Hugh is a Catholic priest with the Vincentian Order, and has spent most of his life working in education. Before his retirement, Father Murray spent several years as the Catholic Chaplain for people with HIV in the City of Sydney.

Cameron Murphy

Cameron has been the President of the New South Wales Council for Civil Liberties and Secretary of the Australian Council for Civil Liberties since September 2000. He has a long record of activism in the promotion of human rights and civil liberties and comes to the Board with a particular interest in law reform.

Clockwise from top left: Laurie Glanfield, Cameron Murphy, Suzanne Jamieson, Father Hugh Murray, Phillipa McDermott.



corporate services

The Corporate Services Branch ensured the efficient running of the 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 occurred 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, finance, corporate training and development, communications, asset management and information technology.

Financial results

The Board achieved a significant budget surplus in 2002-2003, for the seventh 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. Further savings resulted from the delay in recruiting staff to two new managerial positions that were approved for the Board.

Procedural improvements

In 2002-2003 Corporate Services Branch improved recruitment procedures by developing systems to streamline application registration, process documentation and the generation of notification letters. Other work included moving to align accounting procedures with those of the Attorney General's Department

by adopting project cost codes and monthly journal processing for shared cost apportionment.

Occupational health and safety

Another focus this year was occupational health and safety. Solar blinds were installed to reduce heat and glare on the eastern side of the Sydney office, faulty chairs were replaced, and vents were installed to the communications room door to improve air circulation and reduce internal heat. We also enhanced security by adopting a more frequent change of the access code at the Sydney office.

Training

Training continues to be encouraged, with all branch staff undertaking

training and development activities. During the year, two officers were recognised for their language skills with the award of CLAS certificates in Hindi and Arabic respectively.

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 2002-2003 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.

Financial statements

	Actual	2002-2003 Budget	Variance
	'000s	'000s	'000s
Revenue			
User charges	(643)	(722)	(79)
Other revenue	(10)	(16)	(6)
Total revenue	(653)	(738)	(85)
Expenses			
Employee related payments (excl Crown liabilities)	3,625	3,568	(57)
Other operating	1,271	1,490	219
Maintenance	20	14	(6)
Grants and subsidies	0	0	0
Other services	0	0	0
Total expenses	4,916	5,072	156
NET POSITION –			
Funded by Government	4,263	4,334	71

Funds for specific activities in 2002-2003 included (in '000s):

<i>Carers' funding</i>	100
<i>Backlog funding</i>	150
<i>Advance Australia Fairly</i>	205
<i>Arabic Education Project</i>	60
<i>Accommodation</i>	211
<i>Total</i>	726

The Board's full financial figures are included in the consolidated accounts of the Attorney General's Department and published in that Annual Report.



Although there have been positive developments towards reducing discrimination against gay men and lesbians, transgender, transsexual, intersex and bisexual people remain extremely vulnerable to discrimination. Many people in these communities feel that the law has failed to respond to their needs, and they are therefore 'the neglected communities'.

In 2002-2003 the Board aimed to further discussion on discrimination against these communities by hosting a forum as part of the 2003 Sydney Gay and Lesbian New Mardi Gras Festival. The Board circulated a discussion paper prior to the event covering the law in Australia, recent cases and possible law reform initiatives.

The forum, held in February 2003 at Parliament House, was hosted by Georgina Beyer, a popular New Zealand MP who is the world's first transgender member of parliament. Other speakers included:

- Elizabeth Riley, General Manager of Sydney's Gender Centre;
- Jay Ramanathan, a public health specialist and sexual health worker;

major projects

neglected communities forum

- Rachael Wallbank, the lawyer for Kevin and Jennifer in the recent Re: Kevin transgender marriage case;
- Anthony Briffa from the Androgen Insensitivity Syndrome Support Group Australia; and
- Glenn Vassallo from Bi Pride Australia.

The forum was attended by about 100 people, and their reaction was extremely positive. Both speakers and audience members agreed that the event was unique in the issues it addressed and the feeling it generated, as well as being long overdue.

Since the forum the Board has compiled a set of recommendations which flowed from the forum, and produced a draft response to these recommendations. They include:

- provide education on transgender issues to the medical profession;

- community education campaigns to acknowledge the medical foundation of transsexuality/transgenderism and to de-stigmatise the condition;
- uniform state, territory and federal legislative mechanisms to ensure consistent national rights;
- people in prison should not be restricted from access to sex affirmation procedures;
- the NSW Health Department work closely with the Royal College of Surgeons and the AMA to further promote and develop services to transsexual, transgender and intersex persons; and
- provision of specialist information and support to parents when their unborn child is identified as having a chromosomal anomaly, including referral to support groups.

L-R: Jay Ramanathan, former Board President Chris Puplick, Glenn Vassallo, Tony Briffa, Rachael Wallbank, seminar organiser Daniel O'Neill, Elizabeth Riley and Georgina Beyer.





Postcard 'personalities' Indira Naidoo (left) and Jaslyn Hall at the launch of the first series of postcards.

The Board's Advance Australia Fairly project has played a significant role in promoting greater understanding about the role played by people from a variety of ethnic, cultural and religious backgrounds in the life of NSW, and stimulating discussion about migration, racism and community identity in NSW.

The aims of the campaign were to promote respect for and understanding of community diversity in the context of human rights, to increase community understanding and respect for diversity, to foster community knowledge and capacity for action, and to counter racist stereotypes and vilification.

The project began in mid-2002 and concluded in mid-2003. It included two series of postcards, two seminars on racism and the media, and a detailed study of how racial issues are reported in NSW.

postcards

The postcards aimed to highlight the role played by people from different backgrounds in the life of NSW, and reflect the strength and culturally diverse nature of our contemporary society. They were distributed free of

major projects

advance australia fairly

charge via stands in cafes, cinemas and other venues around NSW run by the Avant-Card company.

The first series was launched in October 2002. It included nine individual cards, featuring broadcasters Jaslyn Hall and Indira Naidoo, Aboriginal leader Faith Bandler, University of NSW Chancellor Dr John Yu, SBS Radio Head Tuong Quang Luu, restaurateur Tetsuya Wakuda, performer Leah Purcell, human rights activist Sanushka Mudaliar and designer Jenny Kee.

The first series also included two group cards. One featured well-known sportspeople (rugby league star Hazem El Masri, netballer Sharon Finnan, athlete Eliza Stankovic and cricketer Richard Chee Quee) and the other religious leaders (Archbishop Roger Herft, Imam Yahya Safi, Sister Susan Connelly and Rabbi Selwyn Franklin).

The second series of cards had a more rural theme, and was launched at Young on December 10. The cards featured workers at the Burrangong Meat Processors in Young (including refugees and recent migrants), Young restaurateur Wei Yi (Joe) Zhang, emergency services workers from a variety of backgrounds, the de Bortoli winemaking family, and a group of actors and performers including Sacha Horler, Josh Quong Tart, Anthony Wong and Maya Jupiter.

The launch was addressed by Young Mayor John Walker and received a very positive response from the local community. Members of the Board

and a number of staff travelled there for the event, and afterwards the Board held one of its regular meetings and also took the opportunity to consult with members of the Local Aboriginal Land Council.

Avant-Cards reports that almost all the cards were in the upper range of popularity. One of the most popular was the card featuring religious leaders, highlighting 'the need for this type of message and its the broad appeal in all venue types'.

Also moving well were the cards which combined historical images

Top: Youth workers Ricki Smith (L) and Maj Harris; Bottom: Seminar speaker Anthony McClellan with Balbinder Singh from the Sikh Association of Sydney.



with current ones, such as Quang Luu, Faith Bandler and the de Bortoli family. Other particularly fast movers included Indira Naidoo, Tetsuya Wakuda, Leah Purcell, Sanuska Mudaliar and the emergency services workers. The Ambulance Service and the SES have also expressed interest in using this image in their equity and recruitment activities.

seminars

The aim of the seminars was to generate discussion and ideas about how to improve the media presentation of certain ethnic groups and refugees in general. The first seminar was entitled 'Beyond these walls...' and was held at Petersham Town Hall in October 2002. It brought together a number of speakers and media representatives to discuss race, racism and media representation.

Introduced by broadcaster Jaslyn Hall, the speakers included Emeritus



Professor Donald Horne, educator Joan Tranter, Aboriginal youth leader Mark Yettica-Paulsen, SBS Radio Head Tuong Quang Luu, Nooria Wazefadost, a high school student from Afghanistan, Omeima Sukkarieh from the Australian Arabic Communities Council, Lebanese-Australian youth leader Mohammed El-Asmar, Dr Sharon Pickering from Charles Sturt University, and Associate Professor Scott Poynting from the University of Western Sydney.

The afternoon session was a lively panel discussion moderated by ABC Radio broadcaster Angela Catterns and stimulated by questions and comments from the floor. The panel included Allison Meadows from Mullinars Casting, Faten Dana from Arabic Radio 2MFM, Richard Lawson, Editor of the *Daily Liberal* newspaper in Dubbo, playwright Nick Enright, Stephanie Peatling from the *Sydney Morning Herald*, Stephen Mayne from Crikey Media, and academic and social commentator Eva Cox.

The second seminar was entitled 'We interrupt this programme' and was held at Bankstown Town Hall in November 2002. Its aim was to further explore the issues raised in the first seminar and provide a practical forum for participants to develop their skills in dealing with the media.

Introduced by Electra Manikakis from SBS TV, speakers in the morning session included Ross Coulthart from Channel Nine's

Sunday Program, Anthony McClellan from AMC Media, filmmaker Paula Abood, and youth workers Maj Harris and Ricki Smith. In the afternoon, public relations specialists from the Jordan Templeman Group led workshops on practical aspects of media presentation such as preparing a press release, pitching a story and interview techniques.

The response to both seminars was extremely positive. The combination of discussion and analysis with practical training was particularly satisfying for participants as it provided the immediate outcome of improved skills and knowledge. As a direct result of the second seminar, two media professionals offered pro bono assistance in media skills training and media relations to community groups who were represented at the seminar.

media study

The Board's study on race and the media, *Race for the headlines: racism and media discourse*, was launched at Parliament House in March 2003. It looks at the historical context of race, racism and representation in Australia, the treatment of recent issues relating to race in the Australian media, the impacts of that treatment on the communities involved and the legal and regulatory framework within which the media operates. It also makes a number of recommendations to address the issues raised.

Top: Postcard 'star' Joe Zhang with Young Mayor John Walker; Bottom: Seminar speaker Nooria Wazefadost with Holroyd High School Principal Dorothy Hoddinott.





gay and lesbian

There were a few notable events occurring in 2002-2003 for those who attend the Anti Discrimination Board's Gay and Lesbian Consultations. These included the launch of the report of the Board's forum at the 2002 Gay and Lesbian Mardi Gras, entitled 'Skool's Out' (refer to page 29 for more information), and the Board's 2003 forum on 'the neglected communities' – transsexual, transgender, bisexual and intersex people (refer to page 11).

Generally, there was some progress made in legislative reform this year. Consultation members worked actively to promote changes to the age of consent laws for gay men, and this legislation was finally passed.

Members also contributed in relation to bisexual issues to the Board's submission on the reform of the *Anti-Discrimination Act 1977 (NSW)* (ADA). However, the changes to the ADA recommended in the Law Reform Commission's report have not yet been tabled in parliament.

There were a number of policy and information papers circulated, such

consultations

as the Gay and Lesbian Rights Lobby's paper on Adoption – Gay and Lesbian Parenting and the NSW Police Services Policy Statement on Gay and Lesbian Issues. In the coming year we look forward to the results of the Survey on Personal Safety for Lesbians and Gay Men in NSW, and the recommendations from the Neglected Communities Forum.

At the last consultation meeting, it was noted by the participants that Chris Puplick, who resigned as President of the Anti Discrimination Board in May 2003, made a major contribution to the Gay and Lesbian Consultations over his eight years as President.

The Board restated its commitment to community consultation, and assured members we would continue to discuss the relevant issues with participants. The Gay and Lesbian Consultation is also considering a name change to be more inclusive and reflective of the community involved.

Participants in this year's Gay and Lesbian Consultation included representatives from 2010, the Attorney General's Department, the AIDS Council of NSW, the AIDS Trust, Bi-Pride, the Central Sydney Area Health Service, the Community Support Network, the Country Network, the Crime Prevention Division of the Attorney General's Department, the Gay and Lesbian Counselling Service, the Gay and Lesbian Rights Lobby, the Gender Centre, the Inner City Legal Centre, the Lesbian and Gay Anti-Violence Project, Lesbian and Gay Solidarity,

Luncheon Club, New Mardi Gras, the Order of Perpetual Indulgence, People Living with HIV and AIDS, People with Disabilities, the Pride Centre, the Senior Programs Officer of the NSW Police, South Sydney Council, the Sydney Bisexual Network, TAFE, the Teachers' Federation, Workers Out, Uniting Network, Vincare and several individual participants.

transgender

It has been a busy year for the Transgender Consultation, which met three times in 2002-2003. In particular, the Neglected Communities Forum, hosted by the Board as part of the 2003 Sydney Gay and Lesbian Mardi Gras Festival, focused on the experience and needs of transsexual, transgender, bisexual and intersex people with regard to discrimination (refer to page 11 for more information).

The consultation considered the recommendations from the forum (refer to page 11). Other matters considered during the year included:

- Queensland anti-discrimination legislation;
- the need for a consistent national legal framework for the recognition of transgender people; and
- amendments to the *Anti-Discrimination Act* affecting transgender people.

Participants in the Transgender Forum included representatives from the Gender Centre, the Sex Worker's Outreach Project, the Sex and

Gender Education Foundation, the Registry of Births, Deaths & Marriages, the AIDS Council of NSW, the Inner City Legal Centre and individuals from the transgender community.

The consultation also decided to change its name to the Sex and Gender Diversity Group from the next meeting.

intellectual disability

The Intellectual Disability Consultation met twice this year, in August 2002 and February 2003.

One of the major topics for discussion this year was the booklet the Board is producing to inform people with intellectual disabilities about their rights and how the Board

can help them (for more information refer to page 36). A reference group was established to work on this project, including two members from the Intellectual Disability Consultation, two officers from the Board and one person from the Intellectual Disability Rights Service, which has been contracted to produce the booklet. The organisation of a training initiative to accompany the launch of the booklet was also discussed.

Other matters considered during the year included:

- the Board's Flexible Service Delivery Plan, which arose out of consultation with representatives from various disability groups;

- Privacy NSW's proposed guidelines titled: *Privacy, Consent and Capacity: rights under the Privacy and Personal Protection Act (NSW)*;
- the launch of a publication to celebrate 10 years of the *Federal Disability Discrimination Act*; and
- the Board's review of case law on disability discrimination.

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

successful conciliations

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 were of a minor nature, and other workers who she was required to supervise were allowed to continue working. She also said 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. The complainant also provided the employer with her written resignation.

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 at one campus, but not 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.

Age discrimination in employment

The complainant had worked for his employer for many years. He alleged that he was repeatedly asked about his plans for retirement, and that he was made redundant when he made it clear that he was not intending to retire in the near future.

The company denied that pressure had been put on him to retire and said that the redundancy was genuine and based on a general restructure to define the future direction of the business. The matter was resolved by the respondent paying the complainant's legal costs relating to an industrial claim about the terms of the redundancy itself.



handling complaints

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 2002-2003.

initial enquiries

The Board provides three specialised enquiry services – one for general calls, one to advise employers and the other to advise service providers. Enquiry Officers do the following:

- give general information about what is covered by anti-discrimination law;
- give advice about how to deal

with discriminatory or potentially discriminatory situations;

- provide information about where further assistance can be obtained (including referrals to other agencies in situations where the caller's problem is not covered by the NSW *Anti-Discrimination Act*); and
- take and transfer requests for publications and other Board services as required.

General enquiries come from people who have experienced discrimination or are advising those who have, such as members of the public, employees, community workers, advocates and public servants.

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, which reduces the number of complaints the Board receives.

During 2002-2003 we answered 12,608 enquiries, which is an average of over 50 per day. The

majority of enquiries (97%) were made by phone; the remainder were made by letter, telephone typewriter, email or visit to one of our offices. Most calls took between 5 and 15 minutes, but some enquiries were very complex and took more than 30 minutes to deal with (over 150 in 2002-2003).

The majority of callers (75%) wanted to discuss a situation where discrimination was occurring. Only 9% of people making enquiries were advised to lodge a formal complaint of discrimination. This low figure reflects our policy of empowering and assisting callers to try to solve their problem more directly where appropriate, before making a formal complaint.

Women continued to use our general enquiry service more than men (49% vs 35%) in 2002-2003. The remainder of calls were made by individuals contacting us on behalf of another person or organisation.

The most common types of discrimination people enquired about in 2002-2003 were sex discrimination (2,296 enquiries), disability discrimination (2,016 enquiries) and race discrimination, including racial vilification (1,618 enquiries). Of the sex discrimination enquiries, 825 were about sex discrimination, 812 were about sexual harassment and the remainder were about pregnancy-related discrimination.

The majority of enquiries continued to be employment-related (58% or 7,361 enquiries). The second largest area of discrimination callers enquired about was the provision of goods and services (13% or 1,642 callers).

Problems that were not covered under anti-discrimination law accounted for 38% of calls, with a

quarter of these relating specifically to employment. We generally refer these enquiries to trade unions or to the NSW Office of Industrial Relations, or we give advice about how to resolve the problem within the workplace.

Other problems not covered by the law include people who were treated unfairly because they have a criminal record, or because of their religion, or because of a personal disagreement.

legal and policy enquiries

The President receives many requests for legal and policy information regarding the application of the NSW *Anti-Discrimination Act*. In 2002-2003 the Legal and Policy branch responded 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, with the aim of preventing discrimination from occurring.

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 themselves because they have

enquiries by ground 2002/2003

	No	%
Sex [†]	2,296	17
Disability	2,016	15
Race	1,618	12
Carers' responsibilities	765	6
Age	700	5
Homosexuality	197	1
Racial vilification	165	1
Marital Status	164	1
Victimisation	81	<1
Transgender	68	<1
HIV/AIDS	28	<1
Homosexual vilification	29	<1
HIV/AIDS vilification	13	<1
Transgender vilification	4	<1
All grounds	664	5
Not covered by ADA — other problems	4,077	31
Not covered by ADA — work not harassment	708	5
Total	13,593	100

[†]Includes sexual harassment and pregnancy.

The total number of enquiries by ground is greater than the total enquiries received because many enquiries cover multiple grounds.

enquiries by area 2002/2003

	No	%
Employment	7,361	57
Other	2,041	17
Goods and services	1,642	13
Accommodation	604	4
All areas	366	4
Education	352	3
Vilification	207	1
Registered clubs	188	1
Total	12,761	100

The total number of enquiries by area is greater than the total number of enquiries received because many enquiries cover multiple areas.

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. 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 impartially and free of charge. The first stage is to investigate the complaint to see if it may amount to a breach of the *Anti-Discrimination Act*. If this appears to be the case, we then attempt to conciliate the complaint, which means we ask 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;
- being provided with facilities;
- receiving the goods or services required;
- being provided with accommodation;
- receiving monetary compensation;
- and/or receiving some other form of compensation.

Many complaints are settled through conciliation. Only 14.7% of all finalised complaints in 2002-2003 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 21.

number of complaints

We received 1,659 complaints in 2002-2003, which is slightly higher than last year's figure of 1,625. Each ground of complaint is counted as a separate complaint, and some people make complaints on more than one ground, so the number of complaints exceeds the number of people making complaints.

9% of complaints received in 2002-2003 (152 complaints) could not be investigated because they were outside our jurisdiction, or they did not specify a ground of complaint that we could deal with.

Although the complaint figures are essentially stable, the number of complaints within jurisdiction is increasing, suggesting that

complaints received by ground and area 2002-2003

Ground	Emp	G&S	Accom	Educ	Clubs	Qual bodies	Race vil	Homo vil	HIV/AIDS vil	Trans vil	Other	Total
Race	111	110	16	23	5	0	0	0	0	0	3	268
Racial vilification	0	0	0	0	0	0	37	0	0	0	0	37
Sex	351	20	9	3	3	0	0	0	0	0	2	388
Marital status	16	5	7	0	1	0	0	0	0	0	1	30
Carers' responsibilities	88	0	0	0	0	0	0	0	0	0	0	88
Disability	178	74	24	23	21	2	0	0	0	0	1	323
HIV/AIDS vilification	0	0	0	0	0	0	0	0	0	0	0	0
Age	58	18	14	1	1	3	0	0	0	0	3	98
Compulsory retirement	1	0	0	0	0	0	0	0	0	0	0	1
Homosexuality	39	14	6	0	0	0	0	0	0	0	2	61
Homosexual vilification	0	0	0	0	0	0	0	10	0	0	0	10
Transgender	1	18	0	0	1	0	0	0	0	0	0	20
Transgender vilification	0	0	0	0	0	0	0	0	0	3	0	3
Victimisation	141	12	4	3	3	0	0	0	0	0	9	172
Aiding unlawful act	7	0	0	1	0	0	0	0	0	0	0	8
Advertisement	0	0	0	0	0	0	0	0	0	0	0	0
Other	41	38	3	8	1	1	0	0	0	0	18	110
Unknown	15	8	3	2	3	0	0	0	0	0	11	42
Total	1047	317	86	64	39	6	37	10	0	3	50	1,659*

Each ground of complaint is counted as a separate complaint, and some people make complaints on more than one ground, so the number of complaints exceeds the number of people making complaints.



complainants are better informed about their rights before they lodge the formal complaint.

grounds of complaint

Similarly to previous years, complaints of sex, disability and race discrimination accounted for nearly 60% of complaints received in 2002-2003. Sex discrimination (which includes discrimination on the basis of pregnancy and sexual harassment) was again the most frequent ground of complaints with 388 complaints (23.4%).

The next most common grounds were disability discrimination (323 complaints, which is 19.5% of total complaints) and race discrimination (268 complaints or 16.2%, a slight increase on last year). Victimisation complaints have again increased slightly over last year with 172 complaints (10.4%).

areas of complaint

The largest number of complaints were employment-related, with 1,047 complaints (63.1%). Goods and services complaints were again the second largest area of complaint with 317 complaints (19.1%). This is comparable with previous years.

Employment-related complaints

The breakdown of employment complaints was very similar to the last two years. As with last year, by far the majority of employment-related complaints were about work environment and/or harassment (533 complaints or 50.9%), and over a third of these concerned sexual harassment. Dismissal was the next most common employment-related complaint with 175 complaints (16.7%).

complaint finalisation

The Board has had excellent results this year in finalising complaints. 1,789 complaints were finalised, which is a 21% increase on 2001-2002. The Board has implemented a number of strategies to streamline the complaint handling process and shorten the amount of time taken to finalise complaints. These strategies will be further developed in the coming year.

How were complaints finalised?

The Board can only investigate complaints that come within our legal jurisdiction, so the first decision after we receive a complaint is whether it appears to come within the provisions of the NSW *Anti-Discrimination Act (ADA)*

type of employment complaints 2002-2003

	No	%
Work environment and harassment	533	50.9
Dismissal	175	16.7
Recruitment/selection	120	11.5
Classification	85	8.1
Resignation	41	3.9
Retirement/redundancy	31	3
Demotion	24	2.3
Transfer	17	1.6
Promotion	16	1.5
Awards and enterprise	5	<1
Total	1047	100

type of employer 2002-2003

	No	%
Private enterprise	520	49.7
State govt dept	127	12.1
Individual male*	122	11.7
State statutory body	56	5.3
Education (public)	53	5.1
Hospital	42	4
Local government	29	2.8
Non-profit association	23	2.2
Registered club	22	2.1
Other	16	1.5
Individual female*	8	<1
Education (private)	6	<1
Media organisation	6	<1
Govt bus enterprise	6	<1
Cwltth stat body	4	<1
Cwltth dept	1	<1
Trade union	1	<1
Not known	8	<1
Total	1047	100

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



Of the complaints finalised during 2002-2003, 197 (11%) were found to be outside our jurisdiction. Some of these complaints were covered by other laws or could be dealt with by another agency. If a complaint is not within our jurisdiction, we inform the complainant about other possible avenues they could pursue.

Of the remaining 1,592 complaints that were finalised, 516 (32.4%) 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 is consistent with previous years.

709 complaints within jurisdiction were not proceeded with in 2002-2003. There are many reasons why this may occur – for example, investigation may reveal that unlawful discrimination was not the cause of the problem, or the complainant may decide that they are not prepared to pursue the matter for personal reasons.

Where appropriate, the Board has also continued to encourage complainants to sort out their complaint themselves, or suggest avenues where they might be able to resolve it, especially in the industrial area.

Respondents are also encouraged to talk to the complainant to see if they can resolve the problem. If the parties successfully resolve the problem, the complaint is withdrawn and is counted in our statistics as withdrawn even though the matter has been resolved.

68 complaints within jurisdiction (3.8%) were formally declined as lacking in substance or as not revealing a contravention of the ADA, often after lengthy investigation. Of these declined complaints, 27 were referred to the ADT at the request of the complainant.

Bonella decision

There was a significant increase in the number of matters not accepted because the complaint was lodged more than six months after the alleged events occurred. The Board's previous practice had been to view out of time matters in light of whether there had been a continuous course of conduct leading up to the time of the lodgement of the complaint. If some of the events were within time, and there was sufficient connection between these and the out of time events, then the earlier events were accepted as part of the complaint.

In August 2002, the ADT made a decision in *Wollongong City Council -v- Bonella and Ors* and *Bonella and Ors -v- Wollongong City Council* on the operation of s88(4) of the ADA. The decision stated that the President must make a decision as to whether the complainant has shown good cause as to why the complaint should be accepted out of time.

This placed an obligation on the President to formally seek submissions from the parties and make a considered decision on matters which would not have undergone this process in the past. As a result, the Board has spent an increasing amount of resources in fulfilling the requirement to consider out-of-time matters. The additional work is also reflected in the increased number of complaints rejected as out of time in 2002-2003 – 57 compared with 9 the previous year.

speed of finalisation

There has been a queue of unallocated complaints at the Board, resulting in waiting times before complaints are allocated to a Complaint Handler and then finalised.

Complaints staff continued to reduce the number of complaints in the queue,

and thus the waiting time, by adopting more efficient and effective practices. Strategies were implemented at the intake stage to streamline the investigation process and have cases waiting in the queue only after some investigation has taken place. Parties are therefore only waiting for conciliation conferences if appropriate.

However, the Bonella decision (see above), declinations and administrative law requirements have impacted on the technicality and length of time taken to deal with some complaints. Complaints staff will face further challenges to improve the efficiency of the complaint handling process in the next year as the Board undergoes a significant restructure and changes in key personnel.

The Board is currently instituting revised recording procedures in order to set standards for finalisation times from date of lodgement. These results will be included in subsequent annual reports.

The Board's business plan aims that once a complaint has been allocated:

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

This year we met all of these targets with:

- 18% of allocated complaints finalised in one month;
- 30 % of allocated complaints finalised in two months;
- 41% of allocated complaints finalised in three months;
- 66% of allocated complaints finalised in six months; and
- 88% of allocated complaints finalised in 12 months.

In relation to time taken to finalise the files closed in this financial year from date of receipt:

- 12% of complaints were finalised in one month from date of receipt;
- 17 % of complaints were finalised in two months from date of receipt;
- 23% of complaints were finalised in three months from date of receipt;

- 41% of complaints were finalised in six months from date of receipt; and
- 62% of complaints were finalised in 12 months from date of receipt
- 38% of complaints were finalised more than 12 months from date of receipt.

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.

There is an ongoing demand for the Board's services in rural and regional areas. The Board is reviewing the coverage of our three offices in Sydney, Newcastle and Wollongong to address access and equity issues for parties to complaints, as well as the equitable distribution of cases between those offices.

Outcome of complaints finalised 2002–2003

	No	%
Not proceeded with	709	39.6
Settled after conciliation	321	17.9
Outside jurisdiction	197	11
Referred to ADT	236	13.2
Settled before conciliation	155	8.7
Settled outside the Board	30	1.7
Not accepted OOT	57	3.2
Formally declined	41	2.3
Referred to HREOC	16	<1
Formally declined and referred to ADT	27	1.5
Total	1,789	100

successful conciliations

Homosexual discrimination in employment

The complainant worked in the recruitment industry. He alleged that he was treated less favourably because of his homosexuality by many staff at the company, including his managers. When he complained about this, his complaints were dismissed or were not followed up appropriately by management. He also alleged that he was victimised by being dismissed from his employment.

The matter settled by a payment of \$9,000 – \$6,000 of which was paid to a charity where the complainant was as a volunteer. The employer also agreed to provide training for all its staff on discrimination and harassment issues.

Disability discrimination in service provision

The complainant has paraplegia and uses a wheelchair. She alleged that when she rang to book a taxi, she was advised that people who require wheelchair-accessible cabs must make advance bookings. The complaint was conciliated on the basis of an apology from the manager and the distribution of a new policy to all bookings operators.



wollongong office

complaints

The Wollongong office received 141 new complaints in 2002-2003, which is a decrease from the number of complaints received in 2001-2002 (186). The profile of the complaints in terms of grounds and areas of discrimination was similar to previous years.

The most common grounds of complaint were disability discrimination (33 complaints or 23.4%), sex discrimination (including pregnancy and sexual harassment) (31 complaints or 22%), and victimisation (30 complaints or 21.3%). These three grounds accounted for two thirds of all complaints received.

The most common areas of complaint were employment (101 complaints or 72%), goods and services (17 complaints or 12%), and accommodation (12 complaints or 9%). These three areas accounted for more than 90% of all complaints.

The large number of complaints relating to employment is consistent

with the pattern over many years.

This provides the basis for the Board's workplace relations trainers delivering fee-for-service training to a client base which consists almost exclusively of large employer organisations.

Complaints finalised

In 2002-2003 the Wollongong office finalised 221 complaints. Of these 96 (44%) were settled through conciliation, 65 (29%) were withdrawn and not proceeded with, 33 (15%) were closed because they were not within jurisdiction or were lodged out of time, and 27 (12%) were referred to the Administrative Decisions Tribunal for determination.

education

The Wollongong Education Officer provided on-site training to 19 client organisations in 2002-2003, and delivered a total of 50 training sessions attended by 900 participants. Nearly half of these participants attended training

sessions conducted in outlying areas of the region, including Deniliquin, Moama, Cootamundra, Wagga, Young and Bega.

The education program is self-funding, and had a target \$48,000 for earnings in 2002-2003. This was exceeded by \$9,000, or almost 20%. About one third of clients were repeat clients, indicating a high level of satisfaction with the service.

Local councils were major clients, with on-site training provided to eight different councils during the year. Various other types of organisations booked our training, including the private sector (manufacturing companies, registered clubs and private schools) as well as the public sector (state government departments, area health services and local government authorities).

The programs are tailored to meet the specific training needs of the client organisations. It is interesting to note that the most common request was for training in the prevention and management of workplace harassment and bullying.

This training focussed on addressing the prevention and management of harassment and bullying from a 'whole of organisation' perspective. It provided managers, and especially frontline managers, with the knowledge and skills to make effective and immediate interventions to prevent harassment and bullying. It also provided grievance handling skills to managers and contact officers.

We note that employers and managers continue to demonstrate a lack of awareness about the issue of carer's responsibilities. This often leads to inappropriate and discriminatory responses to employees' requests for flexible working arrangements.



newcastle office

complaints

The Newcastle office received 179 complaints in 2002-2003, which was a 28.4% decrease from the number of complaints received in 2001-2002 (250).

The most common grounds of complaint were disability discrimination (65 complaints or 36.3%), sex discrimination including pregnancy and sexual harassment) (44 complaints or 24.6%) and race discrimination (18 complaints or 10%). This is a change from last year, when the most common grounds were sex discrimination (33%), disability discrimination (24%) and age discrimination (14%).

The most common areas of complaint were employment (111 complaints or 61%), registered clubs (25 complaints or 27%), and goods and services (14 complaints or 7.8%). This reflects a reduction in the relative number of complaints relating to employment (67% of total complaints in 2001-2002) and

goods and services (14% in 2001-2002), and an increase in the number of complaints relating to registered clubs, which accounted for only 4% of complaints in 2001-2002.

Complaints finalised

The Newcastle office finalised 259 complaints in 2002-2003, which is an increase of 53.3% over the number finalised in 2001-2002 (169). Of these, 54 (20.9%) were settled through conciliation, 60 (23.2%) were referred to the Administrative Decisions Tribunal, and 107 (41.3%) did not proceed. This compares 2001-2002 figures of 33.% conciliated, 10% referred to the ADT, and 28.4% which did not proceed.

education

In 2002-2003, the Newcastle office provided education services to community organisations and employers in the Hunter Valley, Central Coast and Mid-North Coast of NSW. These services included

responding to enquiries from employers, service providers and other potential respondents as well as enquiries from people in the community who believe they had been discriminated against. The service also included assistance to employers and service providers in ensuring their policies and procedures comply with current best practice.

Employer and service provider education program

As last year, the strongest demand has continued to be for *Harassment Awareness*, *Contact Officer* and *Grievance Handling* programs. There has also been an increase in training across all levels of some organisations.

The EEO Network program is still running strong with human resources and other staff from organisations attending on a regular basis. The meetings provide an opportunity for open discussion about current issues arising out of legislative or judicial developments affecting the jurisdiction.

Community sector education program

Participation in disability networks and training for indigenous youth, women's refuges, health centres, HIV/AIDS services, aged care services and vocational education programs in schools are just some of the many engagements undertaken during the period.



aboriginal and torres strait i

The Board employs an Aboriginal and Torres Strait Islander team so it can provide culturally specific services for Aboriginal and Torres Strait Islander people. We believe this is the best way to help prevent discrimination against these communities and assist them in situations where discrimination has occurred.

This includes producing publications specifically written and designed to meet the needs of Aboriginal and Torres Strait Islander people. We have a specially designed graphic which is now used in all the Board's Aboriginal and Torres Strait Islander publications and makes them easily identifiable as providing information about discrimination.

complaints

The Board is committed to ensuring that where necessary and possible, complaints from Aboriginal and Torres Strait Islander people are dealt with by a Complaint Handler from a similar background. As with all complaints currently lodged with the Board, there may be a substantial waiting period before an Aboriginal and Torres Strait Islander complaint can be investigated. This is exacerbated by the fact that the

Board has only one full-time Aboriginal and Torres Strait Islander Complaint Handler, who was on leave from the Board for most of the last year.

During 2002-2003, 104 complaints of discrimination were made by Aboriginal and Torres Strait Islander people. These comprised 6.3% of all complaints received by the Board.

As in previous years, by far the majority of complaints from Aboriginal and Torres Strait Islander complainants in 2002-2003 were about race discrimination or racial vilification – 69.2% or 72 complaints. This was nearly a quarter of all race/ race vilification complaints.

education

In 2002-2003 the Aboriginal and Torres Strait Islander education team continued its program to raise awareness among Aboriginal and Torres Strait Islander people about discrimination issues. The team uses a range of methods to make contact with Aboriginal and Torres Strait

Islander communities and assist them to develop strategies to deal with situations and issues on a local level. Some of the areas where we worked in 2002-2003 include Mt Druitt, Dubbo, Sydney, Blacktown, Penrith, Kempsey and Orange.

The team's work included:

- conducting rights-based talk/ training sessions with government and community organisations;
- taking enquiry calls;
- holding an information stall at the Survival Day event;
- working in partnership with the Office of Fair Trading from centres in Penrith and Orange, as well as the Office of Industrial Relations in Sydney;
- attending a number of Careers Expos and information days; and
- attending interagency network meetings within the Sydney area, which provided a good context for advising people how to deal with discrimination issues.

Narelle Hennessy from the Board at the launch of the second Advance Australia Fairly postcard series in Young, with Norma Freeman from Young Local Aboriginal Land Council and Rodney Freeman.



slender outreach

Community Seminar Program

The outreach team ran a number of seminars in 2002-2003 for Aboriginal and Torres Strait Islander community workers and others who work in this area. The seminars were entitled *Rights, Advice & Strategies* and *Non-Discriminatory Community Management*.

Combined information forums

In November 2002 the team combined with other NSW government agencies for the first time to present a highly successful combined forum for the Aboriginal and Torres Strait Islander community in Dubbo. The other agencies were the Office of Industrial Relations, the NSW Workcover Authority, the Office of Fair Trading and the NSW Working Women's Centre.

Entitled 'Marrambul Mali' (Do it Right), the forum was opened with a welcome from local elder Russell Ryan. It covered the rights and



(L-R) Rae Hamilton from the OFT, Michelle Fernando from Workcover, local elder Russell Ryan, Felicity Huntington from the Board, Chris Capper from the OFT and Nareen Young from the NSW Working Women's Centre at the Dubbo information forum.

responsibilities of employers and employees in areas such as workplace harassment and discrimination, workplace safety and workers compensation, awards and employment laws in NSW, and the services of the Office of Fair Trading.

The feedback from participants was extremely positive, and the agencies involved are now planning to hold similar forums throughout the state. The NSW Minister for Industrial

Relations, John Della Bosca, put out a media release to mark the event.

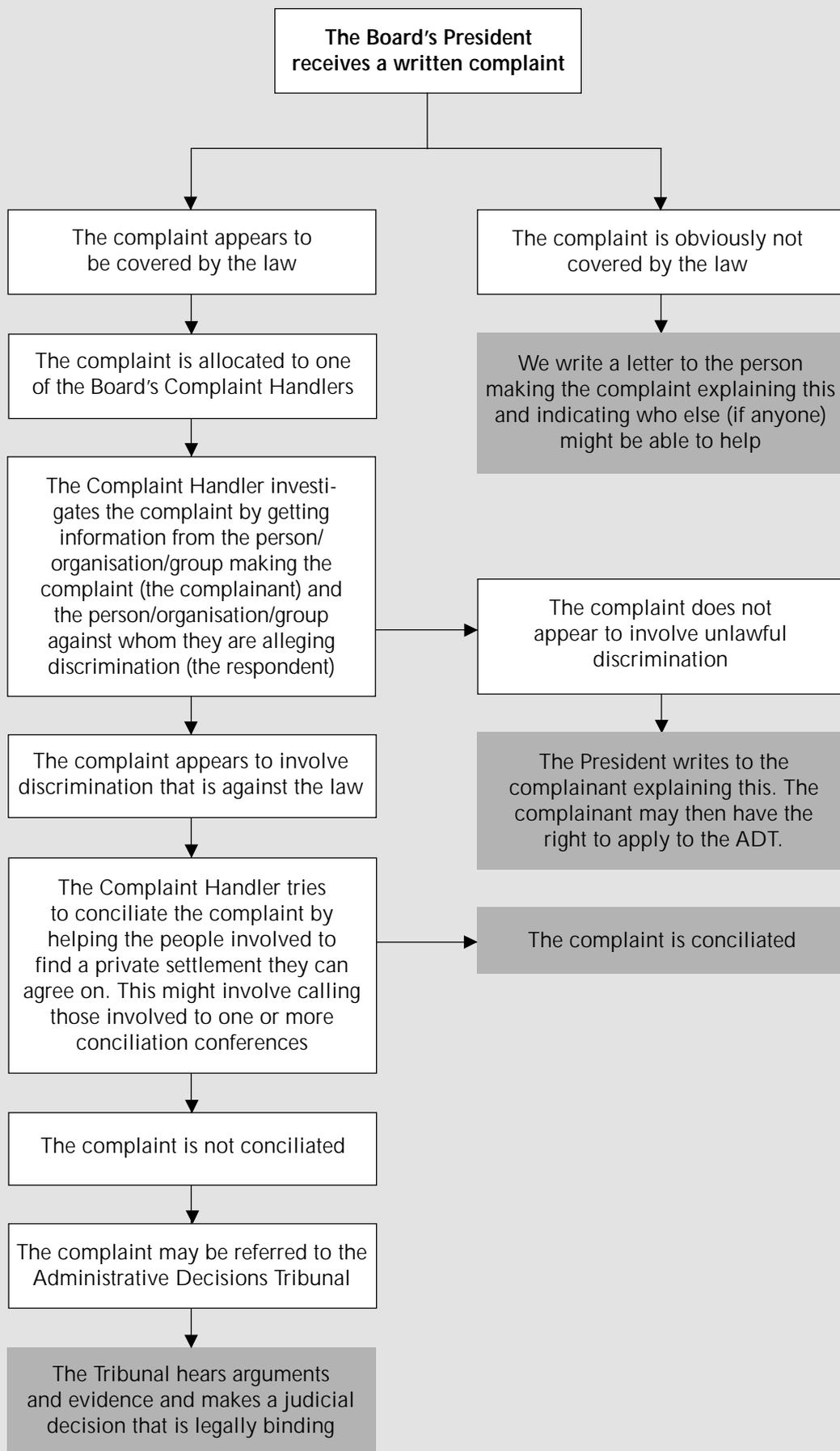
Aboriginal and Torres Strait Islander Advisory Committee

The Advisory Committee members met three times in 2002-2003 to discuss issues of concern. The main issues considered this year were accommodation and financial services.

aboriginal and torres strait islander complaints 2002-2003

Ground	Emp	Goods & servs	Accom	Educ	Qual bodies	Race vilif	Homo vilif	Other	Total	%
Race	17	38	8	4	0	0	0	3	70	67.4
Racial vilification	0	0	0	0	0	2	0	0	2	1.9
Victimisation	6	0	0	0	0	0	0	0	6	5.8
Disability	3	1	1	1	1	0	0	0	7	6.7
Age	0	1	2	0	0	0	0	0	3	2.9
Sex	9	1	0	0	0	0	0	0	10	9.6
Other	1	1	0	1	0	0	0	0	3	2.9
Homosexuality	1	1	0	0	0	0	0	0	2	1.9
Marital status	0	0	1	0	0	0	0	0	1	<1
Total	37	43	12	6	1	2	0	3	104	100

how we handle complaints





educating the community

Understanding and having access to legislation is an important aspect of a democratic society, so the Board provides people with information about their rights and responsibilities under anti-discrimination legislation as well as resolving individual complaints. The Education Services Branch's activities aim to enable people to:

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

Our education initiatives are targetted in two main areas. These are the workplace, from which the Board receives the most complaints, and the community as a whole.

We have used a number of strategies to address these areas. They include:

- delivering talks and information and training sessions throughout NSW;
- presenting papers and workshops at major conferences;
- networking and consulting with various groups and organisations
- developing outreach projects;

- developing and distributing a wide range of targeted publications;
- providing a wide range of information on our website;
- accessing all forms of media;
- having a specialist library linked with other libraries; and
- providing further information and advice to people we have trained.

information and training sessions

The ADB provides talks, lectures, interactive workshops and seminars for all sections of the community. In 2002-2003 we conducted over 500 information and training sessions attended by over 12,500 people.

Workplace training

Training sessions within the workplace are provided on a fee for service basis, and this program raised over \$600,000 in 2002-2003. This meant we effectively covered the cost of the relevant salaries, on-costs and venue hire, plus some publications costs.

These sessions are highly valued and appreciated by workplaces as they provide people with an understanding of their rights and

responsibilities, as well as strategies to address discrimination. Employers also appreciate the sessions as they provide an important venue for acquiring information that enables them to work effectively within anti-discrimination legislation.

Informing the community

The Board also conducts training and information sessions for a wide range of community groups. These include advocacy organisations, community organisations and centres, welfare workers and organisations, voluntary clubs and organisations that wish to learn more about the legislation, school representative councils and interagency groups. Organisations trained this year include:

- Funeral & Allied Industries Union;
- Eastern & Central Sexual Assault Service;
- South West Sydney Legal Centre;
- Wesley Dalmar Child and Family Care;
- Sunnyfield Association;
- Department of Education Student Representative Council; and

organisations we trained in 2002-2003

Alstom Power
 Commonwealth Bank
 Crane Group
 Foxtel
 Parliament of NSW
 3M Australia
 Transport NSW
 Waverley Council
 Westpac
 Bathurst City Council
 Precisionvalve
 Waterways Authority
 Macquarie University



■ Outworkers community workers.

The Board also runs stalls at community and fair days to provide information to the wider community. The feedback from our representation at these days and the talks and presentations that are given is extremely positive. Events attended this year included:

- AIDS Trust Food and Wine Fair 2002;
- Bathurst Indigenous Careers Day;
- Lloyd McDermott Rugby Union Tournament;
- Gay and Lesbian Mardi Gras Fair Day;
- Moree Croc Eisteddfod; and
- NAIDOC week – various activities.

Public seminars

Another aspect of the Board's education program is the public seminar programs. These are conducted throughout the year, with one set focused on workplace issues for human resource and line managers, and the other for the community sector. In each seminar series participants are given highly specialised knowledge to meet their needs and also strategies to employ to establish best practice within the anti-discrimination legislation.

A very valued part of these sessions is the presentation of case law in a user-friendly way, which enables participants to understand the judicial process and the basis on which decisions are made. The outcome is that a greater proportion of the population has the knowledge and skills to address discrimination in the workplace and across all walks of life.

Tailored training sessions

The Board also offers tailored training sessions as required to suit particular situations. In the past year these have included:

- continuing education sessions for legal practitioners, covering recent case law on carers' responsibilities, disability, sexual harassment and transgender issues and updates on other issues relating to harassment and discrimination in the workplace;
- interactive exercises and training sessions for health care workers under the Hepatitis C Workforce Development Project,
- workshops for union delegates; and
- information sessions for people with Turner's Syndrome.

Ongoing support

Clients of our training program are also given ongoing support and advice on issues as they arise. For example, in the last year one large employer received a sexual harassment complaint against one of its senior personnel. The Board advised the client on a number of occasions, which enabled them to resolve the matter internally without a formal complaint being lodged.

Information exchange

The Board coordinates a forum for information exchange between government agencies that provide enquiry services to the public. This enables participants to inform other organisations about the services they provide and familiarise themselves with the numerous government and community services that advise the public.

special projects

The education services branch also works on specific projects aimed at groups who have been identified as being particularly vulnerable to discrimination.

Report on 'Skools Out' Forum

A report on the proceedings of the highly successful forum organised as part of the 2002 Gay and Lesbian Mardi Gras, entitled 'Skool's Out', was launched in November 2002. This publication was produced jointly by the Board and the Crime Prevention Division of the Attorney General's Department. It enables the excellent material presented at the original forum to become an ongoing discussion document and resource on the issues that affect gay and lesbian school students.

'Neglected Communities' Forum

The branch organised another highly successful forum as part of the 2003 Gay and Lesbian New Mardi Gras,

held in February 2003. This was on legal issues relating to the 'neglected communities' – transgender, transsexual, intersex and bisexual people. For more information refer to page 11.

Non-english information

As part of the board's strategy to improve information services for speakers of languages other than English, we have revised and improved the introductory information in 24 languages on our website. We recorded this information in 10 languages with the assistance of SBS Radio, and

distributed it to radio programs broadcasting in these languages throughout NSW. The languages were Arabic, Cantonese, Hindi, Korean, Mandarin, Russian, Serbian, Spanish, Tagalog and Vietnamese.

Video training resource

The Community Education Officer oversaw the production of a 10-minute training video for use by community groups, which was made in conjunction with the University of Technology, Sydney. The video is planned for release in late 2003 and will be distributed with guidelines for use.

what people have said about our training

'Friendly, approachable trainer, very knowledgeable, interesting subject told well. And the ADB kit/package is great to take away!'

'A good mix of information, particularly for those who do not have a good understanding of the policies/law.'

'All the information and the casework examples were very useful. I look forward to another training session.'

'The first training session I haven't fallen asleep in!'

'Very useful and enthusiastically presented. The most useful training I've been to in a long time.'

'Kept me involved and interested for the whole day – great work!'

'Humorous, interesting, stimulating.'

'Presentation was paced well and the information pitched well.'

'Very good – a lot of information to cover and helpful strategies included. Methodical and well-developed.'

'Excellent presentation. Presenter involved all participants very well. Presentation was delivered in lively, interesting and knowledgeable way.'

'Case studies and role plays were good tools to understand the concepts.'

'It was great, and really made me aware of my responsibilities.'

'Thanks for the training. A few days later we had a student with a disability apply for placement with our service, and I knew just how to handle the situation, thanks to your training.'

'I was extremely impressed with the training day on grievance handling. The handouts were great, your presentation was well organised and you sound very expert on the topic.'

'Being a Contact Officer is a very challenging role, but today's training was very interesting, informative and important and will be very very helpful.'

arabic/islamic community training project

In response to the focus on the Arabic/Islamic community following the events of recent years, two Arabic-speaking Education Officers were employed for six months in the first part of 2003 to embark on an education campaign directed specifically at this community.

The first stage of the project was to consult with key community stakeholders to determine the context and issues involved. Following this a three-tier strategy was developed: educating and informing community members about their rights; training community workers to deal with discrimination faced by their clients; and informing service providers about the needs of the Arabic/Islamic community.

The training included assisting community members to identify the core grounds of discrimination, the complaints process, handling matters on an individual level and identifying the most appropriate organisation or agency to approach. Participants were also provided with information kits including bilingual fact sheets translated by the project team – these have also been put on the Board's website.

The team conducted 26 community training sessions addressing 1,672 individuals. 69% of these sessions were in Arabic and the remainder in English. There were six training sessions for community workers and service providers with 173 participants, as well as attendance at information days at Migrant Resource Centres and informal networking. The team also produced a referral poster to assist community workers to refer clients appropriately when they are dealing with discrimination matters.

The overall response to the program was positive. The majority of community members had very little knowledge of discrimination law and believed it was important for them to know how to access it. However, there was a level of doubt about whether they would be eligible for such services and whether agencies would take their concerns seriously or be able to help them.



Intellectual disability picture book

People with intellectual disabilities have been identified as a group that is very vulnerable to discrimination, and the Board has been given additional funding from the Attorney General's Department to produce a picture booklet explaining their rights under anti-discrimination law and how the Board can help them. The booklet is currently being prepared with specialist assistance from the Intellectual Disability Rights Service, and will be completed in late 2003.

publications

The Board's extensive 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. Publication sales covered approximately 70% of the cost of printing and reprinting all Board publications in 2002-2003.

The Board produces two types of publications, factsheets and guidelines. Factsheets provide basic information about different types of discrimination, and the complaint process. Guidelines provide more detailed information for employers and service providers, who are legally responsible for ensuring that their businesses and services are free from harassment and discriminatory practices. We also have a range of posters, flyers and pamphlets which highlight the Board's education and conciliation roles in the community.

In 2002-2003 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 workplace training sessions. We also distributed over 15,000 copies of our publications at community information days and in response to enquiries from the public.



All of the Board's basic information on people's rights under anti-discrimination law is also available on our website. This increases the accessibility of our publications and reduces printing costs.

We also continue to reprint our existing stock of publications to meet demand, making revisions where required to reflect new case law and legislative amendments.

website

Use of the Board's website has increased dramatically during 2002-2003, averaging 143,838 hits per month. This is a 38% increase over the average 104,507 hits per month in 2001-2002.

The website provides a wide range of information on discrimination issues, including basic information about discrimination and how to make a complaint, advice for employers and service providers, papers and reports on legal issues, information in community languages, forms to order publications and other resources and links.

The Board's website is hosted by the Attorney General Department's Lawlink NSW website, which is a gateway into legal resources on the Internet. The Board's site is consistently one of the five most popular sites on the Lawlink network.

A new, separate website was produced in 2002 as part of the

Board's Advance Australia Fairly project, featuring images and text of all the postcards produced. The site also encourages the public to nominate local community members who have played important roles in the history of NSW.

New Board website

In 2003 publications staff designed a new structure for the Board's website, which will be published online in 2003-2004 as part of the upgrade of Lawlink services. The new site is structured around the needs of the different types of people who are likely to use it, and will provide clearer paths to the variety of information it contains.

The new site will take advantage of improvements in software development, allowing us to offer an expanded range of free and billed services online. There will also be additional metadata for search engine access and improved search facilities within the site.

media liaison

The Board continued to enjoy wide and informed media across a variety of different publications and broadcasts in 2002-2003. Journalists approach the Board for comment about issues relating directly to the *Anti-Discrimination Act*, and also to expand and explore issues of human rights and workplace issues.

new publications

This year, the Board produced 35 new publications and related items:

- Annual report 2001-2002
- Equal Time newsletter (4 issues)
- Report on Skool's Out Forum
- Design of new structure for website
- Workplace seminar training brochure (4 issues)
- Community sector training program (2 issues)
- Flyers for seminar programs (2 flyers)
- Advance Australia Fairly postcards (16 postcards)

- Advance Australia Fairly website
- Race for the headlines: racism and media discourse
- Occasional ADB Papers
- Enquiry line external agencies and service providers referral list

In addition, we revised and reprinted 16 existing publications:

- Factsheets (11 updated)
- Complaints form
- Anti-Discrimination and Equal Opportunity (EEO) Guidelines
- Employers Advisory Service and Enquiries Services fridge magnets



Model and photographer at work on the Board's picture booklet explaining anti-discrimination law to people with intellectual disabilities.

The Board undertook a major media initiative in 2002 with the Advance Australia Fairly campaign. This sought to highlight issues of racism within the community in two ways – to counteract the negative attitudes displayed in some areas of the community, and to acknowledge that many people in the wider community are committed to achieving a harmonious society (refer to pages 12-13 for more information).

The launch of this campaign enjoyed wide and informed coverage. In particular, the second series of postcards was launched in the south western NSW town of Young, and received extensive coverage including several radio interviews, press articles and news stories on all the rural evening news bulletins.

The Board has also continued to contribute to wider social debates and discussions including the very successful transgender forum at Parliament House in February, race issues, and the evolving debate about flexibility in the workplace.

library

The Board's Library provided specialist library, research and

information services to the President, staff and Statutory Board to support their day to day operations and policy work.

This year there was greater co-operation between libraries in the Attorney General's Department, and the Board has joined several consortia set up by the department to subscribe to relevant databases and publications.

During 2002-2003, the Librarian provided:

- a regular bulletin to keep staff

abreast of new literature and research, relevant caselaw and legislative changes;

- library orientation for new staff;
- training for staff on new and more advanced electronic databases;
- research reports on bullying at work, a literature review on pre-employment testing and cases on discrimination in recruitment for Education Services staff;
- company searches to establish respondent details and material on alternative dispute resolution for complaint handling staff;
- updates on previous literature reviews and statistical information on carers' responsibilities, and cases on disability discrimination for Legal and Policy staff;
- literature searches and legal research to support special projects.

In conjunction with legal and policy staff, the Librarian began setting up a database for ADT decisions that will provide information and statistics not easily found in a user-friendly database. She also worked on streamlining the storing of legal decisions and other legal information.

successful conciliation

Carers' responsibilities discrimination and victimisation in employment

The complainant is employed with the respondent in the health services industry. He alleged that his employer discriminated against him on the basis of his carer's responsibilities when they rejected his application to work part-time in order care for his aged grandfather, whose health was in decline.

He also alleged that after he lodged a complaint with the Board, the employer victimised him by refusing him employment until he produced a clearance certificate indicating that he was fit to work after taking sick leave.

The complaint was resolved when the parties agreed to mutually specified hours of part-time work. The respondent also undertook to instruct its managers on managerial requirements in regards to carers' responsibilities and the NSW *Anti-Discrimination Act*.

current publications

Factsheets

Age discrimination – your rights
 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
 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
 Introductory factsheet in 25 community languages
 Lesbian discrimination & harassment & anti-lesbian behaviour
 Marital status discrimination – your rights
 People living with HIV/AIDS discrimination – your rights
 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 culturally and linguistically diverse communities)

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

Advance Australia Fairly postcards (16 postcards)
 Advance Australia Fairly website (<http://lawlink.nsw.gov.au/advanceaustraliafairly>)
 Anti-Discrimination Board Annual Report 2001-2002
 ADB Occasional Paper series
 C-change – Report of the enquiry into hepatitis C related discrimination
 Charities and anti-discrimination law
 Discrimination and harassment: the rights and responsibilities of employees (training kit for vocational teachers)
 Enquiry line external agencies and service providers referral list
 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
 Training sessions for employers and service providers
 Community sector training program
 Race for the headlines: racism and media discourse
 Services for employers brochure
 Skool’s Out report and wallet card (with the Crime Prevention Division of the NSW Attorney General’s Department)



improving the law

In 2002-2003 the main activities of the Legal and Policy Branch have been:

- providing legal advice on complaints;
- providing legal updates for Board staff;
- providing legal advice to the President and representing the President in litigation;
- responding to requests for policy advice from outside the Board;
- providing advice to the Attorney General's Department, the Attorney General's office and other government departments;
- participating in a variety of committees aimed at eliminating discriminatory practices; and
- undertaking 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*.

project work

Review of legislation for heterosexual bias

The Board undertook a comprehensive analysis of legislation

in NSW to identify statutes that continue to use definitions of 'spouse' or 'de facto' that are not inclusive of same sex relationships. We identified four key areas where reform is required in order to eliminate discrimination against gay men and lesbians:

- the provisions on the age of consent for homosexual sex in the *Crimes Act 1900* (Parliament has since passed this reform);
- the *Adoption Act* (both the 1965 and 2000 versions), which continues to prevent same-sex partners from adopting as couples;
- the *Anti-Discrimination Act 1977* (ADA), which does not include same sex partners within the definition of marital status; and
- the need for recognition of gay and lesbian co-parents through simple measures such as amendment of the *Status of Children Act 1996* and *Industrial Relations Act 1996*.

Pregnancy and Work Guide 2002

The Board worked with other relevant organisations to produce a guide to the complex legislation relating to pregnancy in the workplace and return to work after

pregnancy, covering occupational health and safety, discrimination and industrial relations laws.

The Guide was published and distributed by Workcover NSW. Other organisations involved included the Department for Women, the Department of Industrial Relations (now Department of Commerce), the NSW Labour Council and Australian Business.

Amendments to the NSW Anti-Discrimination Act

In 1999 the New South Wales Law Reform Commission released its *Report 92: Review of the Anti-Discrimination Act 1977 (NSW)*. The government has not yet formally responded to the Commission's recommendations and is still considering the report.

The Board continued to provide advice to the Attorney General's Department to advance the recommendations of the LRC and propose other amendments to the ADA.

Legislative models for addressing systemic discrimination

In April/May 2002 two staff from the Board undertook a study tour with funding from the SGE Travelling Fellowship in Public Sector Management. The Board has since published a report of that tour, entitled *Addressing Systemic Discrimination in the Public Sector*, and invited comment on the issues raised in the paper.

The report contains a critique of current anti-discrimination mechanisms in NSW, and outlines models from the UK, Canada and the European Union that address discrimination in the public sector. It recommends that further consideration be given to reframing anti-discrimination law in line with international trends to provide a clear duty to provide a discrimination-free

workplace and promote equality of opportunity. It also notes that there is a trend away from sole reliance on individual complaint mechanisms as a method of effecting systemic change.

Other projects

The Legal and Policy Branch also worked on the *Race for the headlines* report and produced discussion papers and follow-up recommendations for the forum on 'the neglected communities'. Refer to pages 11-13 for more information.

submissions

Genetics

The Board continued its involvement with the inquiry by the Australian Law Reform Commission and the Australian Health Ethics Committee (of the National Health and Medical Research Council) into the protection of human genetic information. The Board provided a detailed submission in response to the inquiry's issues paper in April 2002, and a response to the inquiry's further discussion paper in November 2002.

Senate Legal And Constitutional Committee

The Board worked with other members of the Australian Council of Human Rights Agencies on a detailed submission on the Australian Human Rights Commission Legislation Bill 2003.

Age of consent

The Board made a detailed submission to the NSW Legislative Council's Standing Committee on Social Issues inquiry into the equal age of consent. Legislation to make uniform the age of consent for homosexual and heterosexual sex has since been passed.

NSW Department of Health reviews

The Board made a submission to the department's review on the regulation of complementary health practitioners, on the issues of proficiency in English as a prerequisite for registration as a practitioner and the recognition of overseas qualifications.

The Board made a second submission to the department on its Draft Public Health (Disposal of Bodies) Regulation 2002 and Regulatory Impact Statement, on issues relating to HIV and hepatitis C discrimination. This used the expertise that the Board developed through its 2001 review of hepatitis C-related discrimination.

Aboriginal Justice Advisory Committee

The Board contributed to the committee's action plan to reduce the rates of Indigenous incarceration. The Board encouraged the recognition of discrimination as a cause of marginalisation and low socio-economic status, which are significant contributors to rates of imprisonment.

president's speeches

Speeches delivered by the President in 2002-2003 included:

- Addressing Racism: Anti-Racism Forum, University of Sydney;
- Advance Australia Fairly: Launch of the ADB's anti-racism campaign;
- Opening Address to the Human Rights and Equal Opportunity Commission's National Anti-Racism Strategies Forum;
- Without Prejudice – Access and Equity a Service Guarantee, Local Government and Community Services Association Conference and Multicultural Forum; and
- Social Justice in the Asia Pacific University of Sydney, December 2002.

industrial initiatives

The NSW *Industrial Relations Act* requires the Industrial Relations Commission to take into account the principles of the *Anti-Discrimination Act* in carrying out its functions, and gives the President of the Anti-Discrimination Board the ability to intervene in matters before the Commission which involve unlawful discrimination.

In the last financial year the Board has focussed on ensuring that NSW industrial instruments take account of discrimination on the ground of carers responsibilities. The President intervened in the *Review of the Principles for the Approval of Enterprise Agreements 2002* and the *Re State Working Hours Case 2002*.

Review of the Principles for the Approval of Enterprise Agreements 2002

In this case the President asked the Commission to ensure that a reference to discrimination on the ground of a carers' responsibilities was included in the model anti-discrimination clause as it applies to enterprise agreements. This amendment was needed following the changes to the *Anti-Discrimination Act* which prohibited discrimination on this ground from 1 March 2001.

All the industrial parties agreed to the amendment and the Commission ordered that the reference be made on 9 December 2002.

Re State Working Hours Case 2002

The Commission handed down its decision in the *Re State Working Hours Case 2002* on 10 April 2003. That decision considered the federal *Working Hours Case* which was handed down on 23 July 2002.

The federal Commission ordered an award clause which provides that an employer may require employees to work reasonable overtime, but an employee may refuse to work overtime if this would make their working hours unreasonable with regard to health and safety, personal circumstances including family responsibilities, the needs of the workplace, the notice given by the employer and the employee, and any other relevant matter.

The President intervened in the State proceedings to ensure that any State award clause referred to 'responsibilities as a carer'. The Board was concerned that the term 'family responsibilities' may be interpreted more narrowly than 'carers responsibilities', and may exclude some relationships which are specifically covered under the *Anti-Discrimination Act*.

The Commission allowed the intervention and made orders to insert a reference to 'carers responsibilities' into the NSW award clause in accordance with the President's submissions.

Submissions and information

In 2002/2003 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 on proposals for industrial law reform, including unfair dismissal laws and the need for parental leave to take account of parents who are in same sex relationships.

Australian Competition and Consumer Commission

The Board made a submission on an application by the Royal Australasian College of Surgeons for an exemption from the prohibition on anti-competitive practices in the *Trade Practices Act 1974* (Cth). Our comments focussed on the recognition of foreign medical qualifications.

Teachers from non-English backgrounds

The Board worked with the NSW Teachers Federation on a position paper on teachers from non-English backgrounds. This focussed on the allocation of teacher positions according to date of registration, the application of teaching modification supervision/disciplinary procedures, and the use of the Professional English Assessment for Teachers (PEAT) test.

Public Sector Employment and Management Act 2002

The Board assisted the Premier's Department on issues relating to the *Public Sector Employment and Management Act 2002*, including the permanent appointment of temporary officers and the need to clarify that appointments are subject to the *Anti-Discrimination Act* (ADA).

Review of the Administrative Decisions Tribunal Act 1997

The Board made a submission to the Attorney General's Department's review of this Act. The Board has previously made recommendations on reforms to the ADA and the *Administrative Decisions Act*. In this latest submission the Board made 17 recommendations for reform, including the removal of the limit on the amount of damages that can be awarded in discrimination cases.

Inquiry Into The Disability Discrimination Act (Cth)

The Board made a submission to the Federal Productivity Commission's

Inquiry into the DDA. Issues raised included imposing more explicit positive duties to accommodate the requirements of people with disabilities, and possible further provisions which go beyond relying on individual complaint mechanisms.

Community Relations Commission

The Board provided input to the Commission's document *Cultural Harmony – The Next Decade*. We made comments on employment, access to interpreters, religious intolerance, anti-harassment provisions and community harmony generally.

NSW Law Reform Commission

The Board made a supplementary submission to the Commission's review of the *Property (Relationships) Act 1984* (NSW). This Act is key to recognition of same sex relationships and the diversity of contemporary family units.

Cyber-Racism Symposium

The Board made a submission to the Human Rights and Equal Opportunity Commission's Background Paper for its Cyber-Racism Symposium. The Board outlined the ADA's racial vilification provisions, current case law and their possible application to the internet, as well as potential



issues relating to email, chat rooms, web diaries and online polls.

Options for paid maternity leave

The Board made a submission on the Human Rights and Equal Opportunity Commission's Interim Options Paper: *Valuing Parenthood Options for Paid Maternity Leave*. The Board supported the provision of a national paid

maternity leave scheme funded by the Federal Government, as it would provide greater workplace equity and gender equality.

Review of the *Police Act 1990* (NSW)

The Board made a submission to the NSW Police Service as a part of its review of this Act. We recommended that the Act be amended to make specific reference to anti-discrimination principles, which would better enable the Police Service to promote respect for and acceptance of diversity.

Review of the *NSW Community Justice Centres Act 1983*

The Board made a submission to the NSW Law Reform Commission as a part of its review of this Act. The ADB's submission supported the development of a set of standards for CJs which support anti-discrimination principles and guide CJC practice.

papers

Papers delivered by the Legal and Policy Branch in 2002-2003, included:

- a paper on disability discrimination at the launch of the anniversary of ten years of the federal Disability Discrimination Act;
- a presentation on hepatitis C related discrimination and the role of the ADB at the Central Sydney Area Health Service's Forum;
- a paper on industrial relations and anti-discrimination issues for the Industrial Relations Society of NSW Annual Convention;
- a presentation to Department of Education and Training Legal Officers on discrimination issues focusing on disability and carers responsibilities;
- a presentation to Sydney University Law School on discrimination and grievance handling; and
- a presentation on international trends in addressing systemic discrimination to Equal Opportunity Commissioners' Conference.



There are two types of exemptions available under the NSW *Anti-Discrimination Act* (ADA) – those under section 126 and those under section 126A.

exemptions

Section 126A exemptions apply when employers or service providers wish to run a special needs program or activity that would be discriminatory on the grounds of sex, transgender status, marital status, disability, homosexuality or responsibilities as a carer. 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 doing so, the Board takes into account the purpose of the ADA as legislation designed to promote equality of opportunity.

exemptions granted in 2002–2003 under section 126

Applicant	Program	Sections	Date	Expiry
Dympna House Child Sexual Assault Counselling and Resource Centre	to provide services to females of all ages and male children aged twelve and under, and to designate and recruit for women only	25, 33, 49ZYN, 51	25.11.02 (10 years)	24.11.12
NSW Premier's Department	to designate and recruit for an Aboriginal person for the position of Director-General of the Department of Aboriginal Affairs	8, 51	16.6.03 (5 years)	15.6.08
Gunnedah Shire Council	to designate and recruit for a trainee position in the Community Services section for an Indigenous person	8, 51	16.6.03 (5 years)	15.6.08
Hanson Australia Pty Ltd, Hymix Australia Pty Ltd, Pioneer Building Products QLD Pty Ltd and Pioneer Construction Materials Pty Ltd	to run a driving training project and designate and recruit for the position of Driving Training Project Manager and up to 45 positions as concrete truck drivers for women only.	25, 51	16.6.03 (2 years)	15.6.05
Munro Select Consulting Group	to advertise positions for persons over 40 years of age, and to enable Munro Select Consulting Group and any employers and principals to recruit people over 40 years of age through the 'Munro Greys' initiative	49ZYB(1) 49ZYC(1) 49ZYD(b) 49ZYH(a) 49ZYN(1)(a) 51	2.4.03 (5 years)	5.4.08

Northern Rivers Community Legal Centre	to designate and recruit an Aboriginal woman as Indigenous Assistant Coordinator of the Women's Domestic Violence Court Assistance Scheme	8, 25, 51	22.8.02 (10 years)	21.8.12
University of Western Sydney Aboriginal Education Centre	to designate and recruit Aboriginal and Torres Strait Islander persons for 3 positions in their centre	8, 51	2.10.02 (10 years)	1.10.12
University of Western Sydney Aboriginal Education Centre	to designate and recruit Aboriginal and Torres Strait Islander persons for 2 positions in their centre	8, 51	24.02.03 (10 years)	23.02.13

exemptions granted in 2002–2003 under section 126A

Department or organisation	Special needs program or activity	Period of exemption
Body Shape Female Fitness Centres (Warringah Mall)	health and fitness centre for women only	16.11.2002 for 5 years
NSW Department of State and Regional Development	to run its Women in Business Programs	8.8.2002 indefinitely
Sisters Housing Enterprises Incorporated	to run a supported accommodation service as a special needs program for women and their dependent children	1.4.2003 indefinitely
TAFE	to run 'Certificate 1 in Information Technology (E Consumer)', and 'Certificate IV in Information Technology (Web Design)' training courses for women only	1.1.2003 for 4 years 14.5.2002 for 5 years

successful conciliations

Sex (pregnancy) discrimination in employment

The complainant was employed by the respondent as legal secretary. Shortly after she began working she discovered she was pregnant and advised her employer. She alleged that her employer refused her request to take three months leave of absence to give birth to her child. (She was not entitled to paid maternity leave because she had been employed for under twelve months.)

The complainant also alleged that a male employee's request to take leave of absence was granted in circumstances which were not

materially different to hers, and she was forced to resign due to her employer's refusal to grant her leave. The complainant had been employed for a period of almost ten months at the time of her resignation.

The complaint was resolved when the complainant accepted \$8,000, a statement of service, and a statement of regret.

Sexual harassment in employment

The complainant alleged that she was sexually harassed when her manager approached her sexually and touched her. She believed that after she approached him about this, certain work opportunities were not

given to her, but were given to other employees.

She alleged that after she raised the matter with the company, her work performance was questioned, although it had never been an issue before, and that she was victimised and dismissed because of her complaint.

The company argued that they had responded adequately to the allegations of sexual harassment by instituting their grievance procedure. The complaint was resolved by the respondent agreeing to pay the complainant \$4,000 plus her legal costs.



Aboriginal leader Faith Bandler (right) and friend at the launch of the first series of 'Advance Australia Fairly' postcards at Sydney Hospital.

anti-discrimination board of new south wales

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