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The contents of this publication are for information purposes only and should not be substituted for legal advice.
This issue of Equal Time focusses on several areas of discrimination.

**Race Discrimination**

Sadly, in recent months the Board has issued three press releases highlighting incidents of race discrimination in NSW. Disturbingly, Aboriginal and Torres Strait Islanders are still bearing the brunt of race discrimination, particularly in the areas of accommodation. Over twenty-five percent of complaints to the Board about discrimination in accommodation were by Aboriginal and Torres Strait Islander people.

Complaints of race discrimination against Aboriginal and Torres Strait Islander people occur at twice the rate that would be expected compared to the number of Aboriginal and Torres Strait Islander people in NSW.

Race discrimination in employment was also highlighted by research conducted at the Australian National University which revealed that some employers will decide not to interview people if their name does not sound Anglo-Saxon.

These employers are simply depriving themselves of the opportunity to engage talented individuals that do not fit their stereotyped attitudes. They are also leaving themselves open to expensive compensation claims.

**Sexual Harassment**

Some recent legal cases reviewed in this issue demonstrate the pitfalls of not having clear policies and procedures for dealing with incidents of sexual harassment.

In one case an employer followed correct procedures and was praised by the Industrial Relations Commission, while in another case a company was found liable for half a million dollars in compensation.

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**ADB media release**

**Entry to pubs is everyone’s right**

Aboriginal and Torres Strait Islander communities still bear the brunt of race discrimination” the President of the NSW Anti-Discrimination Board, Stepan Kerkyasharian, said today.

“Anti-Discrimination Board statistics tell a sorry story of race discrimination, particularly in relation to accommodation and the provision of goods and services”, Mr Kerkyasharian added.

In NSW in 2008–2009, a quarter of the complaints of race discrimination in accommodation, and one in ten of the complaints in relation to the provision of goods and services, came from Aboriginals and Torres Strait Islanders, according to annual statistics compiled by the AntiDiscrimination Board.

“The Anti-Discrimination Board has an active Aboriginal and Torres Strait Islander Outreach Team. The stories they hear of race discrimination against indigenous communities are still very disappointing to me” the President stated. “In particular, I am dismayed to hear stories in relation to pubs and hotels. Pubs are places for everyone in the community to meet, so discriminating at the door is not acceptable”, the President added.

Race discrimination complaints may be made to the NSW Anti-Discrimination Board, where they may be investigated and conciliated. Some cases then go to the Equal Opportunity Division of the Administrative Decisions Tribunal, which can order up to $100,000 in compensation.

An unlawful act of race discrimination can also lead to a hotelier losing the hotelier’s licence. Hoteliers can also be held responsible for discrimination by staff or security guards.

Serious racial vilification can lead to a maximum of 6 months in jail or a fine of $11,000.

The Anti-Discrimination Board’s Aboriginal and Torres Strait Islander Outreach Service can provide advice and assistance in relation to race discrimination against Aboriginal and Torres Strait Islander people.


27 August 2009
Diversity in a changing workplace
A review of recent research into workplace diversity

Diversity is all around us. We no longer live in homogenous societies. The workplace reflects this, so we need to acknowledge this change and adapt to function with success as workers and communicators.

Organisations need to recognise this changing phenomenon and utilise the best attributes of all employees within their workforce to excel in industry and ‘best practice’.

If we understand the dimensions and dynamics of diversity we can manage better in the workplace.

Diversity in the workplace has been researched for more than two decades. The advantages of diversity are well documented:

- diverse teams can contribute different perspectives to problem solving and decision making;
- unique, creative, innovative and high quality solutions are increased;
- there is greater availability of specialized skills like language skills;
- intercultural communication increases business advantage in a competitive market.

Potential challenges may include:

- increased miscommunication
- increased group dissatisfaction leading to higher turnover and absenteeism;
- more difficulty learning and working together;
- decreased group interaction and cohesion;

Managers need to be prepared to deal with the changing dynamic in the workplace to create a respectful, collaborative work environment.

Studies on diversity – what have we learned?

Throughout the academic literature diversity in the workplace is defined by the differences in attributes among a group or team. Jackson et al (2003) describe it as the “distribution of personal attributes among interdependent members of a work unit”. Jackson looked at a variety of groups from students, to top management teams (TMT) to whole organizations. Attributes were categorised as ‘readily detectable’ such as sex, age, ethnicity, etc; underlying attributes such as personality, knowledge and values; and attributes that lie between these ‘two extremes of transparency’- education, tenure. Some of these attributes are directly related to work (education and tenure) and others indirectly related to work (sex, age etc).

People in the workplace relate to each other based on these attributes. Being able to influence understanding or increase awareness may result in team behaviour that creates a positive team environment. Stereotyping may be limited and discrimination and harassment reduced.

The practical implications from the research are to alter the focus to improving team effectiveness and strategically approaching diversity management not just reducing ‘inequalities between demographically defined groups’ or ‘inclusion practices’ (Jackson et al 2003). There is a need for targeted training efforts because diversity dynamics are shaped by organizational context.

Pettigrew says training and awareness on ‘stereotypes’ will influence behaviour change (Jackson et al, 2003). This is certainly a real experience for workplace educators at the Anti Discrimination Board of NSW. Organisations need to create positive interactions especially for ‘out group’ members. Rynes and Rosen found rewards and recognition for Managers need to be tied to diversity programs that promote Pettigrew’s identified conditions as well as strategies such as Affirmative Action (Jackson et al, 2003).

When leaders and employees have diversity training, openness to change and self transcendence is cultivated and cultural change occurs to support values of diversity (Sawyer et al 2006, p.515). These initiatives can be strategic and are likely to build tolerance and harmony through diversity in the workplace.

continued on page 4
Age diversity in the workplace

While research on cultural diversity is in abundance the area of age diversity has been less examined. Much of the focus has been on the negative experience of older workers and the stereotypes that surround this group. (Shore et al 2009, p.120; Goldberg 2007). In their research Shore et al review the concerns of employers that as older more experienced workers leave the workforce younger applicants are being favoured. They bring different challenges to the new environment. To date, training has focused on the skills older employees lack and mentoring has had a positive effect on developing younger and older protégés (Shore et al 2009).

The Intergenerational workplace

The workplace of the 21st century is characterized by four generations in the workplace. Weston (2001) describes each generation. The “silent” generation or the “traditionalists” are the employees in the workplace over the age of 55. They are characterised as the generation that grew up in hard times. They are tough and are not afraid to work hard (Weston 2001, p.11).

They are closely followed by the Baby Boomers, born between 1945 and 1960 who are expected to dominate the workplace until 2015 (Weston 2001, p.12). They have been a fortunate generation. Growing up at the advent of the information age they experienced the change in familial harmony. They have experienced rising rates of divorce amongst their parents and they have accepted uncertainty (Weston 2001, p.14). They have less organisational commitment than Baby Boomers. But of all the generations, Generation Y are proving to be the most difficult to ‘live’ with in the workplace. Barnes (2009) suggests we need to be ready for them. They are the generation that will not conform to the workplace and while wanting to trust workplace leaders are cynical about current leadership (Barnes 2009, p.58). They have been protected by their Baby Boomer parents and have known comparatively little hardship or major challenges while growing up. They have grown up with advanced electronic communications and are reliant on these devices for communication. They live in a ‘global village’ and yet their interpersonal communication skills are lacking, confirms Barnes (2001, p.59).

These are the “millenials” who will require innovative management styles that will not constrain their creativity. Their achievement goals include fame; fortune; leadership; trust. (Barnes, 2009,p.59). Their strong parent connections have made them less skilled at problem solving but this may help them accept the support of Baby boomers as mentors in the workplace (Weston, 2001,p.15). They have a strong desire for psychological comfort and fear failure, though they seem ready to take on challenges. Their ability to interact with hyperlink communication has reduced their attention span and they constantly want change and new challenges (Barnes 2009, p.59). This generation are the ‘knowledge workers’ of the future who value diversity (Kalantzis & Cope 2009). They will need to be managed so their potential is enhanced and recruitment and selection processes need to be prepared for them (Barnes 2009, p.59).

What approaches have been taken to bridge generational communication?

So how do the different generations interact in the workplace? What are the common themes in managing aspects of ‘age diversity’? Finkelstein (2005) offers social identity theory (SIT) and stereotypes as a way to examine intergenerational perspectives. There is a tendency to categorise based on “us and them”. Our self concept benefits by continued on page 3
Diversity in a changing workplace  continued from page 4

the degree to which we belong to the "us" group (Finkelstein, 2005, p.108). Ayoko (2007) agreed with this tendency.

Each generation relates to the world in a completely different way. Do they relate to one another or are there tensions and friction between them? Finkelstein (2005, p.108) says there will be conflict on mixed teams but by understanding the theoretical and practical perspectives of 'newcomer' socialization, mentoring and work teams, we can minimize intergenerational perceptions. Open communication is highly recommended.

Other strategies to deal with reducing tension include coaching and mentoring. Weston (2001) and Barnes (2009) suggest coaching and mentoring styles will differ with each generation. Relationships with supervisors have been more formal for the 'silents' and baby boomers but for Gen X and Y it is much more informal.

Yu and Miller (2005) looked at work characteristics and the expectations of leadership styles among Gen Y in two different work contexts, the manufacturing sector and the education sector. Generational gaps existed in the manufacturing industry highlighted by different work characteristics and preferred leadership styles unlike the education sector (Yu & Miller 2005, p.35).

ADB media release

Race discrimination complaints by Aboriginal and Torres Strait Islander people are tip of the iceberg

"Aboriginal and Torres Strait Islander people continue to be targets of race discrimination in NSW", the President of the NSW Anti-Discrimination Board, Stepan Kerkyasharian, said today.

Complaints of race discrimination against Aboriginal and Torres Strait Islander people occur at twice the rate that would be expected compared to the number of Aboriginal and Torres Strait Islander people in NSW.

“I am sure the complaints we receive are just the tip of the iceberg”, Mr Kerkyasharian added. “Many acts of discrimination are discussed with our Aboriginal and Torres Strait Islander Outreach Team without a formal complaint being made”.

“I was saddened to hear that in Alice Springs recently, some young Aboriginal women were refused accommodation in a hostel. This reminds me of a similar case we had, in Newcastle in 2007. In that case, the management of a pub directed the security staff to refuse admission to all Aboriginal people. The men and women who were excluded were embarrassed and humiliated. The case went to the NSW Administrative Decisions Tribunal, who awarded each of the Aboriginal complainants about $15,000. Interestingly, the owner of the pub and the manager were held liable for the acts of the security staff, so it was the owner and the manager who had to pay”.

“There are now even more severe penalties: since January this year, compensation of up to $100,000.00 can be awarded, and pubs which limit entry to particular classes of people can lose their hoteller’s licence” he added.

“It is over 40 years since Australians campaigned to desegregate swimming pools in the remote parts of this State; 30 years since the first race discrimination legislation came into force; and 15 years since Mabo; but we still receive about 50 complaints a year of race discrimination against Aboriginal and Torres Strait Islander people”, said Mr Kerkyasharian.

Most race discrimination complaints by Aboriginal and Torres Strait Islander people are based on being treated unfairly, harassed, or victimised, when seeking employment, accommodation, or goods and services.

The Anti-Discrimination Board investigates discrimination complaints, and tries to resolve any problems by agreement. If people cannot agree, the result is decided independently by the Administrative Decisions Tribunal.

The Anti-Discrimination Board has Aboriginal and Torres Strait Islander staff who deal with education, enquiries, complaints and conciliations involving Aboriginal and Torres Strait Islander people. More information is available at www.lawlink.nsw.gov.au/adb or through the enquiries line 1800 670 812.

3 June 2009
Baby boomers will need purpose and meaning while balancing carer’s responsibilities that are ever present. This generation will indulge in life long learning says Weston (2001) while Gen X will want skills development opportunities and Gen Y career advancement. The learning styles and subsequent tools will differ for each generation. Gen Y will want online podcasts and video interaction not repositories of information (Aker 2009, p.48). Other generations will value the ‘war’ stories of managers to learn from past experiences (Weston 2001).

Weston (2001) explores key steps a manager of a multi-generational team must assess. Where do I fit – which generation do I belong to? What are the expectations of the team about my behaviour? How does their behaviour and yours differ, complement, conflict? (Weston, 2001). Recognizing generational bias is very important and mediating intergenerational conflict will be needed. Different perspectives, expectations and assumptions may result in discrimination and/or harassment in the workplace. Removing pre-conceived ideas will be necessary through training (Weston 2001).

Weston offers other solutions to generational diversity. Utilising the viewpoints of all team members will lead to better problem solving. Each generation brings different competencies to the team (Weston 2001). Matching role models and mentors appropriately. Gen Y may be best mentored by Baby Boomers and Gen X by the ‘Silents’. Gen Y could benefit from the well ordered, organizational skills and chunking into short term goals that Baby Boomers are more skilled at. Role models and mentors will give each generation a chance to reach their potential and their highest level of competency (Weston 2001, p.20).

ADB media release —
Hidden race discrimination against job applicants

“Employers who would not consider a job applicant, just because of their race, are breaking the law”, the President of the NSW Anti-Discrimination Board, Stepan Kerkyasharian, said today.

“The very first category of unlawful discrimination in the NSW Anti-Discrimination Act is discrimination on the ground of race, and the first type of discrimination mentioned in the Act is deciding who should be interviewed for a job!” Mr Kerkyasharian added.

Mr Kerkyasharian was responding to the report released by the Australian National University, which revealed that employers will decide not to interview people if their name does not sound Anglo-Saxon.

“These results also highlight the fact that sex discrimination in employment is continuing”, Mr Kerkyasharian said. “Interestingly, in some ethnic groups, it is the men who are more likely to be discriminated against because of their race”, he added.

“The worst thing is that this type of discrimination is almost impossible to prove”, said Mr Kerkyasharian. “The community has to rely on people to do the right thing, and obviously that’s not always what happens”.

In 2008, the NSW Anti-Discrimination Board received 93 complaints of racial discrimination in employment. One in five of these complaints came from Aboriginal and Torres Strait Islander people. The ANU report indicated that in Sydney discrimination in employment is worst if you have a Chinese or Middle Eastern sounding name.

Discrimination in employment on the ground of race is permitted in NSW if being of a particular race is a genuine requirement of the job, or if an exemption is granted for a particular job, program or activity in order to redress past discrimination against a particular racial group.

The Anti-Discrimination Board investigates discrimination complaints, and tries to resolve any problems by agreement. If people cannot agree, the result is decided independently by the Administrative Decisions Tribunal, which can make orders for compensation of up to $100,000.

The Anti-Discrimination Board has officers who deal with enquiries, complaints and conciliations. More information is available at www.lawlink.nsw.gov.au/adb or through the enquiries line 1800 670 812.

19 June 2009
Development needs can be addressed through coaching. Buahene & Kovary (2009) go so far as to suggest mentoring roles could be reversed. If a two way respect as reiterated by Barnes (2009) is developed the high energy of Gen Y could be complemented by the experience of the traditionalists and Baby Boomers (Buahene & Kovary 2009, p.14). Informal teaching by Boomers and Traditionalists could be successful and assumptions could be broken down on both sides. Gen Y could be mentors and coaches for acquiring skills with new technologies and all generations could successfully contribute to the business. Resistance is bound to be experienced but maintaining opportunities for exchange will build relationships (Buahene & Kovary 2009, p.14).

Aker (2009) and Martin (2005) acknowledge each generation will have strengths, needs, and stereotypes. Workplaces need to utilise the best of each generation and dispel myths and provide opportunities for positive interaction and relationship building organisations will meet the demands of the 21st century by retaining and attracting the best talent.

The experience of the Australian context

The Australian work landscape has similar trends in ‘labour participation and age’ to other OECD countries (Australian Social Trends 2007). Men and women continue to have high rates of participation well into their fifties with women taking time out during child-bearing age. Murray & Syed (2005) dispel the myth that mature age workers are ready to retire. Many are not financially prepared to retire, most wish to continue with the economic and social participation that work brings and if retrenched, experience low confidence in finding new jobs despite skills and knowledge (Murray & Syed 2005).

So, the reality is mature age workers are staying on in the workplace and make up two out of four recognizable generations at work. Their needs in employment are changing and their value is slowly being recognized. Murray & Syed (2005, p.210) suggest ‘legal compliance rather than strategic advantage’ is the reason organisations consider managing diversity in the Australian context. The focus of their paper was on age diversity within Australia and their key findings suggest that while many organisations have found mature age workers are reliable in attendance and are less likely to be involved in accidents, there are still subtle discriminatory practices in human resource management (Murray & Syed 2005, p 220).

Skill retention and the value of mature age workers need to be underpinned in HR practice. Organisations such as WH Smith and B&Q Home Hardware report savings in recruitment and training as well as low absenteeism rates (Murray & Syed 2005,p.221) as positive results of retaining mature age workers but as younger workers enter the workplace they bring new perspectives which create tensions between generations (Barnes 2009; Aker, 2009; Weston 2001).

Murray and Syed (2005) suggest job redesign for mature age workers with leadership and mentoring becoming the focus of their work. A balance is required in managing the needs of older and younger workers.

Conclusion

Some similarities in theoretical and practical perspectives of the dimensions of cultural and age diversity have been examined. There are similarities in the way generational differences and difference in race and ethnicity in the workplace have created challenges. The solutions also share some common ground. Gaining understanding of difference and building relationships of support and benefit are essential to overcoming tension and possible hostility.

Managing generational diversity will be an ongoing challenge, as will other dimensions of diversity. Organisations will have to establish strategies to retain talent such as those used by the ADSA, British Telecom and the National Maritime Museum in the UK (HRM International Digest 2006). Buddy systems, showing an age positive focus, flexibility in retirement, are all key elements in the above case studies that provide older workers with incentives to continue working.

Alongside these initiatives, the cultivation of younger generations according to their aspirations and needs as well as the needs of the organizations will maintain success in the marketplace. Extracting the best of all generations will be the goal for the future.

References

A full list of references to this article is available on the ADB website (http://www.lawlink.nsw.gov.au/lawlink/adb/ll_adb.nsf/pages/adb_equal_time)
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## Seminar (please tick relevant date)

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- you cannot transfer your booking if you give us less than five working days notice.

Please note that if you don’t attend on the day, you cannot transfer your booking and you will not receive a refund.
Dismissal for sexual harassment upheld

The NSW Industrial Relations Commission has upheld Bluescope Steel’s dismissal of a pumphouse attendant for sexual harassment.

A female co-worker complained that Mr Grahovac twice kissed her on the neck with an open mouth. He denied the action and claimed the woman had complained to get back at him after a dispute. When he kissed her she immediately told him to stop and reported the incident to her manager the next day.

Bluescope stood Mr Grahovac down on full pay and then investigated the complaint. The woman concerned initially did not want disciplinary steps before any final decision was taken to sack Mr Grahovac. After the matter was initially investigated, the investigation was reviewed by a more senior officer to ensure that all appropriate steps had been taken and all of the evidence was given due consideration before a decision was made to dismiss Mr Grahovac.

Bluescope pointed out that the company’s policies and procedures had been scrupulously followed. The Commission also praised the company’s decision to investigate the complaint despite the woman’s reluctance, saying the behaviour complained of clearly breached company policy. The evidence of a number of people, including a qualified psychologist, was obtained before the decision to dismiss was taken.

The Commission upheld the dismissal, making the point that had the company failed to act on the complaint, it might well have been in breach of OH&S legislation.

AWU, NSW (on behalf of Grahovac) v Bluescope Steel [2009] NSWIRComm 86 (5 June 2009)

continued on page 11
Company treats sexually harassed woman as a problem

The Federal Court has awarded near-record damages of close to half a million dollars in a sexual harassment case and has also found that the company’s response to the woman’s complaint amounted to sex discrimination.

Ms Poniatowska was a building consultant employed in 2005 by Employment Services Australia (ESA) to provide consulting services to Hickenbotham Homes. She was dismissed in 2006. She had made a number of complaints of serious sexual harassment. She alleged that after a colleague sent a series of emails and text messages of a suggestive nature, she had complained to a team leader who said to her: ‘What do you expect with a face like yours’. A second male colleague had sent an sexually explicit picture to her mobile phone and also made repeated requests for sex.

After she made internal complaints about these and other incidents, she became, she said, isolated and excluded. No real action was taken to investigate any of her complaints.

Following Ms Poniatowska complaints the company then commenced a poor performance management process against her. She received first, second and third warnings and was then dismissed. By this time she was suffering from severe depression and anxiety.

Ms Poniatowska sued the company for sex discrimination and sexual harassment. She also claimed that she had been dismissed, not for poor performance but for making the complaints.

The Federal Court accepted her complaints. It found that the conduct to which she was subjected amounted to sexual harassment. It also found that the company’s response to her complaints was sex discrimination because she was treated less favourably than it would have treated a male in similar circumstances. Managers had been openly supportive of the male consultants and her complaints had become widely known in the office.

Justice Manfield found that the company’s response to the consultant’s complaints was ‘not adequate’. He said it had no ‘internal protocol or procedure’ for addressing complaints about sexual harassment or discrimination.

The court found no evidence of poor performance by Ms Poniatowska. It decided that she had performed at least as well as her colleagues and that the performance warnings were merely a device to get rid of her. Justice Mansfield said the consultant ‘was not treated as the

What are reasonable steps?

The case law suggests that reasonable steps include:

- having appropriate policies in place, which are clearly communicated to staff and clearly outlines what constitutes discrimination and harassment
- policies need to include the provision of goods and services and how complaints against senior management would be dealt with
- the information has to be available in a form that can be accessed by staff, including translations for NESB staff if necessary
- appropriate training sessions, briefings, seminars must be conducted to ensure that all management and staff understand their responsibilities with the workplace
- the training needs to be conducted regularly and include contact officers (for larger organisations)
- a grievance procedure must be in evidence and all staff must be aware of how it operates and know to whom they should speak if they feel they are being discriminated against or harassed.
- Management must deal with complaints seriously, confidentially, impartially and quickly and follow their organisation’s grievance procedure
- managers must protect complainants from victimisation
- steps need to be taken to address a culture that places some workplace participants at risk. eg. educating a male dominated workforce about appropriate behaviour for the impending arrival of new female staff.
- be aware of any potentially unlawful conduct, implement appropriate monitoring strategies to ascertain whether staff feel humiliated or offended by inappropriate behaviour and take any appropriate action to stop that behaviour.
victims of sexual harassment but as a problem to be dealt with. The employer, he said, decided she didn’t fit in, because she ‘was a female who would not tolerate sexual harassment and a robust work environment’. The court ordered ESA to pay the consultant $466,000 in damages, plus costs. Of this $90,000 was for pain and suffering, $200,000 for past lost earning capacity (plus $30,000 in interest), $140,000 for future lost earning capacity and $3,000 for medical expenses. Justice Mansfield said ESA could apply to the court for the order to be amended to require part of it to be paid by the company’s managing director, team leader and the two consultants who had sexually harassed her.

ESA is appealing against the ruling and in turn Ms Poniatowska is cross-appealing seeking a larger compensation payment.

Poniatowska v Hickinbotham [2009] FCA 680m(23 June 2009)

Teenage KFC worker sexually harassed

The NSW Administrative Decisions Tribunal has found that an assistant manager at KFC’s Punchbowl store sexually harassed a 15 year-old worker.

The young woman made a number of complaints against an assistant manager who was her supervisor. Many of these related to lewd and offensive comments, suggestions and gestures. In one incident, he pulled her along the ground by her leg and later bent down in front of her, touching her leg and growling and purring like a cat.

Other workers said that this assistant manager often “talked dirty” and that Ms Sharma didn’t seem to mind. She actually laughed at it sometimes. They thought, however, that things had gone too far and had become unwelcome. She had, on numerous occasions asked him to stop. She also put in a written complaint to the company after the leg pulling incident.

The tribunal agreed that Ms Sharma had exaggerated some of her complaints and that some of them were “self serving”. They did accept, however, that she had been subjected to sexual harassment. They were also satisfied that an ordinary, reasonable, person would have been offended by the behaviour. They said that the fact that a 15 year old girl did not complain against her supervisor, who was a man twice her age, did not mean that the incidents did not occur or that they were welcome.

They found, however, that KFC had not taken reasonable steps to protect its staff from harassment. They had a sexual harassment policy and had trained staff, but the policy was not enforced. They found that the training and monitoring at management level was not sufficient. The assistant manager’s behaviour was known to everyone but no-one ever tried to stop it. The company was, therefore, vicariously liable for the behaviour of the employee.

The Tribunal awarded Ms Sharma $15,000 for humiliation and distress.

Sharma v Qsr Pty Ltd T/as KFC Punchbowl [2009] NSWADT 166

‘Touchy feely’ employer harasses woman

The Queensland Anti-Discrimination Tribunal has found the owner of a new business sexually harassed a woman he had lured to work for him by offering her a significant pay increase on what she was currently earning.

On her first day at work he sent her an email warning her he was ‘touchy feely’ and that she should not take it the wrong way. He said she should expect to be called ‘yummy’ if she wore a mini-skirt.

When the worker went to the employer’s house on the weekend to help him proofread an email, he touched her, kissed her on the forehead on several occasions and attempted to kiss her on the lips. When she did not respond positively to his advances he sent her a text message questioning her work ethic.

She left the company and returned to her old job when the employer refused to pay her the wages she was owed.

At the Tribunal hearing the employer alleged that the worker had forged the emails and text messages. However the Tribunal preferred the woman’s evidence.

Tribunal President, Douglas Savage found that while the employer’s emails and ‘touchy feely’ behaviour were not intended to humiliate or intimidate the worker, it still amounted to sexual harassment because a reasonable person would have been offended by it. This was compounded by the refusal to pay her wages and the unsubstantiated allegations of criminal misconduct.

The Tribunal awarded the worker $5000 to compensate for hurt, humiliation and distress and $3600 for unpaid wages.

Lane v Hamilton [2009] QADT 13

Bunnings unreasonable handling of complaint

The Queensland Anti-Discrimination Tribunal has condemned Bunnings ‘completely unreasonable’ handling
Sexual harassment at work  continued from page 12

of sexual harassment complaint by a female worker.

The worker’s male supervisor asked on about eight occasions whether she was wearing any underwear. He also asked her to go out with him for a drink. She refused but he followed this with many more requests for ‘cuddles’ and dates. On another occasion he put his hand on her leg while she was driving a forklift. This was followed by another incident when he bent down and kissed her through the window of her car.

The worker went to discuss the harassment with the store’s operations manager at his flat on his day off. At the end of the meeting the operations manager showed her a gay dating website on his computer.

She was upset at the unprofessional manner which the operations manager had treated the issue and lodged a complaint with Bunnings. Nearly six months later she lodged a sexual harassment complaint with the Queensland Anti-Discrimination Commission after becoming upset at Bunnings inaction.

She also claimed that Bunnings had victimised her by allowing the supervisor to continue to manage her after her complaint to the company and for leaving him in control of the employee share allotment scheme and her intended transfer to a Bunnings store in Melbourne. She further alleged Bunnings continued to victimise her once litigation had commenced by discontinuing her membership of a superannuation fund and rejecting her application for a casual position at another store.

At the Tribunal hearing the supervisor denied any of the harassment had taken place. But the tribunal accepted the evidence of the worker, whose claims were backed up by other female employees who told the tribunal they had also been subjected to the supervisor’s unwanted kisses, breast-touching and sexual innuendo.

Tribunal President Douglas Savage accepted evidence from the woman’s psychiatrist that she had developed a depressive disorder because of the sexual harassment and Bunnings failure to adequately deal with her complaint.

President Savage found Bunnings had failed to take reasonable steps to prevent the sexual harassment by the supervisor. He ordered the company and the supervisor as joint and several debtors to pay the worker $23,425, of which $18,750 was damages and interest.

President Savage also awarded her $4000 for future medical expenses and $675 in compensation after the harassment forced her to leave her job at the store prematurely.

The tribunal slammed the ‘entirely unreasonable’ nature of Bunnings approach to the complaint. President Savage said the retailers persistence with the litigation despite the probable result ‘smacks of oppression’.

He ordered Bunnings and the supervisor to pay the worker indemnity costs of $132,818.65.

Whitlock v Bunnings, DP and DF [2009] QADT 14 (22 May 2009)
Community outreach

Sudanese community – Blacktown
ADB Community Education Officer Claire Williams was invited by Sydwest Multicultural Services to do two training seminars with the Sudanese community in Blacktown; one with the community and the other with leaders in the community.

The Sudanese leaders were anxious about general racial discrimination that occurred on the street. They mentioned they could do little other than write down the number plates of people who had shouted out racist comments such as ‘go back home to Africa where you belong...’ as they drove past, but felt frustrated that no one could prosecute the offenders. This was particularly difficult for them when they had their children walking alongside them. They were both upset and angry about the discrimination their community faced every day.

Meadowbank and St George TAFE
The ADB continues to facilitate training at TAFEs, universities, colleges and schools and recently trained students studying at both Meadowbank and St George Tafe. Students at Meadowbank were studying disabilities, whilst students at Kogarah were on the AMEP program. Since 1952, NSW AMES (Adult Migrant English Services) has helped over one million migrants, refugees and humanitarian entrants to start a new life in Australia through the Adult Migrant English Program (AMEP).

NSW AMES is a division of the NSW Department of Education and Training. It is a Registered Training Organisation (RTO) in NSW through the Vocational Education and Training Accreditation Board (VETAB). NSW AMES is also renowned for its delivery of language and literacy courses locally and internationally to fee-paying students, companies and the public sector, and teacher training to volunteer language teachers.

Courses are free for eligible migrants, refugees and humanitarian entrants. Migrants and refugees can receive up to 510 hours of free tuition through the AMEP. With NSW AMES you can use these hours to study in class with a teacher, online, by distance or at home.

Claire found the NSW AMEP students were eager to learn about anti-discrimination legislation and they commented that they often felt hurt and unwelcome in Australia due to racial discrimination, but were happy to know such legislation existed.

In-house training
Discrimination, Harassment and EEO issues
In-house training for employers and service providers

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

Our training sessions are highly interactive and use a range of scenarios, exercises and activities to stimulate interest and discussion. They will raise managers and staff awareness of discrimination, harassment and EEO issues as well as send a powerful message that your organisation does not tolerate discrimination or harassment.

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

Generally we train groups of up to 15–20 people. In some cases we may recommend smaller groups.

All our programs are competitively priced, with two-hour non-supervisor sessions for 20 people starting at $44 (+GST) per participant and full-day sessions for 15 managers starting at $140 (+GST) per participant.

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

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

The ADB has a series of six attractive posters that promote the rights of people in NSW. Our posters are a colourful and stimulating way of reminding people about their rights and responsibilities under anti-discrimination law.

A new poster highlighting the rights of breastfeeding women is now available.

Posters cost $7.50 each plus postage and handling and GST. There are discounts available for bulk purchases.

To order posters, download an order form from our website (http://www.lawlink.nsw.gov.au/lawlink/adb) and fax it to us on (02) 9268 5500. The form also gives details of the bulk discounts. Orders must be received in writing so please use the supplied order form. For more information contact Milly Stylli on (02) 9268 5530 or 1800 670 812.

To view the posters visit our website at http://www.lawlink.nsw.gov.au/lawlink/adb/ll_adb.nsf/pages/adb_posters

Three of our posters are designed specifically for the workplace and include space to add contact details for your organisation. The other posters are designed for a variety of settings but will also be effective in workplace environments. One poster has a brief message about discrimination in thirteen languages.

Displaying our posters will help reinforce the message that your organisation does not tolerate discrimination or harassment.
Disability Discrimination — Employment

A man who worked as a labourer for a contract labour hire company (his direct employer) is on a methadone program. He asserted that his direct employer was aware of his being on a methadone programme and that on occasions his employer had facilitated his obtaining a methadone dose during work time. The labourer alleged that his employer and the firm that had contracted his employer (the host employer) both discriminated against him on the ground of his disability (opioid dependency to a legally prescribed drug).

The labourer's assignment with the host employer was allegedly terminated when his host employer became aware that he was on a methadone program. He alleged that the work he was employed to do was to last for some weeks, but that when the host employer became aware that he was on a methadone program, it instructed his employer not to send him to complete the remaining work. He lodged separate complaints against his employer and the host employer. The allegations in each complaint were such that each complaint stood alone. The Board therefore decided to investigate and attempt to conciliate the complaints separately.

The host employer denied that it was aware that the complainant was on a methadone program and asserted that it did not ask the direct employer for particular employees. It asserted that it simply asked for workers that had the requisite tickets. The labourer agreed that he did not possess the requisite ticket. The host employer also asserted that the remaining work was completed two days after the labourer finished and was not continuing for a couple of weeks as the labourer had thought.

The complaint against the host employer was settled by agreement when the labourer accepted payment of two days net wages to settle the matter.

The complainant's direct employer also denied any unlawful discrimination. It also asserted that the man being on a methadone program was not a factor in his engagement with the host employer ending. The employer also asserted that the reason the labourer was not requested to complete the remaining two days work was because he did not.

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possess the relevant tickets. The labourer’s employer asserted that it had assisted the labourer to access the methadone program in the past and it also asserted that it offered further assignments to the labourer following this particular engagement but that these had been refused. The labourer agreed that some engagements had been refused but said that he felt that he was unable to continue with his employment following his firmly held view that his employer had unlawfully complied with the direction of the host employer not to engage him for the remainder of the work.

The complaint against his direct employer was resolved when the labourer accepted an ex-gratia payment of $400 in settlement of his complaint.

Disability discrimination — Goods and Services

The complainant has a stoma and uses a colostomy bag. The stoma is positioned in an area of his abdomen, which prevents him from bending because of pain and possible leakage of the colostomy bag. When filling his car with fuel at a self-service fuel station he used a device to lock in the trigger of a petrol bowser nozzle. The use of the device alleviates the man’s need to excessively bend or stoop while re-fuelling. When the petrol station owner realised the man was using the device he told him he had to stop because it was a dangerous and contrary to the requirements of safely handling fuel. The man felt that he was unable to comply with the petrol station’s requirement to hold the trigger by hand.

The Board investigated the matter and the complaint was resolved when, during a conciliation proceeding conducted via telephone, the complainant agreed to a procedure proposed by the petrol station, whereby the complainant would provide notice that he was coming in to re-fuel and the station would organise an attendant to refuel the man’s vehicle.

Sexual harassment — Employment

A young woman receptionist alleged that her employer subjected her to unwelcome conduct of a sexual nature. She alleged that during her employment the respondent made a number of sexual comments to her, sent her text messages of a sexual nature, and made comments of a sexual nature directed to other people in her presence. The alleged comments included comments about her private body parts, suggestive sexual remarks and unwelcome comments revealing details of his sexual activities. The woman alleged that she resigned because of the conduct.

Her employer asserted that the woman demonstrated a very high degree of sexual precociousness and candour about her private life. Her employer asserted that every comment made or text message sent by him was in response to conduct initiated by the woman. Her employer also asserts that she involved herself in conduct of a sexual nature in the workplace. The woman denied this and also denied that she initiated the conduct.

The matter was resolved following a conciliation conference when a payment of $7,500 was negotiated in settlement of the complaint.

Race discrimination — employment

An Aboriginal man was employed as a leading hand. He alleged that his employer unlawfully discriminated against him on the ground of his race when he was subjected to racist abuse by a co-worker. The man also alleged that the employer subjected him to further less favourable treatment on the ground of his race and/or victimised him when, after making a complaint about the alleged conduct and after later losing his driver’s licence his employer effectively suspended his employment. The employer denied any unlawful conduct.

The employer asserts that it took appropriate action regarding the incident of racial abuse. They further asserted that the decision to not make any work available to the complainant after he lost his driver’s licence was not causally connected to his prior complaint. The employer asserted that holding a driver’s licence is an inherent requirement of the man’s job and that he was no longer able to perform the inherent requirements of his job.

The man alleged that other employees who lost their licences were provided with alternate duties until they were able to regain their licences. The employer asserted that the circumstances of the person the complainant had compared himself to were materially different.

The matter was resolved when the parties negotiated a conciliated settlement with the Board’s assistance. The respondent was able to provide the complainant with alternate duties for the period of his licence suspension and to re-credit the complainant’s leave during the period of his suspension.
What types of discrimination do we deal with?

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

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

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

**Grounds**

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

**Areas**

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

**Where we are**

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