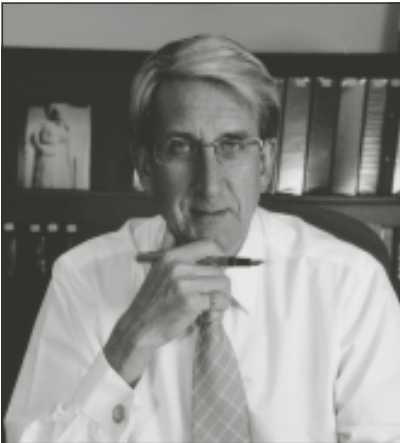


# 2000-2001 annual report



anti-discrimination board of new south wales



## *From the President*

In the year of the triumphal Sydney Olympics one cannot really get away from being able to claim that there were a number of gold medal performances by the Board during the year which perhaps stood out from what was otherwise another year of very solid achievement and continued progress.

The Anti-Discrimination Board's charter is not only to administer our Act but equally to play a leadership role in eliminating discrimination and promoting social change. In many ways what was most pleasing for me during the year was our success in a number of key matters which came before the Industrial Relations Commission of New South Wales. Our role in the industrial jurisdiction is relatively recent and we are still 'the new kid on the block' among the well-established industrial parties. While they have an approach that aims to settle industrial disputes taking into account the broader interests of the parties, the interests of the Board are somewhat different. Our aim is to ensure that each individual is afforded maximum protection of their rights, especially the right to be free from discrimination, harassment and bullying, and to have equal opportunity. We are more interested in the rights of individuals than in the rights of unions, employers or other organisations. Consequently, we were delighted with the decision of the Industrial Relations Commission to insert a model anti-discrimination clause into all NSW enterprise agreements. We believe this will go a long way to improving conditions for everyone in the workforce and I pay particular tribute to those officers of the Board who were involved in this most complex and difficult case.

Protecting the rights of people with disabilities came to the fore this year in relation to arrangements for the Olympic and Paralympic Games. The Board was engaged at several levels with the Olympic planning and transport authorities to ensure that accessible transport was available, not only for the Games themselves, but also that accessible vehicles were not simply removed from other areas where they were still needed. We also took steps to ensure that people with special dietary and other requirements were not prevented from bringing their own food to venues, simply to pander to the requirements of powerful commercial sponsors.

It is with pleasure that I can report that we finalised 6% more complaints this year than last, but I have to admit to a degree of disappointment and frustration that we continue to be burdened with an unacceptably high number of complaints which are awaiting allocation to an officer. Once allocated, the complaints are resolved well within our business targets, but the queue of unallocated complaints cannot be addressed without additional resources. My complaint handling officers do an exceptional job under pressure and their rate of case closure is well above benchmark standards.

In many respects this has been a year of waiting — we are still awaiting the Government's formal response to the recommendations of the Law Reform Commission about increasingly urgent requirements to amend our legislation; we are awaiting the final report of the Council on the Cost and Quality of Government which examined our operations during the year; and we will then have to wait for the Government's/Department's response to any recommendations.

For a variety of reasons, mainly financial, the Board has not been in a position to conduct any public enquiries for some years. During this year we received additional funding from our Department to allow us to commence an Enquiry into Hepatitis C Related Discrimination. This Enquiry is progressing very well and from the quality of material placed before it already, I am more than confident that an excellent report with significant recommendations to address this serious problem will result.

The Board's files contain a great deal of material that is highly sensitive and confidential. The commencement of new privacy legislation in this State has required us, along with all other agencies, to review our privacy practices and make sure that they conform to both legislative requirements and best practice. This has been a most positive undertaking for the Board.

I am very pleased to be able to report that the new carer's amendment provisions in our legislation which commenced operation during the year were integrated smoothly into our operations. This is a great tribute especially to the complaint handlers, educators and legal staff who had to make it all happen.

Equally our financial services continued to show good returns. We managed the complexities of the introduction of the GST with no difficulties and thanks to tight financial management operated entirely within our budget.

As in previous years we have had many changes of personnel at the Board and it would be impossible to detail them all. However, I cannot fail to acknowledge the contribution made by Anthea Lowe, who left us as Education Services Manager after 11 years with the Board. Under her inspired leadership the Education Services Branch has grown to one which is acknowledged throughout the State for its expertise, skill and leadership in the provision of education and training. The Board is indebted to Anthea for the nature and quality of her contribution. The greatest testament to this is not only the way in which the Education Services Branch performed throughout the year (for example, maintaining its revenue targets despite the Olympic quiet period) but how that Branch has continued to perform at the highest level under its new manager.

The year ahead promises to be one of great excitement and challenge: there is the possibility of a new Act and of resource enhancement. We will produce our Hepatitis C Discrimination Report and continue our active involvement in industrial matters. We will be looking to revise the way we manage complaints and the databases we use in that process.

As in previous years we have been fortunate to have the encouragement and support of both our Minister (Hon Bob Debus MP); our Director General (Mr Laurie Glanfield AM) and other members of the Attorney General's Department. It is my great pleasure to extend my thanks and appreciation to them. However it is to the staff of the Board and the members of the Statutory Board that I express my particular gratitude for all their hard work and dedication.



Chris Puplick  
*President*

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**28 September 2001**

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 2000 to 30 June 2001.

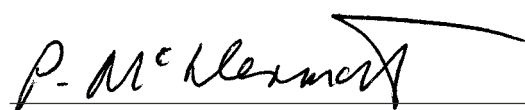
Yours sincerely,



Chris Puplick AM  
President



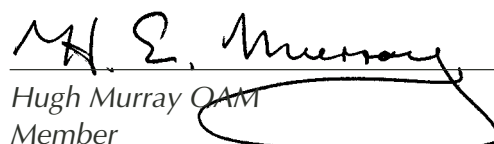
Suzanne Jamieson  
Member



Phillipa McDermott  
Member



Shaughn Morgan  
Member



Hugh Murray OAM  
Member



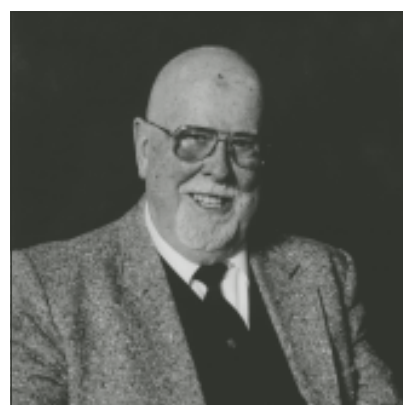
Suzanne Jamieson



Phillipa McDermott



Shaughn Morgan



Hugh Murray



Above: Chris Puplick speaking at the Passionate Acts Forum at Parliament House.

## Summary of achievements

### New ground of carers' responsibilities discrimination

The introduction in March 2001 of carers' responsibilities as a ground of discrimination under the *Anti-Discrimination Act* recognised the changing structure of work and family life. It also recognised the growing number of women and men in the workforce who are the carers of children, adults with disabilities, or other family members in need of care and support. It highlighted the issues employees and employers face in balancing work and family responsibilities, and provides important protection for workers balancing their carers' responsibilities.

This change to the *Anti-Discrimination Act* generally requires employers to accommodate the caring needs of their employees. The introduction of part-time work, job sharing, flexible working hours, the capacity to work from home and other options is enabling many people to better negotiate and balance their work and family commitments.

The Board supported the introduction of this amendment with publications that provide guidance for employers on their responsibilities and advise employees of their rights. The Board also conducted 'Carers' Breakfasts' and other training sessions to ensure that people were informed about the amendment.

### Forum on disability discrimination

The Board has long been concerned that people with an intellectual disability are deterred from complaining to the Board because they will find the process difficult or they are unaware of their rights. To help address this, in August 2000 the Board hosted a forum for advocacy and support organisations working with people with intellectual disabilities. The main purpose of the forum was to discuss how the Board's services, and particularly our complaints service, could be better adapted to suit people with intellectual disabilities. The forum was attended by around 35 people from a variety of peak disability organisations and resulted in some very practical recommendations to help improve the Board's processes and encourage people with intellectual disabilities to seek our help. Another outcome of the forum was that we have established a regular consultation with representatives from the intellectual disability community.

### Enquiry into Hepatitis C Related Discrimination

The Board commenced a public Enquiry into Hepatitis C Related Discrimination in February 2001. The Enquiry is investigating the extent and nature of discrimination against people who have, or are thought to have, hepatitis C in New South Wales. The information gathered through the Enquiry will ensure we have a more comprehensive understanding of hepatitis C related discrimination. Improved understanding of the extent and nature of discrimination will enable better targeted education strategies — strategies designed to both make people aware of their rights and to prevent hepatitis C related discrimination.

## Model anti-discrimination clause

In 2000/2001, the Industrial Relations Commission reviewed the principles it must generally adhere to when deciding whether to approve an enterprise agreement. The Board's President intervened in this case, and recommended that the principles should ensure that conditions contained in enterprise agreements are not discriminatory and that all agreements should contain the model anti-discrimination clause contained in all NSW awards. The Commission decided to make the proposed changes to the principles.

## Continued success of our education programs

Once again the Board's talks and training program has been a great success attended by over 16,000 people. The revenue raised from our publication sales and training fees fully funded the education services we provided to employers and service providers.

## Review of the *Anti-Discrimination Act*

The NSW Law Reform Commission has recommended significant changes to the *Anti-Discrimination Act* including a new approach to discrimination and the extension of the Act to cover new grounds. In general, the Board is supportive of the policy shift proposed by the Law Reform Commission and is waiting to see if the changes proceed. Major changes proposed include new grounds of discrimination, a new definition of discrimination, new areas of discrimination, the streamlining of exceptions under the Act, and the ability of the President to initiate complaints.

## Rise in complaint numbers

In 2000/2001, the Board received 1,587 formal complaints, an increase of 15% over the previous year. Regional offices were responsible for much of the increase — the number of complaints received in the Wollongong office increased by 36% while the number of complaints received in the Newcastle office increased by a massive 57%. The numbers of complaints finalised during 2000/2001 also rose by 6% over the previous year to 1,277 complaints.

## Ethnic Affairs Action Plan 2000

Consistent with the New South Wales Government Ethnic Affairs Action Plan 2000 the Board ensured that existing anti-racism and anti-discrimination laws were effectively implemented by:

- responding to 1,730 enquiries about race discrimination and racial vilification
- receiving 236 complaints of race discrimination
- collecting information about the ethnic background of complainants on a voluntary basis (except in complaints of race discrimination or racial vilification where the person lodging the complaint must state their race)
- including information on race discrimination and vilification in education programs provided for employers and the community
- commencing production of discrimination rights resources for people who do not speak any or much English.



*Above: Passionate Acts at Parliament House, jointly co-ordinated by the Crime Prevention Division of the Attorney General's Department, the Anti-Discrimination Board, and Privacy NSW, was part of the Sydney Gay and Lesbian Mardi Gras community events program. This event was awarded from within the gay and lesbian community as most 'Outstanding Community Event 2001' at the Mardi Gras awards ceremony. Margaret Kaye, Education Officer at the Anti-Discrimination Board and Jackie Braw, Gay and Lesbian Liaison Officer, Crime Prevention Division are pictured above with the award.*



# 1 *what the Board does*





*we aim to prevent discrimination  
and harassment throughout NSW*

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

## **Functions of the Board**

We have three major functions:

- We handle complaints of discrimination. We provide an enquiry service for people who want to know about their rights or responsibilities under anti-discrimination laws. We also accept complaints of discrimination, investigate complaints and conciliate complaints when appropriate.
- We try to prevent discrimination from happening in the first place. We inform the people of NSW about their rights and responsibilities under anti-discrimination laws. We explain how they can confront and prevent discrimination. We do this through education programs, seminars, talks, the media, and the production and distribution of written information.
- Finally, when we think legal or policy changes are needed to ensure more people get a fair go, we make recommendations to government about what we think needs to be done and by whom.

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

- to investigate and conciliate complaints of discrimination
- to research and formulate policy on discrimination and human rights issues
- to undertake community education and community relations activities to try to ensure that everyone acts in accordance with the anti-discrimination laws



### Indirect discrimination

Direct discrimination is easy to spot. Help for a person who is refused a job or service on the basis of their race or sex or marital status can be straightforward — the prejudice is easy to pinpoint and remedies can be easily prescribed.

It is more difficult to recognise indirect discrimination. The target of discrimination can be unclear and indirect discrimination is endemic in many parts of society. Many seemingly fair rules, requirements and procedures are indirectly discriminatory. For example, people with carers' responsibilities may be disadvantaged by inflexible working conditions and women or people with disabilities may be disadvantaged by a requirement that employees all work full-time.

Indirect discrimination often affects Indigenous people. Specific health or education requirements in job descriptions could mean that Indigenous people would be ineligible to apply for the position. In turn, achieving the levels of education necessary to apply for specific jobs can be difficult for Indigenous people living in remote communities.

Indirect discrimination can be insidious. The Board is continually monitoring the types of complaints and enquiries it receives to assess people who are affected, whether they realise it or not, by indirect discrimination.

- to consult with government, business, industry groups, community groups and organisations to develop ways of improving services and conditions affecting minority and other groups subject to discrimination and unequal treatment
- to review the laws of NSW to see whether they have a discriminatory effect
- to hold public inquiries
- to report on any matter that the Minister refers to the Board
- to investigate and determine a reference from the Director of Equal Opportunity in Public Employment relating to equal opportunity management plans
- to make recommendations to the Minister about applications for exemption from the *Anti-Discrimination Act*.

### Anti-discrimination law

Under the NSW *Anti-Discrimination Act* certain types of discrimination (or unfair treatment), harassment and vilification are against the law. In 2000/2001, these types (or grounds) were:

- sex (including pregnancy and sexual harassment)
- race
- marital status
- homosexuality/lesbianism
- disability (including HIV/AIDS, hepatitis, other infectious diseases)
- age
- transgender
- carers' responsibilities in employment (from 1 March 2001).

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

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

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

### Discrimination can be direct or indirect

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

Indirect discrimination means treating someone according to a requirement (or rule) that is the same for everyone but has an effect or result that is unequal and 'unreasonable in all the circumstances'. For example, an employer who

says they need a person over 180 cm tall to do a job is likely to discriminate against women and some ethnic groups. This is because women and people from some ethnic groups are less likely to be that height than men or people from other ethnic groups. If it is possible to show that the job does not need someone 180 cm tall or that it could be easily adapted to suit people who are not that tall, then indirect sex discrimination or indirect race discrimination might exist.

### Vilification

Some types of vilification are also unlawful:

- racial
- homosexual
- HIV/AIDS
- transgender.

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

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

Vilification laws allow the Board to deal with anti-racist, anti-homosexual/lesbian, anti-HIV/AIDS or anti-transgender behaviour that happens not only inside but outside the usual areas of employment, goods or services, and so on, as listed on page 10. It allows us to look at problems in the media or in public places (for example, graffiti or public abuse).

### Developments in Corporate Services

Corporate Services Branch focused its 2000/2001 activities on the following:

- implementing the Goods and Services Tax system from 1 July 2000 by training staff and adapting procedures to incorporate the requirements of the new tax system
- achieving a budget surplus — for the fifth year in a row, the Board ended the year with a small surplus. The surplus resulted from 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.

The Board achieved its objectives through:

- a co-ordinated working relationship with different areas of the Attorney General's Department (human resources, capital works, finance, corporate training and development, communications, information technology)
- use of the Migrant Work Experience Program run by the Office of the Director of Equal Opportunity in Public Employment.



Above: Staff from Corporate Services.

### Financial statements

In the 2000/2001 financial year, the Board's financial position was as follows:

<b>Income</b>	<b>\$(000)</b>
Revenue earned	581
Government funding	3,614*
<b>Total</b>	<b>4,195</b>
<b>Expenditure</b>	<b>\$(000)</b>
Salary related	2,784
Other expenses	1,183
<b>Total</b>	<b>3,967</b>
<b>Surplus</b>	<b>228</b>

#### Notes

\* Including funds provided for initiative projects 2000/01, Hepatitis C Enquiry, Queue reduction, Legal self-funding project, and Education material development.

Total initiative funds	280
Funds expenses (2000/01)	60
Rolled over to 2001/02	220
<b>NET SURPLUS</b>	<b>8</b>
(surplus less rolled over funds)	

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

### Staff restructure

In 2000/2001, the Board's management team reviewed the Board's staff structure in response to an increasing amount of legal work, to address a lack of career opportunities for staff and to maximise the Board's resources. The restructure mainly affected two branches, Legal and Policy and Complaints Resolution. As a result of the restructure, the Board's legal expertise and capacity was substantially increased.

## Structure of the Board

### The President and the Board

The President, Chris Puplick, is the salaried chief executive officer of the Board. The members of the Board are the President as Chair and four part-time members appointed by the Governor of NSW. The members during 2000/2001 were Fr Hugh Murray OAM, Ms Suzanne Jamieson, Ms Phillipa McDermott and Mr Shaughn Morgan.

### Staff of the Board

The President heads an organisation with 50 salaried positions employed in Sydney, Wollongong and Newcastle. During 2000/2001, the Board employed two officers through the public sector Migrant Work Experience Program. The Board received additional initiative funding from the Attorney General's Department to employ temporary staff to help the Board implement the carers' responsibilities amendment and to engage a consultant to manage the Hepatitis C Enquiry. We were also assisted by an employment law solicitor on secondment at the Board for two months from Clayton Utz to help with our legal work.

### Student placements

In 2000/2001, the Board benefited from the work of three students on placement from the law faculty of the University of Sydney and one social work student on placement from the University of New South Wales. The students made important contributions to the legal research, policy and complaints work of the Board.

*Below: The Board's management team. From left, John Hill, Chris Puplick, Jane Cleur, Darryl Brown and Maggie Smyth.*



### Complaints Resolution Branch

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

### Education Services Branch

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

### Legal and Policy Branch

The Legal and Policy Branch provides policy and legal advice to the NSW 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 co-ordinates the Board's work on legal and policy reform in relation to human rights issues generally. The Manager is Maggie Smyth.

### Corporate Services Branch

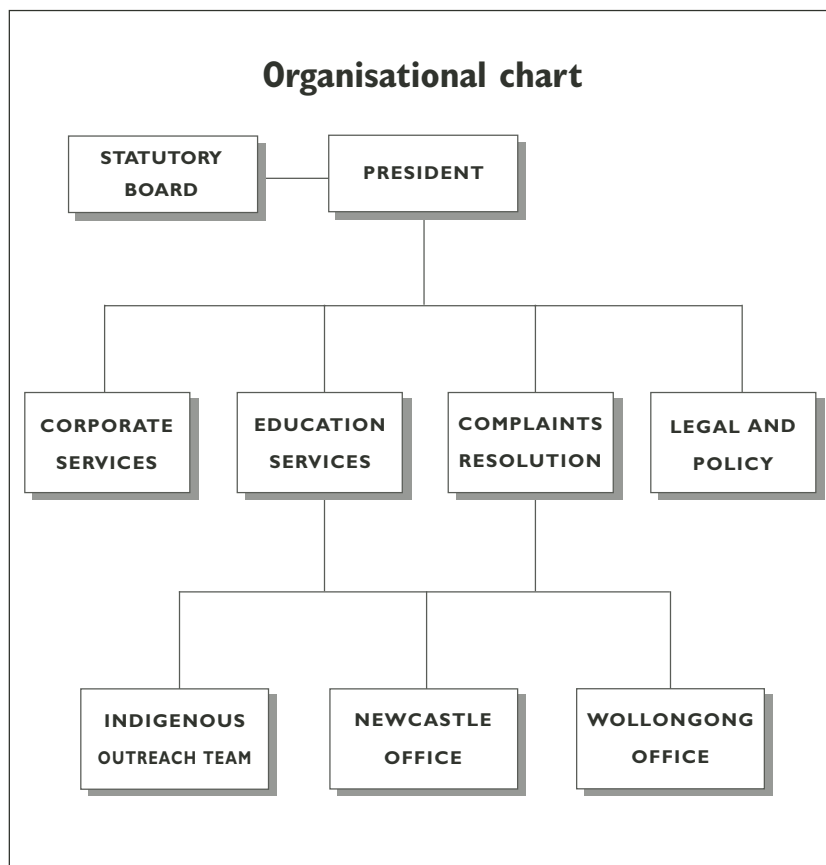
The Corporate Services Branch provides the support services, especially financial control and information technology, which contribute to achieving the primary aims and goals of the Board. The Manager is Darryl Brown.

### Council on the Cost and Quality of Government

The NSW Council on the Cost and Quality of Government reviewed all human rights agencies in the Attorney General's Department, including the Board, in 2000/2001. The Council aims to help government agencies improve the quality of their services and deliver value for money. The Board is awaiting the release of the Council's findings.

In our submission to the Council we argued that the Board's lack of adequate financial and staff resources impacts directly on our ability to provide effective and timely services to the people of NSW. It has resulted in a large queue of complaints and a delay in dealing with new complaints, unreasonably high workloads and high turnover of staff in some areas. The ability of the Board to undertake legal and policy work is stretched, and this is reflected in the Board's inability to intervene to the extent we would like in individual cases before the Industrial Relations Commission. Lack of money has limited the ability of complaint handlers to travel to rural areas to hold conciliation conferences, which in effect means we offer a lesser service to complainants from rural areas. We hope the Council's report and the Government's response will address these issues.

### Organisational chart



## *Progress in human rights*

As the Board approaches 25 years of operation, and faces the possibility of major reform to the *Anti-Discrimination Act*, it seems appropriate to see how the coverage of discrimination has evolved in NSW.

When the *Anti-Discrimination Act* commenced in June 1977 it was unlawful to discriminate on the grounds of sex, race and marital status in the areas of employment, accommodation, goods & services, access to places and vehicles (race only), and education (race only).

Additional areas and grounds were added over the years as it became clear that many other groups of people were the targets of discrimination:

Year	New ground/area
1981	physical disability included as a ground of discrimination registered clubs included as an area of discrimination
1982	two new grounds of discrimination added: homosexuality and intellectual impairment
1989	racial vilification added, including an offence of serious racial vilification
1991	compulsory retirement added gradually so that by January 1993 it was unlawful to compulsorily retire all public and private sector NSW employees
1994	homosexual vilification becomes unlawful age added as a ground of discrimination disability discrimination added as a ground, replacing the previous grounds of physical and intellectual impairment HIV/AIDS vilification becomes unlawful
1996	transgender discrimination becomes a ground transgender vilification becomes unlawful
1997	a specific ground of sexual harassment is added; this amendment expands coverage of sexual harassment, previously covered under the sex discrimination provisions, to include private educational authorities
2001	carers' responsibilities becomes a ground of discrimination.

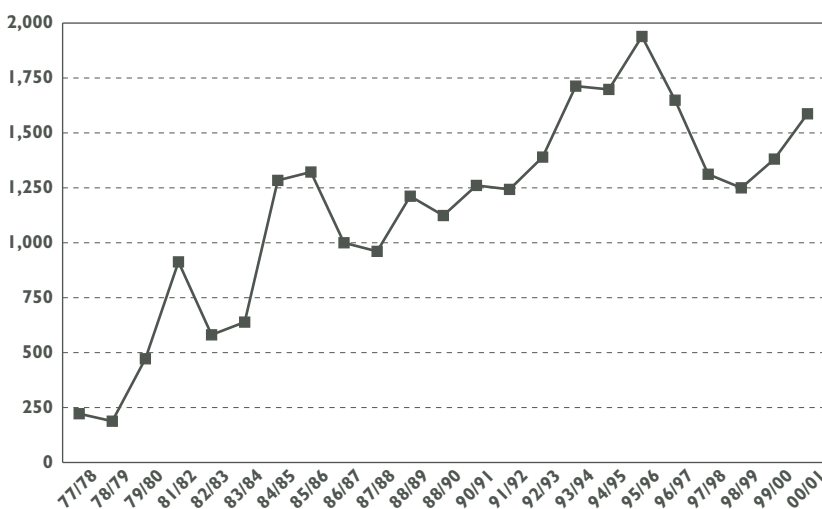
Another important development occurred in 1996 with the passage of the *Industrial Relations Act 1996* (NSW). One of the objects of this Act is to prevent and eliminate discrimination in the workplace, including equal remuneration for men and women. The President of the Board can seek leave to intervene in proceedings before the NSW Industrial Relations Commission if they concern unlawful discrimination, and can apply to vary awards and enterprise agreements to remove unlawful discrimination.

## How has the nature of complaints changed?

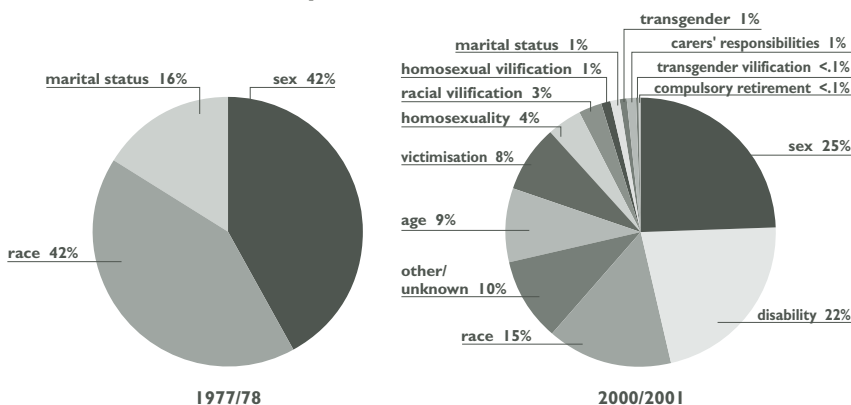
The number of complaints the Board receives each year has grown steadily since 1977 (see chart below). From 1984 to 1991, the Board handled discrimination complaints under federal legislation for the Human Rights and Equal Opportunity Commission. Even taking that into account, there is a clear increase in the overall numbers of complaints. Some of that increase can be attributed to the addition of new grounds while some is partly related to the Board's efforts to educate people that they have a right to complain about unlawful discrimination.

Even though the original three grounds of unlawful discrimination have expanded to 14 grounds (including vilification), the grounds of sex and race have consistently been the main grounds of complaint. They were closely joined by disability after the expansion of the Act's coverage in 1994. In comparison, complaints of marital status discrimination have decreased over the years. In 1977/78 they represented 16% of all complaints whereas in 2000/2001 they represented only 1% of complaints received. This perhaps reflects changing attitudes of society to divorce, de facto relationships and the role of women.

**Complaints made to the Counsellor of Equal Opportunity/  
Anti-Discrimination Board of NSW 1977–2001**



**Grounds of complaints received in 1977/78  
compared with 2000/2001**



The past 24 years have seen some interesting changes in society's attitudes towards the roles of men and women. In 1980, for example:

- the Board was still receiving complaints from women refused service in hotel public bars
- the Board received complaints from people denied the chance to be employed in their chosen occupation because of their sex — women were denied the opportunity to be fire fighters, ironworkers and television camera operators while men were denied the opportunity to be domestic airline stewards, hospital matrons and check out operators. Today, although some jobs have a much larger concentration of men or women, very few jobs are considered appropriate for only one sex
- women were still complaining of being dismissed from their employment on marriage.





### The role of women

Women make up the largest group of people on this planet who are discriminated against. 70% of the world's female population lives below the poverty line (WHO, 1997), and they make up just 5% of the world's richest people.

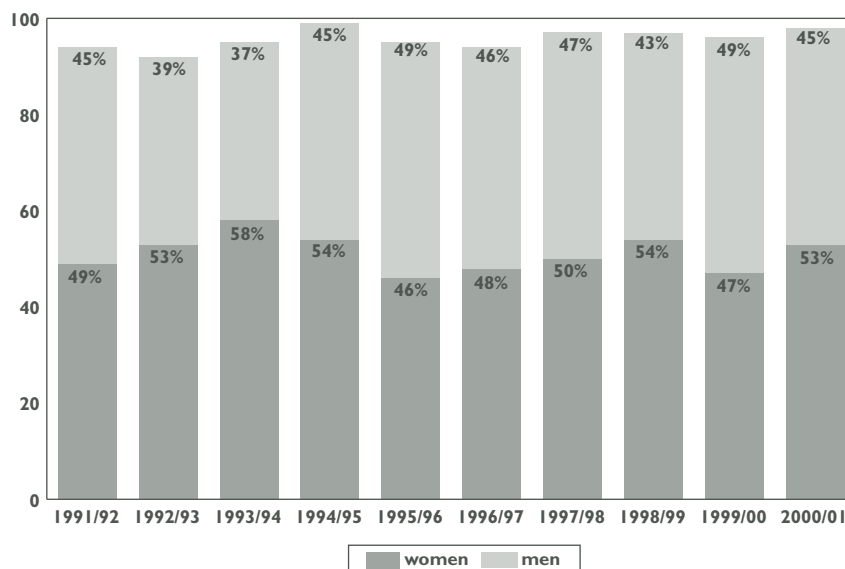
Despite many advances in equal rights for women in Australia, systemic unfairness is still the reality for women in the workplace. There are a range of issues that the Board is working to redress — equal pay for work of equal value, difficulty in accessing flexible work practices, employer hostility to maternity leave, and sexual harassment.

Education and training is one of the most effective ways to ensure the fair treatment of women in the workplace. Because women are likely to seek casual and part-time work, the Board is currently targeting temporary placement and recruitment agencies for workplace training, and ensuring that agents as well as employers are aware of equal employment opportunity practices.

### Did men or women make more complaints?

Women have tended to make more complaints than men over the years, mainly because they make the majority of complaints of sex discrimination. However, there has been the occasional year when men have made more complaints.

**Complaints received by sex of complainant, 1991/92–2000/01**



Women have overwhelmingly made complaints of sex discrimination (including sexual harassment and pregnancy discrimination) — from 78% of complaints in 1977/78 to 84% in 2000/2001. The continuing high numbers of complaints of sex discrimination reflect the continuing disadvantage faced by women in our society, especially in the workplace. Complaints of sexual harassment have increased over the years (5 complaints in 1979/80 compared to 231 complaints in 2000/2001). Although the majority of complaints have been from women, increasing numbers of complaints are from men. One of the major difficulties in addressing the problem of sexual harassment is that many people are unable to understand why women find sexual harassment upsetting or demeaning instead of a 'trivial occurrence'.

### How does NSW compare to the rest of Australia?

Although the number of grounds of discrimination covered under the NSW *Anti-Discrimination Act* have greatly increased, there are still some major gaps in the coverage, especially when you compare it with the situation in other States and Territories (see table opposite). NSW is the only jurisdiction that does not specifically have a ground of pregnancy discrimination. Discrimination on the ground of religion or political belief is covered in most other jurisdictions, but not NSW. Tasmania has led the way with its very comprehensive 1998 Act which, in addition to the standard grounds, covers disability vilification, irrelevant medical record and irrelevant criminal record.

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

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

(1) *Employment only*(2) *Under Industrial Relations law.*

# 2 *handling complaints*



*we aim to manage complaints as  
effectively & quickly as possible*

We handle three types of complaints or enquiries about discrimination.

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

This chapter describes the types of enquiries and complaints that we received during 2000/2001.

## **Initial enquiries**

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

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

Many complaints about discrimination are resolved with the help of the enquiry officers. By informing callers about their rights and giving them suggestions about how to resolve their situations, the enquiry officers assist callers and in many instances prevent the need for a formal complaint, reducing the number of complaints received.

### Total number of enquiries by ground 2000/2001

	No	%
Sex†	2,767	17
Disability	2,002	12
Race	1,569	10
Age	841	5
Carers' responsibilities (from 1.3.01)	455	3
Carers' responsibilities not covered by ADA (before 1.3.01)	147	1
Homosexuality	315	2
Marital status	202	1
Racial vilification	161	1
Transgender	83	<1
Victimisation	74	<1
HIV/AIDS	48	<1
Homosexual vilification	45	<1
Other	24	<1
HIV/AIDS vilification	11	<1
Transgender vilification	5	<1
All grounds	1,077	7
Not covered by ADA		
— other problems	5,257	33
Not covered by ADA		
— work, not harassment	1,001	6
<b>Total</b>	<b>16,084</b>	<b>100</b>

† Includes sexual harassment & pregnancy.

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

Below: The Board receives a small number of enquiries each year by TTY.



The Board has two enquiry services — one for general enquiries and one specifically to advise employers. During 2000/2001 we answered a total of 15,520 enquiries, about 60 a day. The majority of enquiries (15,056 or 97%) were made by phone; the remainder were made by letter, telephone typewriter, email or a visit to one of our offices.

Although we answered 7% fewer enquiries than in the previous year, we feel that this partly reflects the increasing complexity of enquiry calls. The continuing popularity of the Board's website has also contributed to the decrease in call numbers. The wide dissemination of information on the internet about people's rights under discrimination law has meant that a smaller proportion of enquiry calls are for very basic information. Where callers' problems are not covered by the *Anti-Discrimination Act*, enquiry officers suggest other ways that they can resolve their problems, either through self help or another agency. The increasing numbers of employers and service providers contacting the Board for policy advice and assistance with discrimination matters has also impacted on the length of calls. The average length of phone call is eight minutes; this reflects the complexity of the problems that people call the Board for help with. The decrease in enquiries is also partly due to the impact of the Olympics — for the two week period of the Olympics, we offered a limited enquiry service.

In 2000/2001, there were 13,633 calls to the general enquiry service. As in the past, women (55% or 7,477 enquiries) continued to use our general enquiry service more than men (39% or 5386 enquiries). Individuals contacting us on behalf of another person or organisation, students and teachers made the remainder of calls.

Employers, personnel officers, human resource managers, service providers and legal advisers all used our Employers and Service Providers Advisory Service. This service provides specialised advice and assistance to employers and service providers on anti-discrimination issues. The number of people using the Employers and Service Providers Advisory Service in 2000/2001 was 1,887 compared with 1,317 the previous year, a massive increase of 43%. This in part reflects the success of our training programs: when organisations we have trained need help they turn to our advisory service.

The majority of callers (71% or 10,971 enquiries) wanted to discuss a situation where discrimination was happening. Only 8% of people making enquiries (1,298 enquirers) were advised to lodge a formal complaint of discrimination, a slight decrease from the previous year. This low figure is a result of our policy of empowering and assisting callers to attempt to solve their problem first before making a formal complaint.

Similar to previous years, the most common types of discrimination people enquired about in 2000/2001 were sex discrimination (2,767 enquiries), disability discrimination (2,002 enquiries) and race discrimination, including racial vilification (1,730 enquiries). Of the sex discrimination enquiries, 1,062 were about sex discrimination, 1,014 were about sexual harassment and 691 were about pregnancy related discrimination.

Problems that people experienced that were not covered under anti-discrimination law accounted for 41% of calls (or 6,405 enquiries). Generally, where it is a problem at work, we refer these enquiries to trade unions or to the Department of Industrial Relations, or we give strategic 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.

The majority of enquiries continued to be employment related (55% or 8,623 enquiries). The second largest area of discrimination callers enquired about was the provision of goods and services (14% or 2,205 callers).

## Legal and policy enquiries

We receive many requests for legal and policy advice about the *Anti-Discrimination Act*. These requests come from the Attorney General, Members of Parliament, government departments, employers, peak bodies and associations, consumer organisations and advocates, lawyers, researchers, community organisations and others with an interest in discrimination.

In 2000/2001, 145 written legal and policy advices were given externally by our Legal and Policy Branch to other people and organisations, an increase of 12% from the previous year, and 180 advices were given internally, a 50% increase over the 120 advices given internally in 1999/2000. This increase was partly due to the need to clarify the implications of the carers' responsibilities amendment on the work of the Board. We are also often asked by organisations to comment on policy statements, application forms, recruitment or service guidelines and other documents that are sources of potential discrimination.

## Formal complaints

Lodging a formal complaint involves either 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 the complainant thinks the conduct was unlawful. If the person is unable to write a letter, for example because they have a disability, they can get someone else to write the letter on their behalf or this can be done by an officer of the Board itself. That officer will then have no further contact with the case. Letters of complaint can be lodged in any language, including Braille.

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

Settlements may involve the complainant:

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

## Total number of enquiries by area 2000/2001

	No	%
Employment	8,623	55
Other	2,730	18
Goods and services	2,205	14
Accommodation	614	4
All areas	523	3
Education	504	3
Registered clubs	252	2
Vilification	175	1
<b>Total</b>	<b>15,626</b>	<b>100</b>

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

Below: One of the Board's senior conciliation officers at work.







Above: The Board's administrative staff provide support for the work of the Board.

Many complaints are settled in this way. Only 14% of all finalised complaints in 2000/2001 were referred to the Equal Opportunity Division of the Administrative Decisions Tribunal (ADT) for a legal determination. For more information about ADT referrals, see pages 28–29.

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

### How many complaints were received?

We received 1,587 complaints in 2000/2001 compared with 1,381 in 1999/2000, an increase of 15%. Of the 1,587 complaints received:

- 207 (13%) were complaints that we could not investigate because they were outside our jurisdiction compared with 237 complaints (17%) in 1999/2000
- 1,380 (87%) were complaints within our jurisdiction compared with 1,144 complaints (83%) in 1999/2000.

Possible reasons for the increase in the overall number of complaints received are:

- the Board's extensive and well developed education programs, which are helping to increase awareness of people's right to complain
- the interventions of the President in matters before the Industrial Relations Commission, which are helping to increase awareness of worker's and employer's rights and responsibilities under anti-discrimination laws
- the addition of the new ground of carers' responsibilities and resulting publicity about the Board and its role.

### Complaints received by ground and area 2000/2001

Ground	Employ	Goods & services	Accom	Education	Clubs	Racial vilif	Homosex vilif	Transg'r vilif	Other	Total
Race	110	91	11	12	7	0	0	0	5	<b>236</b>
Racial vilification	0	0	0	0	0	52	0	0	0	<b>52</b>
Sex	331	38	2	8	7	0	0	0	4	<b>390</b>
Marital status	11	3	1	0	0	0	0	0	1	<b>16</b>
Carers' responsibilities	20	0	0	0	0	0	0	0	0	<b>20</b>
Disability	157	129	16	36	7	0	0	0	4	<b>349</b>
Age	91	35	7	4	2	0	0	0	0	<b>139</b>
Compulsory retirement	1	0	0	0	0	0	0	0	0	<b>1</b>
Homosexuality	32	19	0	4	0	0	0	0	4	<b>59</b>
Homosexual vilification	0	0	0	0	0	0	15	0	0	<b>15</b>
Transgender	2	13	3	0	2	0	0	0	0	<b>20</b>
Transgender vilification	0	0	0	0	0	0	0	1	0	<b>1</b>
Victimisation	118	6	1	4	0	0	0	0	0	<b>129</b>
Other	47	40	4	5	2	0	0	0	15	<b>113</b>
Unknown	17	13	3	0	0	0	0	0	14	<b>47</b>
<b>Total</b>	<b>937</b>	<b>387</b>	<b>48</b>	<b>73</b>	<b>27</b>	<b>52</b>	<b>15</b>	<b>1</b>	<b>47</b>	<b>1,587</b>



### What were the main grounds of complaint?

Similar to previous years, complaints of sex, disability and race discrimination accounted for nearly two-thirds of the 1,587 complaints received in 2000/2001:

- sex discrimination (which includes discrimination on the basis of pregnancy and sexual harassment) was the highest ground of complaint with 390 complaints (25% of complaints received) compared to 288 complaints (21%) in 1999/2000
- disability discrimination (349 complaints) represented 22% of complaints received, similar to last year
- race discrimination (236 complaints) represented 15% of complaints compared to 19% (259 complaints) in 1999/2000.

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

We received 20 complaints of carers' responsibilities discrimination since 1 March 2001, when it became a ground of unlawful discrimination:

- 19 complaints were about current responsibilities
- 1 complaint was about past responsibilities
- 70% of complainants were women.

Although a wide variety of relationships are covered by the legislation, 90% of complaints involved a parent's responsibility to care for a child. The majority of these complaints were from people unable to negotiate flexible work arrangements to fit in with child care arrangements. The other 10% of complaints involved people needing time off work to care for their spouse.

### What type of disability discrimination complaints did we receive?

We received 349 complaints of disability discrimination: 248 (71%) concerned physical disability, 24 complaints (7%) were about a past or presumed disability, and 31 complaints (9%) concerned current psychiatric disability. Only 7% (23 complaints) of complaints about disability discrimination were about intellectual disability. These were in the areas of employment (9 complaints), education (8 complaints), provision of goods and services (5 complaints), and accommodation (1 complaint). The Board has long been concerned that people with an intellectual disability are deterred from complaining to the Board because they will find the process difficult or they are unaware of their rights. See page 46 for a report on how we are attempting to improve the Board's services in this area.

### What were the main areas of complaint?

The largest number of complaints were employment related — 937 complaints or 59%. Goods and services complaints (387 or 24%) were again the second largest area of complaint. This is comparable with the previous year. The numbers for all complaint areas are shown in the chart below.

### Complaints received by ground 2000/2001

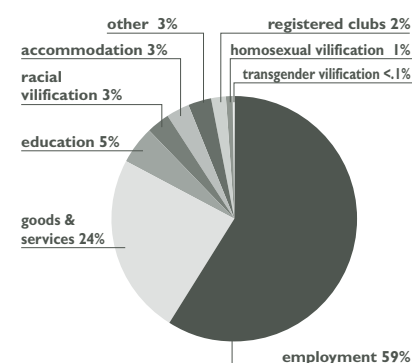
	No	%
Sex	390	25
Disability	349	22
Race	236	15
Age	139	9
Victimisation	129	8
Other	113	7
Homosexuality	59	4
Racial vilification	52	3
Unknown†	47	3
Transgender	20	1
Carers' responsibilities	20	1
Marital status	16	1
Homosexual vilification	15	1
Transgender vilification	1	<0.1
Compulsory retirement	1	<0.1
<b>Total</b>	<b>1,587</b>	<b>100</b>

† No ground specified by complainant — usually out of jurisdiction

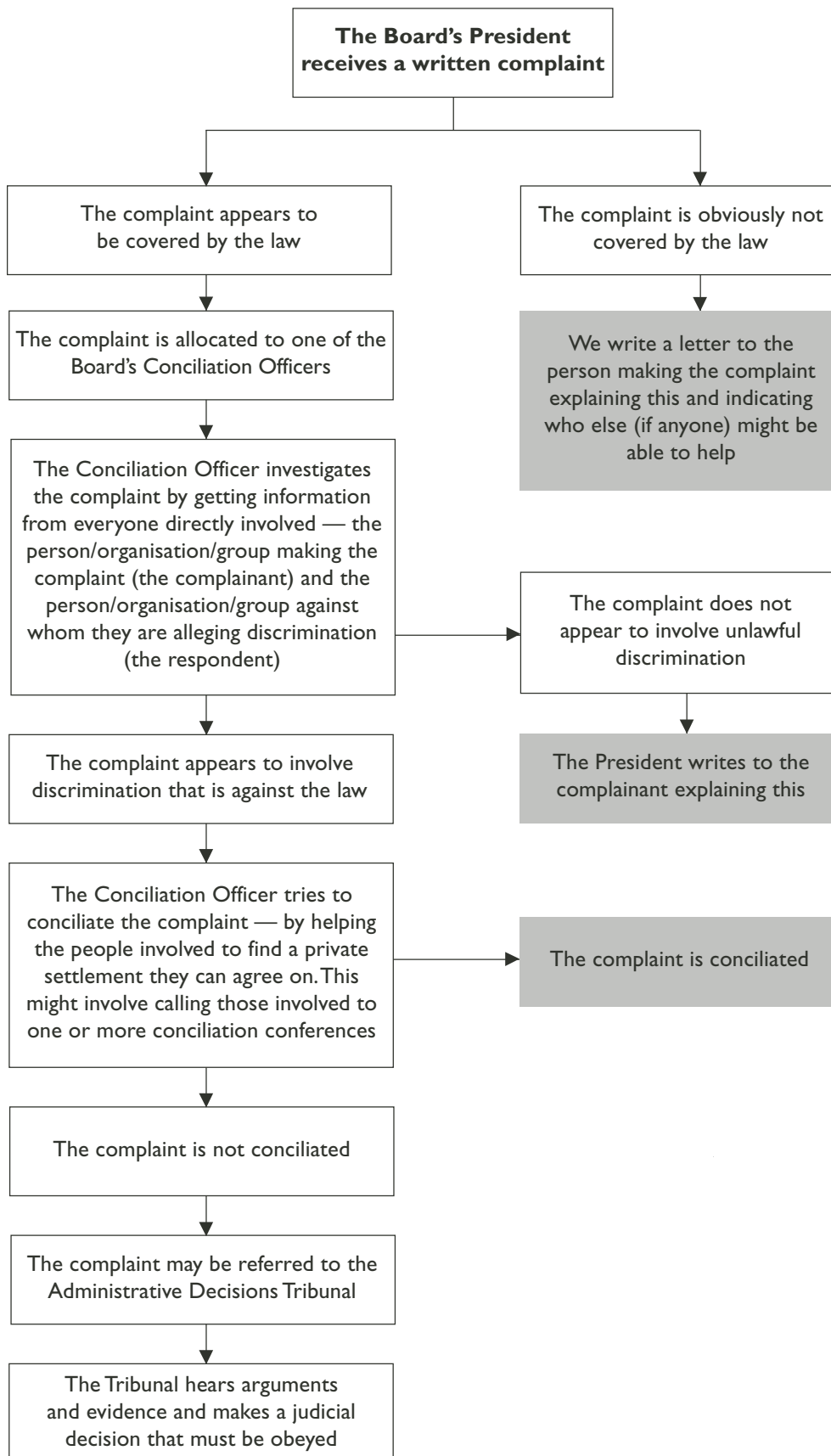
### Complaints received by area

	No
Employment	937
Goods and services	387
Education	73
Racial vilification	52
Accommodation	48
Other	47
Clubs	27
Homosexual vilification	15
Transgender vilification	1
<b>Total</b>	<b>1,587</b>

### Complaints received by area (%)



## How we handle complaints



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

By far the majority of employment-related complaints were about work environment and/or harassment (447 complaints or 48%). Of those, 213 complaints concerned sexual harassment, a 39% increase from the 153 complaints in 1999/2000. Complaints about dismissal increased slightly from 128 complaints (16%) in 1999/2000 to 181 complaints (19%) in 2000/2001.

There were small shifts in the breakdown of employment complaints between grounds:

- 35% of complainants (331) claimed sex discrimination in employment compared to 30% (240 complaints) in 1999/2000
- 17% of complaints (157) were about disability discrimination, compared to 22% (175 complaints) in 1999/2000
- 12% of complaints (110) concerned race discrimination compared to 16% (129 complaints) in 1999/2000
- 13% of complainants (118) claimed victimisation in employment compared to 9% (74 complaints) in 1999/2000, a worrying increase.

Similar to last year, 53% of employment-related complaints (497) were about private enterprise and 16% of complaints (148) were about treatment by State and federal Government employers. There was, however, a disturbing rise in complaints against individual males from 6% of complaints in 1999/2000 to 9% of complaints in 2000/2001. See chart at right for the breakdown of other employment categories.

### What were the grounds of goods & services complaints?

We received 387 complaints that related to goods and services delivery — 24% of all complaints. In comparison to the previous two years, the main ground of goods and services complaints was complaints of disability discrimination (129 complaints or 33% compared to 68 complaints or 22% in 1999/2000). In the previous two years, the main ground of goods and services complaints was complaints of race discrimination, which was the second most common ground of complaint in 2000/2001 (91 complaints or 28%).

### What type of vilification complaints did we receive?

In 2000/2001:

- we received 52 complaints of racial vilification compared with 28 complaints in 1999/2000; the main racial groups complaining of vilification were South Africans, Africans, English and Chinese; 1 of these complaints was of serious vilification
- we received 15 complaints of homosexual vilification this year compared with 20 complaints in 1999/2000; 5 of these complaints were of serious vilification
- we received 1 complaint of transgender vilification compared with no complaints in 1999/2000
- we received no complaints of HIV/AIDS vilification.

### Type of employment complaints 2000/2001

	No	%
Work environment & harassment	447	48
Dismissal	181	19
Recruitment/selection	133	14
Classification	86	9
Resignation	33	4
Retirement/redundancy	24	3
Demotion	14	1
Promotion	10	1
Transfer	7	1
Awards & enterprise agreements	2	<1
<b>Total</b>	<b>937</b>	<b>100</b>

### Where the unfair treatment occurred at work

	No	%
Private enterprise	497	53
State government	130	14
Individual male	82	9
Other	44	5
Hospital	35	4
Educational authority	35	4
Registered club	26	3
Local government	26	3
Non-profit association	19	2
Commonwealth govt	18	2
Individual female	9	1
Not known	6	<1
Media organisation	5	<1
Trade union	5	<1
<b>Total</b>	<b>937</b>	<b>100</b>

### Homosexual vilification by area 2000/2001

	No	%
Public conduct	5	33
Private dispute	4	27
Other public communication	3	20
Print media	2	13
Electronic media	1	7
<b>Total</b>	<b>15</b>	<b>100</b>

### Racial vilification by area 2000/2001

	No	%
Print media	19	36
Private dispute	14	27
Public conduct	14	27
Electronic media	3	6
Other public communication	1	2
Public work	1	2
<b>Total</b>	<b>52</b>	<b>100</b>

### Transgender vilification by area 2000/2001

	No	%
Private dispute	1	100

#### **Conciliated complaint: Pregnancy discrimination in employment**

The complainant worked for the respondent as a shop assistant. She alleged that she was made to take her recreation leave early when she advised that she was pregnant. With assistance from the Board, the complainant made contact with the HR department and an EEO officer, and was able to have her annual leave re-credited.

'Serious vilification' is defined in the Act to involve the threat of physical harm towards the complainant. The President considers such complaints and if he believes the vilification has involved such threats, he refers them to the Attorney General for possible prosecution. The Attorney General has delegated this function to the Director of Public Prosecutions, who declined to prosecute any of the complaints the Board referred to him in 2000/2001.

### Did men or women lodge more complaints?

In a return to the general trend of complaints to the Board, as opposed to last year, in 2000/2001 women lodged more complaints than men (848 as opposed to 714 complaints). The remaining complaints were lodged by people whose gender was not stated or by organisations. Although women lodged more complaints overall, men lodged more complaints in all grounds except for sex discrimination, marital status discrimination, carers' responsibilities discrimination and transgender discrimination.

In relation to sex discrimination complaints, of a total of 390 complaints, women lodged 327 or 84% and men lodged 61 or 16%. Complaints of pregnancy discrimination increased by 40% from 43 complaints in 1999/2000 to 60 complaints in 2000/2001. All complaints of pregnancy discrimination related to employment; they represented 15% of sex discrimination complaints.

The number of sexual harassment complaints was 231; these mainly related to employment (92% or 213 complaints). In 2000/2001, women (89% or 206 complaints) lodged the overwhelming number of sexual harassment complaints.

As in previous years, in 2000/2001:

- men continued to lodge the greater proportion of complaints received about homosexual discrimination — 71% or 42 complaints — and 73% of homosexual vilification complaints were lodged by men (11 complaints)
- men predominantly lodged complaints of race discrimination (59% or 139 complaints) and of racial vilification (75% or 39 complaints)
- women — 63% or 10 complaints — predominantly lodged complaints of marital status discrimination
- women — 80% or 16 complaints — predominantly lodged complaints of transgender discrimination
- women — 61% or 79 complaints — predominantly lodged complaints of victimisation.

The variation in numbers of complaints lodged by men and women about employment-related discrimination has widened compared to the previous year. In 2000/2001 women lodged 571 complaints (61%) of employment-related discrimination and men lodged 362 complaints (39%), whereas in 1999/2000, women lodged 53% of complaints and men lodged 44%. In contrast the difference in numbers of complaints lodged by men and women has lessened in the goods and services area — men lodged 198 complaints

(51%) and women 180 complaints (47%) compared to the previous year when men lodged 53% of complaints and women lodged 40%. Men and women lodged similar numbers of complaints about accommodation and education, though men lodged twice as many complaints as women about discrimination in clubs.

#### Sexual harassment complaints by area 2000/2001

Area	Male	Female	Total
Employment	24	189	213
Goods and services	1	12	13
Education	0	5	5
<b>Total</b>	<b>25</b>	<b>206</b>	<b>231</b>

#### Ground of complaints received by sex of complainant 2000/2001

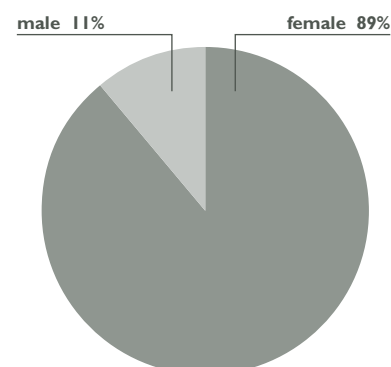
Ground	Male	Female	Other	Total
Sex	61	327	2	390
Disability	191	153	5	349
Race	139	94	3	236
Age	74	62	3	139
Victimisation	50	79	0	129
Other ground	64	43	6	113
Homosexuality	42	17	0	59
Racial vilification	39	12	1	52
Unknown	27	17	3	47
Carers' responsibilities	6	14	0	20
Transgender	3	16	1	20
Marital status	6	10	0	16
Homosexual vilification	11	3	1	15
Compulsory retirement	1	0	0	1
Transgender vilification	0	1	0	1
<b>Total</b>	<b>714</b>	<b>848</b>	<b>25</b>	<b>1,587</b>

#### What was the complainant's ethnic background?

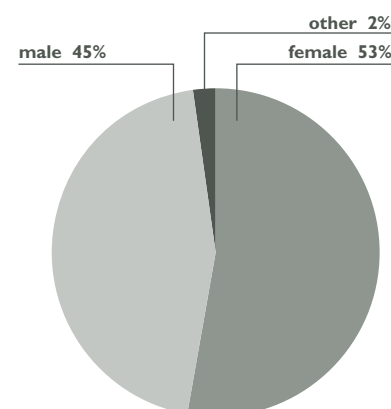
The Board collects information about the ethnic background of complainants on a voluntary basis except in complaints of race discrimination or racial vilification where the person lodging the complaint must state their race and/or demonstrate that they belong to the group that allegedly has been vilified.

This year 40% of individual complainants (639 people) gave us information about their ethnicity. 5% of complainants (77) identified themselves as Indigenous people and 20% (313) identified their background as 'Australian'. The other most commonly identified backgrounds were Chinese (32 or 2%), Indian (23 or 1%) and Lebanese (16 or 1%).

#### Sexual harassment complaints (by sex of complainant)



#### Sex of complainant (all complaints)



#### Complainant's ethnic background

	No	%
Indigenous	77	5
Non-English speaking background	207	13
English speaking background	355	22
Not known	948	60
<b>Total</b>	<b>1,587</b>	<b>100</b>

### How many complaints were finalised?

In 2000/2001, 1,277 complaints were finalised; an increase of 6% over the 1,201 complaints finalised in 1999/2000. In addition to the 1,587 complaints received in 2000/2001, 1,040 open complaints were carried over from the previous year, making a total of 2,627 complaints handled during the year. Of these, 1,277 were finalised, leaving 1,350 complaints to be carried into the 2001/2002 year. Therefore in 2000/2001, 24% more complaints were received (1,587) than finalised (1,277).

### How were complaints finalised?

The Board is only allowed to investigate complaints that come within our legal jurisdiction. So the first decision to be made after we receive a complaint is whether that complaint appears to come within the provisions of the *Anti-Discrimination Act*. Of the complaints finalised during 2000/2001, 193 (15%) were considered to be outside our jurisdiction compared to 238 (20%) in 1999/2000. Some of these complaints, although outside our jurisdiction, are either covered by other laws or are able to be dealt with by another agency. When we decline these complaints, we inform the complainant about any other possible avenues they could pursue.

When complaints fall within federal rather than State anti-discrimination legislation, we refer them directly to the federal Human Rights and Equal Opportunity Commission (HREOC). We referred 22 complaints (2%) to HREOC in 2000/2001.

Of the remaining 1,062 finalised complaints (that is, those that were within jurisdiction), 32% (342) were settled either by the Board negotiating with parties or as a result of a conciliation conference, a similar percentage to the previous year.

The complaints most likely to be settled were:

- carers' responsibilities (60%)
- victimisation (50%)
- marital status discrimination (47%)
- sex discrimination (39%)
- homosexual discrimination (37%)
- disability discrimination (31%).

The complaints least likely to be settled were homosexual vilification (0%) and racial vilification (12%).

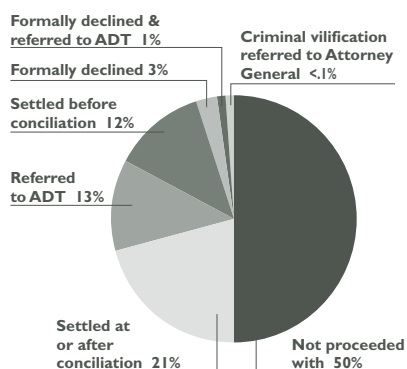
Overall, 50% (536) of complaints within jurisdiction were not proceeded with in 2000/2001, a similar result to the previous year.

There are many reasons why a complaint may be withdrawn. For example, investigation may reveal that unlawful discrimination has not been the cause of the problem or for personal reasons the complainant may decide that they are not prepared to pursue the matter. In some instances the Board has assisted complainants by suggesting avenues (especially in the industrial area) where they could resolve the complaint themselves. When a complainant succeeds in using an alternative way to resolve their complaint, the person then withdraws the complaint. Where appropriate, the Board has also continued to encourage complainants to sort out their complaints themselves. In addition,

#### Outcome of 1,277 complaints finalised 2000/2001

	No
Not proceeded with	536
Settled at or after conciliation	218
Outside jurisdiction	193
Referred to ADT	139
Settled before conciliation	124
Formally declined	31
Referred to HREOC	22
Formally declined and referred to ADT	9
Criminal vilification referred to Attorney General	5
<b>Total</b>	<b>1,277</b>

#### Outcome of 1,062 finalised complaints within jurisdiction (%)



when the Board notifies the respondent that a complaint has been made against them, we encourage them to talk with the complainant to see if they can resolve the problem. If the complainant successfully resolves the problem, the complaint is withdrawn.

In addition, where there had been delay in the allocation of complaints for investigation, the Board had a policy of regularly contacting complainants to check on the status of the complaint. Where the complainant indicated that the matter had been resolved or that they did not wish to proceed with the complaint, those matters were finalised as not proceeded with.

The complaints least likely to proceed were:

- transgender discrimination (63%)
- race discrimination (59%)
- homosexual vilification (58%)
- age discrimination (57%)
- homosexual discrimination (51%).

Of complaints within jurisdiction, 40 or 4% were formally declined, after often lengthy investigation, as lacking in substance or as not revealing a contravention of the *Anti-Discrimination Act* after they had been investigated. This is a decrease from the previous year where 84 complaints (9%) were declined.

The referral rate of complaints within jurisdiction for hearings in the Administrative Decisions Tribunal increased from 12% (113 complaints) in 1999/2000 to 14% (148 complaints) this year. The complaints most likely to be referred to the ADT were victimisation (32%) and racial vilification (26%).

### How quickly were complaints finalised?

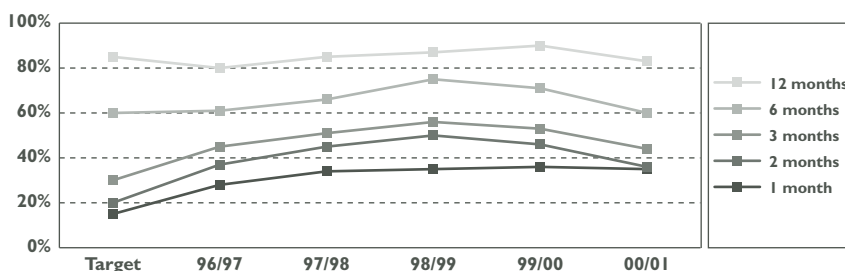
In our Business Plan, we aim for:

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

This year we met almost all of these targets with:

- 25% of allocated complaints finalised in one month
- 36% of allocated complaints finalised in two months
- 44% of allocated complaints finalised in three months
- 60% of allocated complaints finalised in six months
- 83% of allocated complaints finalised in 12 months.

**Rate of finalisation of allocated complaints (%)**



### **Conciliated complaint: Sexual harassment in employment**

The complainant alleged he was sexually harassed when his manager grabbed him by the hips while he was using the photocopier and simulated anal intercourse. The company investigated the incident which was admitted to by the Manager. The complainant alleged he had suffered a severe psychological reaction to this incident because of previous sexual abuse as a child. He alleged he could no longer remain with the employer and took voluntary retirement.

While not disputing the incident, the respondent refuted that the treatment amounted to sexual harassment. The respondent further asserted that it had already resolved the issue with the complainant, by making voluntary retirement available to him (at his request), when he was not entitled to it under normal circumstances. The respondent acknowledged that no formal agreement had been entered into which waived the complainant's rights to pursue the matter with the Board. The matter was settled when the complainant accepted a monetary payment of \$8,000 in exchange for his signing a deed of release to settle the matter.





### Self help/conciliation

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

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

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

When notifying respondents of a complaint, the Board encourages them to try to discuss the problem with the complainant, before the matter is allocated at the Board for investigation. We are happy to offer whatever encouragement and encouragement we can to assist the parties as an alternative to formal investigation by the Board.

### Complaints queue

Complaints staff have endeavoured to reduce the number of unallocated complaints in the queue in 2000/2001 by reconsidering current practices to determine more efficient and effective practices. Decisions from the Administrative Decisions Tribunal about out of time matters, declinations and procedural fairness have impacted on the length of time taken to deal with some complaints.

The Board received funding from the Attorney General's Department to temporarily employ additional staff in the regional offices to help reduce the queue of unallocated complaints. However, there is an ongoing demand for additional staff to effectively address the increasing complaint load.

### Rural trips

Complainants and respondents from rural areas may be unable to travel to one of the Board's offices for conciliation conferences for various reasons. In recognition of this, and in order to increase our service delivery to regional NSW, conciliation officers arrange conferences in rural areas when appropriate. Although there is an ongoing demand for the Board's services in rural and regional areas, we continue to experience difficulties in travel to rural NSW despite receiving some additional one-off funding from the Attorney General's Department. However, in 2000/2001 conciliation conferences were conducted in Armidale, Tamworth, Lismore, Ballina, Inverell and Dubbo.

### Standards on complaint handling

In 2000/2001, to help improve our service delivery to complainants and respondents, complaints staff drafted performance standards on complaint handling. These standards reflect what complainants, respondents and other parties involved in complaints can expect from the Board in regard to:

- provision of information about the Board's management of complaints
- formal acceptance of complaints
- investigation and responses to complaints
- conciliation undertaken by the Board
- regular review and feedback about complaints management
- maintenance of accurate records about complaints
- ensuring Board staff receive training and support to provide an effective complaints service.

The standards will also provide some guidelines regarding time frames for handling of complaints. It is hoped that the standards will be finalised in 2001. They will be made publicly available as soon as possible.

## *Cases from the Tribunal*

### **Amery v State of NSW**

#### **Sex discrimination in employment**

**Date of decision: 12 March 2001**

In this case complaints of sex discrimination were lodged in November 1995 by 13 long serving female casual teachers against the NSW Department of School Education. All of the complaints were heard together.

All but two of the complainant teachers had been permanent teachers who resigned in order to have and care for children and their families. The complainants then sought to re-enter the teaching service as permanent appointments but were unsuccessful. In many cases the women did not gain permanent appointment as they limited the area in which they could work in order to balance their work and family responsibilities. The complainants were then appointed as casual teachers.

It would appear that at that time the teaching service employed what were known as 'relief casuals' and 'supply casuals'. Relief casuals worked for short periods of time. All of the complainants were 'supply casuals' who were employed on contracts for at least 8 weeks at a time and some worked as supply casuals for more than a year at a time.

The issue was that permanent part-time or full-time teachers were entitled to salary on a 13 step incremental scale. However all casuals were paid a daily rate on a five step scale. The fifth level of the casual scale was equivalent to the eighth level on the permanent scale.

The complainants argued that as long-term casuals, they were performing work of equal value to the permanent staff and that they had been indirectly discriminated against on the ground of their sex.

The Tribunal found that the respondent had imposed a requirement that in order to access the higher rate of pay employees must be permanent.

The Tribunal found that a substantially higher proportion of men than women could comply with the requirement. 79% of male teachers compared to 59% of female teachers were permanent.

The Tribunal found that the requirement was not reasonable in all of the circumstances. The Tribunal stated that there was no evidence to indicate that financial or economic considerations explained the difference in treatment of men and women teachers. In addition, there was no evidence to suggest that providing supply casuals with access to higher pay scales would impact on the need for a flexible workforce. Finally, the Tribunal looked at the respondent's submission that supply casuals did not perform work of equal value to permanent staff. The Tribunal found that in the complainants' circumstances, work of equal value was performed.

This case illustrates the overlapping relationship between discrimination and industrial law. The Tribunal reviewed a number of decisions of the Industrial Commission which had considered the pay scales in question. Even though

### **Conciliated complaint: Sex discrimination & victimisation in employment**

The complainant was the first female to be employed with the respondent at a particular work site. She alleged sex-based harassment due to a hostile working environment in that her manager, assistant manager, contractors and co-workers would continually use foul language when talking to her and each other and treated her as though she was 'empty headed'. She alleged that she found the language offensive and she had complained to management about the language on several occasions, but to no avail.

The complainant also alleged that she had been discriminated against on the ground of her sex, because her continual requests to be trained to drive a forklift were not acceded to but those of her male colleagues were. This alleged denial of training ultimately led to the loss of her position, when it was deleted and a new position created which required a forklift ticket. The respondent did not dispute the use of the language complained of and while it acknowledged the language was inappropriate it denied it amounted to less favourable treatment. The matter was resolved when the complainant agreed to accept an undisclosed amount of money to settle the matter.

***Conciliated complaint:***  
**Race discrimination in employment**

The complainant, an Aboriginal man, worked for the respondent as a car salesman. He alleged that the sales manager harassed him during his period of employment. The alleged treatment took the form of comments and names directed at him such as 'Abo' and 'black bastard'. He alleged that this sometimes occurred in front of customers. The respondent refuted the allegations and said that the complaint was lodged by a disgruntled employee who had been terminated because of poor performance. The parties agreed to resolve the matter with an ex-gratia payment of \$2,000 to the complainant in exchange for his not pursuing the matter further.

the Industrial Relations Commission had approved the enterprise agreements and awards which enshrined the different pay scales, the Tribunal found them to be discriminatory. The consent of industrial parties and the approval of the Commission is no defence to a complaint of discrimination under the *Anti-Discrimination Act*.

The Tribunal rejected the respondent's submission that the complainants could comply with the requirement. The respondent argued that because the complainants had resigned from permanent employment to raise families, they had a choice about whether to comply with the requirement of permanency in order to reach a higher salary. The Tribunal stated that:

"the purpose of prohibiting discriminatory conduct on the ground of sex is not furthered by a construction which would have the result of permitting discriminatory conduct where the aggrieved person has no effective choice but to submit to the discriminatory regime or requirement. That is the case where for family reasons, a female teacher chooses to be at home to raise her children and support her partner."

The Tribunal found in the complainants' favour and awarded separate damages representing the loss of wages to each complainant. Those damages ranged from approximately \$1,900 to \$32,000.

An appeal is pending against this decision.

**Russell v Commissioner of Police, NSW Police Service**

**Racial vilification and race discrimination in provision of goods & services**

**Date of decision: 26 February 2001**

Mr and Mrs Ted Russell made a complaint of racial vilification and race discrimination in the provision of services, on behalf of their son, the late Edward Russell, against the Commissioner of Police, the New South Wales Police Service and 11 named Police Officers.

On 11 December 1993 Mr Russell was pursued in a high-speed chase in which four police vehicles were involved. At approximately 2 am Mr Russell was apprehended and arrested at Wisemans Creek Road in Oberon NSW, with 10 police officers (listed as respondents) in attendance at the scene of the arrest.

Mr and Mrs Russell alleged that during the course of the apprehension and arrest police used abusive and obscene language related to Mr Edward Russell's Aboriginality. Mr and Mrs Russell also alleged that unnecessary force was used against Mr Edward Russell, such as ramming his head into the back of the police wagon, dragging him up an embankment, hitting him with a baton and placing his handcuffs on very tightly.

One of the police officers listed as a respondent was not present at the scene of the arrest, but interviewed Mr Edward Russell later that morning. It was alleged that the police officer racially discriminated against Mr Russell by failing to report Mr Russell's complaint that he had been assaulted and injured during his apprehension and arrest.

The Administrative Decisions Tribunal found that the Police Service and 10 of the officers had racially discriminated against and racially vilified Mr Edward Russell. The Tribunal found that the officer who interviewed Mr Edward Russell had not discriminated against Mr Edward Russell, and dismissed this claim.

In coming to its decision the Tribunal noted the evidence of witnesses who, unknown to the police, overheard and observed portions of the language and conduct of the police officers at the scene of the arrest. One of the witnesses was so disturbed that he later wrote to the editor of the local paper strongly criticising the actions of the police officers.

As part of their defence the Police Service argued that it was not liable for the conduct of the officers as they were not agents or employees of the Police Service, given the particular way that officers are appointed under the *Police Service Act 1990 (NSW)*.

After examining various authorities the Tribunal rejected this argument and concluded that the Police Service was an employer for the purposes of the *Anti-Discrimination Act 1977*, and that an examination of the provisions of the *Police Service Act* did not detract from this.

The Police Service also argued that it was not providing Mr Edward Russell with a 'service'. Again the Tribunal rejected this submission holding that in light of other cases previously decided a 'broad' interpretation of services was appropriate so as to apply to 'the circumstances that affected Mr Edward Russell on 11th December 1993.'

The Tribunal awarded \$30,000 compensation for the racial discrimination and vilification, and ordered that the NSW Police Service and the Police Officers pay \$30,000 to the Estate of Mr Edward Russell.

At the time of writing the Police had appealed this decision to the Appeal Panel of the Administrative Appeals Tribunal. The Appeal Panel referred three questions of law to the Supreme Court for determination on 3 April 2001: two questions relate to the application of the *Anti-Discrimination Act* to the Police Service and police officers, and the third question was about the powers of the Administrative Decisions Tribunal.

### ***Conciliated complaint: Racial harassment in employment***

An Armenian employee of a major corporation claimed that he was subjected to racial harassment at work by senior staff. During his five months of employment, he repeatedly complained to the managing director, but the harassment continued. He further claimed that after complaining about the racist work environment, the alleged harassers started a new campaign by leaving abusive messages on his mobile phone and answering machine at home. He resigned from his position and complained to the Board. The Board wrote to the respondent company with details of his allegations. During the conciliation conference, the respondent agreed to pay the complainant a sum of \$10,000 in full settlement of the complaint.



Left: Staff in Legal and Policy Branch.

## Indigenous outreach

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

### Complaints

The Indigenous team has been working diligently towards the reduction of the current waiting time for Indigenous complaints to be investigated. At present, it may take up to 12 months or longer for the Indigenous Conciliation Officer to be able to begin investigating complaints of discrimination from Indigenous Australians. The Board acknowledges that these delays may affect the ability of Indigenous people to achieve effective redress following alleged incidents of racial discrimination, and has sought additional resources to be able to address this area of concern.

During the 2000/2001 year 77 complaints of discrimination were made by Indigenous people, a 19% decrease over the number of complaints received last year (91 complaints).

As with previous years, by far the majority of complaints from Indigenous complainants are about race discrimination or racial vilification — 73% (56 complaints) compared to 18% of overall complaints.

The area of complaints received in 2000/2001 from Indigenous people differed from the overall pattern of complaints:

- 30% of complaints (23) were about employment-related discrimination compared with 59% of overall complaints
- 44% of complaints (34) were about discrimination related to the provision of goods and services compared with 25% of overall complaints
- 11% of complaints (8) were about discrimination related to accommodation compared with 3% of overall complaints.

The majority of Indigenous complainants were women (47 complaints or 61%); numbers of complaints from men and women were similar in all areas except provision of goods and services where women made three times as many complaints as men.

### Education

The Indigenous team:

- conducted rights-based training sessions in Campbelltown, Sydney, Tamworth, Dubbo and Orange to raise awareness among Indigenous communities about their rights under the *Anti-Discrimination Act*
- attended a number of Career Expos this year
- regularly attending interagency meetings in the Sydney area — these meetings provide an excellent opportunity to obtain feedback on current issues affecting Indigenous communities and to provide advice in relation to dealing with discrimination matters
- attended the Indigenous Peoples & Racism Conference in Sydney
- attended the first NSW Women's Gathering State Conference, Morpeth.

#### Ground of complaints received from Indigenous people 2000/01

	No	%
Race	52	68
Sex	6	8
Victimisation	5	7
Racial vilification	4	5
Age	3	4
Homosexuality	3	4
Homosexual vilification	1	1
Disability	1	1
Other	1	1
Unknown <sup>†</sup>	1	1
<b>Total</b>	<b>77</b>	<b>100</b>

<sup>†</sup> No ground specified by complainant — usually out of jurisdiction

#### Area of complaints received from Indigenous people 2000/01

	No	%
Goods and services	34	44
Employment	23	30
Accommodation	8	11
Racial vilification	4	5
Clubs	3	4
Education	3	4
Homosexual vilification	1	1
Other	1	1
<b>Total</b>	<b>77</b>	<b>100</b>





## Know your rights

In 2000/2001, the outreach team produced new resources for Indigenous people in NSW aimed at ensuring that Indigenous communities know their rights. The new wallet card outlines the grounds and areas of unlawful discrimination under the *Anti-Discrimination Act*, and includes contact details for the Indigenous Outreach Team. The revised factsheet includes more detailed information and explains what to do if you are an Indigenous person who is experiencing discrimination or vilification. Packages consisting of the new wallet card and factsheet, and the existing *Know your rights* poster and kit, were widely distributed to organisations that advise Indigenous people about their rights.

## Indigenous Advisory Committee

The outreach team now has a full complement of staff who can consult with Advisory Committee members and individuals from Indigenous communities on discrimination issues that affect the community.

In 2000/2001, the Advisory Committee met three times and discussed issues of concern to Indigenous communities, some of which are ongoing. These included:

- local government positions
- violence in prisons
- issues experienced by people with intellectual disabilities
- impact of hepatitis C
- mental health issues experienced by Indigenous people.

Below: The Board's Indigenous Outreach Team.



## Reconciliation

On 7 December 2000, the Board's President formally welcomed the final report of the Council for Aboriginal Reconciliation as an important step towards supporting the human rights of all Australians.

'Now is the time for all Australians to get behind a meaningful process of reconciliation within the framework of an agreement or treaty as outlined by the Council. In practical terms there is room for improvement at all levels of Government in all areas of activity,' the President said.

The President also stated that the Reconciliation Australia Foundation must effectively harness the 'people power' of the grassroots movement for reconciliation. 'The Council has worked hard to keep reconciliation alive as a public issue over the past 10 years. Now the Foundation has a chance to benefit from the public enthusiasm evident over the last 12 months,' the President said.

The Reconciliation Council says Indigenous rights are based on the principle that all Australians should share equal social and economic conditions, equal rights and responsibilities as citizens, and equal access to decision-making.

The report provides a blueprint for a national reconciliation strategy, and as the President stated, 'now everyone, Governments and business included, must make it happen.'

## Newcastle office

Manager: Kay Jackson

### Complaints

In 2000/2001, the Newcastle office received 222 complaints of the 1,587 complaints received by the Board. This is a 57% increase over the number of complaints received in the previous year (141 complaints). There are some significant differences in the type of complaints received in the Newcastle office from the overall pattern of complaints:

- 38% (84) alleged sex discrimination compared with 25% of overall complaints received
- 5% (10) alleged race discrimination compared with 15% of overall complaints received
- 14% (32) alleged age discrimination compared with 9% of overall complaints received
- 18% (40) alleged disability discrimination compared with 22% of overall complaints received
- 74% alleged discrimination in employment compared to 59% of overall complaints received
- 13% alleged discrimination in provision of goods and services, compared with 24% of overall complaints received.

**Newcastle — complaints received by ground 2000/2001**

	No	%
Sex	84	38
Disability	40	18
Age	32	14
Victimisation	20	9
Other	17	8
Race	10	5
Homosexuality	9	4
Transgender	3	1
Marital status	2	1
Carers' responsibilities	2	1
Racial vilification	2	1
Homosexual vilification	1	<1
<b>Total</b>	<b>222</b>	<b>100</b>

**Newcastle — complaints received by area 2000/2001**

	No	%
Employment	164	74
Goods and services	30	13
Education	9	4
Accommodation	8	4
Clubs	6	3
Racial vilification	2	1
Other	2	1
Homosexual vilification	1	<1
<b>Total</b>	<b>222</b>	<b>100</b>

### How were complaints finalised

The Newcastle office finalised 100 complaints in 2000/2001. There were some significant differences in the way complaints within jurisdiction were finalised in Newcastle:

- complaints were almost twice as likely to be referred to the Administrative Decisions Tribunal — 19 complaints or 25% compared to 13% of overall complaints
- complaints were more likely to proceed — only 22 complaints or 29% did not proceed compared with 50% of overall complaints
- complaints were more likely to be settled through our conciliation process — 33 complaints or 43% compared with 33% of overall complaints.

### Education

In 2000/2001 staff in the Board's Newcastle office continued to offer a range of education services to the people of the Northern, Central Coast and Hunter regions of New South Wales. These services included responding to enquiries from people who believe they have been discriminated against; responding to enquiries from employers, service providers and other potential respondents; and reviewing policies and procedures to ensure they comply with current best practice.

### Employer and service provider education program

Interest in this program continued to be very strong, with demand for training sometimes greater than our capacity to deliver it. Over the past few years, demand for on-site workplace training has outstripped demand for the Employers' Seminar Series in this region, so in 2000/2001 the Seminar Series was limited to a single Contact Officers program.



Training was provided this year to people working in a range of sectors including: the legal profession; health and aged care; retail; primary, secondary and tertiary education; power industry; manufacturing; food preparation; registered clubs and hospitality; and local government. Some of these organisations were using our training services for the first time while others have incorporated the Board's training programs as part of their ongoing training cycle. Demand was strongest for Harassment Awareness (for employees and for supervisors/managers), Contact Officer and Grievance Handling programs.

A number of organisations used the carers' responsibilities amendments to the NSW *Anti-Discrimination Act 1977* as a platform for reviewing their discrimination and harassment policies and procedures, and either initiating training or doing 'refresher training' in their workplaces.

We have found that a number of the organisations which are committed to ongoing training in discrimination and harassment issues are also the organisations most likely to contact the Board for advice when incidents occur in their workplaces. We have observed that many of these issues then are able to be resolved within the organisation and without formal complaints being lodged with the Board.

Individual local councils continue to be significant consumers of education programs. Following the successful delivery of a 'Train the Trainer' program for human resources staff from a number of Hunter-based councils co-ordinated by the Hunter Region Organisation of Councils (HROC) in 1999/2000, HROC again arranged for the Board to deliver this program in 2000/2001. This has a number of advantages as it is a cost effective way of enabling staff from a number of (often smaller) councils across the region to participate in targeted training, share experiences, and develop strategies for addressing common issues which are likely to arise in the local government sector.

Education staff continued to work with the Department of Education and Training in both the school and TAFE sectors. This year the school program included a series of workshops with staff and community representatives from schools in the Lake Macquarie Area on discrimination and harassment rights and responsibilities in State schools.

### **Community sector education program**

This program incorporates the Community Workers Seminar Program and extensive regional outreach.

The Community Workers Seminar Program was delivered in Newcastle and Gosford in November 2000. Rights & Strategies, Community Management — Your Responsibilities and Train the Presenter sessions were conducted during both programs.

Staff continued to participate in disability networks on the Central Coast and in the Hunter, as well as the Rural Multicultural Workers Network and the Central Coast NESB Interagency. We continued to work with the Department of Fair Trading in providing regular information/education sessions at a rehabilitation program on the Central Coast.

Staffing and funding constraints still inhibit the Board's capacity to provide a comprehensive community education program to people outside the largest population centres in our region.



*Above: Staff in the Newcastle office.*

### **EEO Network**

A number of new participants attended the EEO Network during 2000/2001. Network members are usually human resources staff from organisations who have used the Board's on-site training service or attended our Employer Seminar Series.

In May 2001 the Network, in a well-attended and lively session, discussed strategies for accommodating employees with carers' responsibilities in their various organisations. A number of case studies were presented by the Board's staff, based on enquiries and complaints received in the Newcastle office, and case law from other jurisdictions.

## Wollongong office

Manager: Connie Santiago

### Wollongong — complaints received by ground 2000/2001

	No	%
Disability	54	26
Sex	50	24
Victimisation	29	14
Race	22	11
Age	15	7
Homosexuality	10	5
Other	8	4
Marital status	5	3
Racial vilification	5	3
Unknown <sup>†</sup>	4	2
Homosexual vilification	2	1
Transgender	1	<1
Transgender vilification	1	<1
<b>Total</b>	<b>206</b>	<b>100</b>

<sup>†</sup> No ground specified by complainant — usually out of jurisdiction

### Wollongong — complaints received by area 2000/2001

	No	%
Employment	138	67
Goods and services	36	18
Education	10	5
Other	6	3
Racial vilification	5	2
Clubs	4	2
Accommodation	4	2
Homosexual vilification	2	1
Transgender vilification	1	<1
<b>Total</b>	<b>206</b>	<b>100</b>

## Complaints

In 2000/2001, the Wollongong office received 206 complaints of the 1,587 complaints received by the Board. This represents a 36% increase from the number of complaints received in the previous year (152 complaints).

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

- 11% (22) alleged race discrimination compared with 15% of overall complaints received
- 26% (54) alleged disability discrimination compared with 22% of overall complaints received.

Victimisation complaints were again higher in Wollongong — 14% of complaints received in Wollongong alleged victimisation compared with 8% of overall complaints received.

Sixty-seven percent of complaints received in Wollongong alleged discrimination in employment, higher than the overall amount received of 59%. Only 18% of complaints received in Wollongong were about goods and services compared with 24% of overall complaints.

## How were complaints finalised

The Wollongong office finalised 200 complaints in 2000/2001. There were some significant differences in the way complaints within jurisdiction were finalised in Wollongong:

- complaints were less likely to be referred to the Administrative Decisions Tribunal — 6 complaints or 3% compared to 13% of overall complaints
- complaints were more likely to be settled through our conciliation process — 82 complaints or 46% compared with 33% of overall complaints.

## Education

### Community based training

In keeping with the Board's commitment to provide an outreach service in regional areas, staff from the Wollongong office conducted training sessions in Wagga and Cootamundra. The focus of these sessions was:

- non-discriminatory community management for various agencies
- clients' rights under anti-discrimination law for advocate workers.

We also provided a number of sessions for TAFE and Department of Education managers and principals. Staff have addressed principal's conferences as speakers and run interactive workshops at the request of the Department of Education and Training.

The office's other consultative involvement has been in holding regular meetings with representatives of trade unions and representing the Board on community-based committees such as the Wollongong Aboriginal Interagency and the Illawarra Forum, which is a peak body for Illawarra-based community management committees.

### **Employer & service provider education program**

Education staff have provided education and consultancy services to a wide range of employers including local government, tertiary education, volunteering organisations and large industrial corporations. The well-established EEO Network and Contact Officers Network continue to meet with interest from all participants.

There has been a significant and encouraging increase in the number of employers who have taken a pro-active approach in seeking advice on the development and implementation of preventative and responsive policies and procedures as well as in dealing with issues arising in the workplace. A significant number of training requests from employers stem from discrimination and complaints occurring in the workplace, and often as part of an agreement to resolve a complaint.

The recent introduction of carers' responsibilities legislation has resulted in increased requests for information and training, and the local media have given extensive coverage to the legislation. The Wollongong office held an information morning for employers to provide a practical overview of the legislation and its application to the workplace.

### ***Conciliated complaint: Race discrimination in employment***

The complainant, an Aboriginal apprentice, alleged that he was discriminated against by his employer and two co-workers when they engaged in making derogatory comments about his racial background. He alleged that management failed to prevent the conduct, and further, that when he brought this to their attention he was then victimised by management and each of the co-workers. All three respondents denied the allegations. The matter was settled when the complainant agreed to a monetary settlement of \$2,666 to finalise the matter against all three respondents.



*Left: Staff from the Wollongong Office.*

# 3 *educating the people of NSW*



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

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

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

Our education initiatives seek to do two things. First, we target educational programs towards those groups about whom we receive the most complaints. Secondly, we attempt to reach those groups that are most likely to experience discrimination or unfair treatment but have little contact with the Board.

We use several strategies, for example:

- we deliver talks, information and training sessions all over NSW including presenting papers and workshops at major conferences
- we network, consult and develop 'outreach' projects
- we develop and distribute a wide range of targeted publications
- we maintain an accessible website
- we use all forms of the media to get our message across
- we have a specialist library linked with other libraries.

### What people have said about our training...

'Group sessions enabled us to compare our thoughts with other members & argue our reasoning.'

'Informative — clarified many issues taken for granted.'

'Very well pitched and facilitated for our line managers.'

'Interesting & comprehensive training, necessary to our client service.'

'Trainer was clear and easy to understand... kept us interested.'

'Excellent content and knowledge of the subject matter.'

'It's great to find out about real work examples.'

## Talks & training programs

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

- delivery of 703 information and training sessions attended by over 16,000 people, a similar amount of training to the previous year
- continuing acclaim for our employer seminar programs, once again held successfully in Sydney, Wagga Wagga, Parramatta and Newcastle
- raising \$541,919 from our training fees and publications sales — this income fully funded the education services we provided to employers and service providers (including the seminar series, the cost of five trainers on staff, two casual trainers and an administrative assistant). It also funded the travel, venue hire and other such costs associated with all our community sector training.

There are two aspects to our talk and training programs:

- services targeted towards potential respondents
- services targeted towards potential complainants.

## Services for employers & service providers

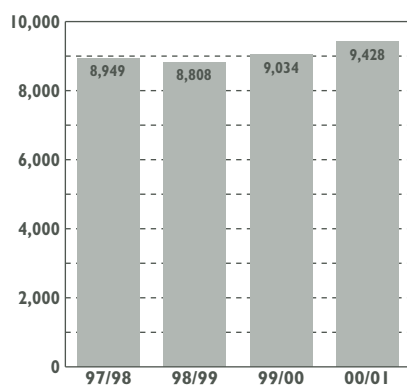
Our approach to training employers and service providers involves a number of components:

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

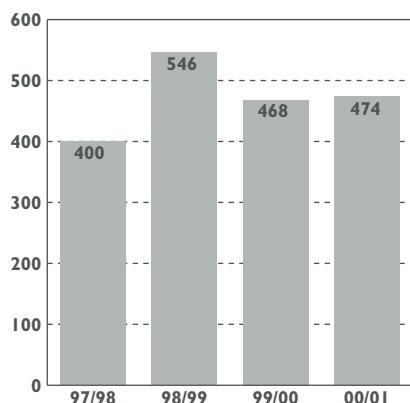
In 2000/2001 we conducted 474 sessions for employers and service providers and trained nearly 9,500 employers, managers and service providers from the private, public, local government and community and welfare sectors. This is a similar number to the previous year.

We received so many requests for on-site training and information sessions that even though we have increased the number of trainers we were at times unable to meet demand. The Olympics also had an impact on our ability to meet demand by creating an additional two-week period where we were unable to offer training. EEO training for both managers and staff was the course most in demand for on-site training. Our range of standard on-site seminars is detailed in the publication *Training Sessions for Employers and Service Providers*. However, all our training is adapted to produce a tailor-made approach for each client.

**Employer training sessions:  
number of people trained**



**Employer training sessions:  
number of sessions**





### Seminar program

We ran our seminar program again this year, and regularly offered a number of half day and one day courses for employers, managers, employee relations professionals, human resource managers and equal employment opportunity (EEO) practitioners in Sydney, Parramatta, Newcastle and Wagga Wagga. These courses aim to increase participants' understanding of how to maintain a workplace free of all forms of discrimination and harassment. The seminar program was attended by 322 people throughout the year, almost double the number of participants in the previous year. This is mainly due to the addition of a breakfast seminar outlining the new carers' responsibilities amendment. This was a very popular addition to our regular seminar program and high demand from employers resulted in an additional two breakfast seminars being run.

Seminars covered:

- introduction to EEO
- EEO for managers
- recruitment
- preventing harassment
- skills training for contact officers
- key skills in grievance handling
- carers' responsibilities.

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

We continued our free consultancy reviewing service for employers and service providers during 2000/2001. At no cost to any employer or service provider, we reviewed organisations' EEO related policies and procedures. We examined policies on eliminating harassment in the workplace, grievance procedures, promoting diversity in the workplace and policies on handling recruitment. During the year we reviewed 129 procedures and policies from 51 organisations — a 23% decrease compared to 1999/2000. Part of this decrease can be attributed to organisations adopting the Board's model policies and procedures that are available in our published guidelines and on disk. This reviewing service has proved to be very popular and yet another way of establishing ongoing contact with many employers. It has also been responsible for a large number of significant and positive changes to policies and procedures in many organisations.

### Small business project

In 2000/2001 the Board's education services continued to help small businesses meet their obligations under discrimination law and published *NSW anti-discrimination & equal employment opportunity guidelines for small business owners and managers*. These guidelines explain how small businesses can make sure they follow anti-discrimination laws.

### Some of the people & organisations we trained in 2000/2001

Allen, Allen & Hemsley  
ANA Hotel  
Austar  
Australian Foundation  
for the Disabled  
Chickadee Chickens  
Department of Fair Trading  
Director of Public Prosecutions  
Energy Australia  
Independent Commission  
Against Corruption  
Korean Resource Centre  
Lake Macquarie Council  
Pacific Power  
Perpetual Trustees  
Recruitment Solutions  
Spicer Axle  
St Vincent's Hospital  
Sydney Water  
Transgrid  
UBS Warburg  
Visionstream



Right: Three of the Board's Senior Workplace Relations Consultants, Louise Rosemann, Lesley Ashwood and Margaret White.



### Training in rural areas

We have continued to extend our training to areas outside Sydney, Newcastle and Wollongong. In addition to interstate trips to Melbourne, Brisbane, Adelaide and Perth, the country areas in NSW we visited included:

Albury	Bathurst
Blue Mountains	Cessnock
Coffs Harbour	Cootamundra
Dubbo	Glen Innes
Gosford	Junee
Kempsey	Kurri Kurri
Lake Macquarie	Lismore
Maitland	Mittagong
Moruya	Muswellbrook
Nowra	Orange
Port Macquarie	Shellharbour
Tamworth	Taree
Ulladulla	Wagga
Wingecaribee	Wyoming
Yass	

Below: Nick Juarez, Community Education Officer in the Wollongong Office.



### Union project

We are working with the NSW Labor Council to produce *Guidelines for union delegates* to explain what anti-discrimination law says in relation to workplace discrimination and how union delegates can help the workers they represent get a fair go at work. Although unions normally use industrial laws to protect workers' rights, sometimes it will be more appropriate to use anti-discrimination law to help ensure that the workplace is free of discrimination and harassment.

In addition, under anti-discrimination law, unions can be legally liable for aiding or abetting discrimination or harassment. If anyone representing the union (including a workplace delegate) is found to have aided or abetted discrimination or harassment, the union can also be held responsible. For example, aiding and abetting may arise where a union or union official fails to take action when a worker reports discrimination, harassment or victimisation in the workplace. This is another reason why it is important for all union representatives to understand anti-discrimination law. The guidelines will be published in 2002.

### Sessions targeting potential complainants and/or their advisers

The second part of our training strategy is to target those groups of people most likely to experience discrimination, particularly their advisers. The way we do this is to:

- respond to requests for training sessions
- develop specially targeted outreach and training programs.

Over the year we conducted 229 training sessions targeted towards complainants and their advocates from all sectors of the community. Examples of general rights-based education sessions conducted include:

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

Our community outreach projects and training seminars included:

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

### Community Workers Seminar Program

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

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

The courses were detailed in the training calendar we published in September 2000. In 2000/2001 a total of 15 seminars were held across NSW, including at

Gosford, Mayfield, Sydney, Blacktown, Cabramatta, Shellharbour, Ulladulla and Albury, attended by 94 community workers. Staffing shortages at the Board resulted in fewer seminars being run than in the previous year. Seminars covered:

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

The train the presenter course has been running for two years: over 60 community workers all over NSW are now trained to conduct a presentation on anti-discrimination law. Presenters have initiated presentations in a range of contexts: in different languages, for clients and peers, and in places as far afield as Broken Hill and Shoalhaven. Forty presenters have also agreed to participate in a network of presenters who are willing to be contacted by the Anti-Discrimination Board to run basic requests for presentations that we are unable to meet.

### Outreach Programs

For more information about the Indigenous Outreach Program please turn to page 34. For more information about the Regional Outreach Programs please turn to pages 36–39.

### Video training resource

The community education officer has overseen the script development and production of a 20 minute training video for use by community groups. The video will help explain people's rights under anti-discrimination law and the strategies they can use to resolve discrimination and harassment problems. It will be a useful tool for stimulating discussion on discrimination issues. The video is being produced in conjunction with the University of Technology, Sydney and will be released late in 2001.

### Information exchange

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



### Acts of Passion

Building on the *Acts of Passion* community legal campaign to alert gays and lesbians to new legal rights for same sex couples, the theme of passionate acts was used to draw together a number of Sydney Gay and Lesbian Mardi Gras events that the Board helped organise.

To demonstrate the Board's commitment to equal human rights for lesbians and gays, staff from the Board once again participated in the Sydney Gay and Lesbian Mardi Gras Parade, along with staff from the Attorney General's Crime Prevention Division and Violence Against Women specialist unit, the Law Reform Commission and Privacy NSW. The *Acts of Passion* theme was carried over to the float which emphasised that we are passionate about obtaining equal age of consent, equal access to IVF, and stopping homophobia and discrimination.

*Passionate Acts at Parliament House*, a forum on violence, discrimination and legal rights, was organised jointly by the NSW Anti-Discrimination Board, the Crime Prevention Division and Privacy NSW. The first lesbian and gay event to be held at Parliament House packed the theatre with over 160 people. Chris Puplick, President of the Board, opened the forum and suggested that the gay and lesbian communities need to take more direct political action to advance the law reform agenda. This event won the most 'Outstanding Community Event' award at the 2001 Mardi Gras awards ceremony.

Left: Board staff at Mardi Gras events.

***Conciliated complaint:  
Disability discrimination  
in employment***

The complainant, assisted by her advocate, alleged that she had been discriminated against by a recruitment agency because she was denied an opportunity to apply for a kitchenhand position, for which she is trained and experienced.

The complaint was settled with the complainant accepting a written apology from the respondent, and the respondent undertaking to implement policies and procedures to improve access to recruitment services for persons with disabilities.

***Conciliated complaint:  
Transgender discrimination  
in employment***

A woman who worked at a retail company alleged she was made redundant because her supervisor knew she was transgender (male to female) and did not want to employ 'a weirdo'. She was the only person made redundant and she alleged her position was later advertised. At the conciliation conference, the company agreed to review its anti-discrimination policies with the assistance of the Board. It also agreed to pay the complainant \$4,000 in resolution of the complaint.

## **Community involvement**

In 2000/2001, the Board continued its policy of participating in public events to provide information about people's rights under anti-discrimination law and answer specific enquiries. We had stalls at:

- AIDS Trust Food & Wine Fair 2000
- Hunter Pride (Gay & Lesbian) Festival 2000
- International Women's Day stall 2001
- Mardi Gras Fair Day 2001
- Survival Day 2001.

## **Forum on disability discrimination**

In August 2000 the Board hosted a forum for advocacy and support organisations working with people with intellectual disabilities. The main purpose of the forum was to discuss how the Board's services, and particularly our complaints service, could be better adapted to suit people with intellectual disabilities. The forum was attended by around 35 people from a variety of peak disability organisations and resulted in some very practical recommendations to help improve the Board's processes and encourage people with intellectual disabilities to seek our help.

One of the recommendations was that Board staff should receive training in disability issues. Since the forum, public contact staff have undertaken a series of training sessions including training by the Brain Injury Association and sessions from the Intellectual Disability Rights Service on how to effectively communicate with a person with an intellectual disability.

To help implement some of the recommendations of the forum, the Board established a regular consultation with representatives from the intellectual disability community. The consultation has met three times since the forum.

## **Initiative funding items**

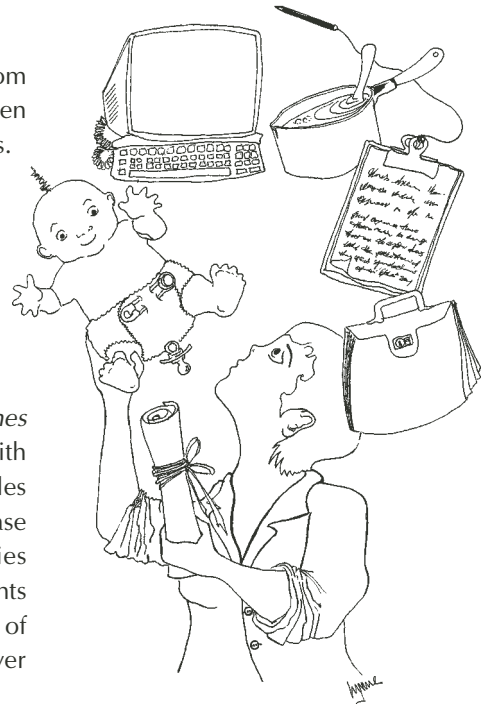
The Board received additional funding from the Director of the Attorney General's Department to enable us to expand our discrimination rights resources for people with visual impairments, people with disabilities, people with low literacy and people who do not speak any or much English. The three items in production are:

- translations of basic information about people's rights under anti-discrimination legislation in 24 languages; this information will be available on the Board's website
- picture book for people with an intellectual disability explaining their rights under anti-discrimination law
- audio cassettes that contain basic information about people's rights under anti-discrimination law.

## Carers' responsibilities amendment

To help publicise the changes to the *Anti-Discrimination Act* resulting from the carers' responsibilities amendment, a range of activities were undertaken to help inform employers and employees about their rights and obligations.

- The Board published a new factsheet, *Carers' responsibilities discrimination: your rights*, outlining the rights of employees in relation to their carers' responsibilities. Nearly 4,000 copies were directly mailed out to community groups, and copies were distributed through Carers NSW, and the Department of Ageing and Disability. Overall, nearly 10,000 copies have been freely distributed.
- The Board published *Carers' responsibilities discrimination: guidelines for employers*, outlining the steps employers need to take to comply with the carers' responsibilities amendment. These guidelines give examples of carers' responsibilities discrimination and summaries of relevant case law. They include advice on how to prevent carers' responsibilities discrimination and examples of the sorts of flexible work arrangements employers can provide. Nearly 7,000 copies were mailed to a range of employer groups, including government departments, peak employer organisations, employment agencies and local councils.
- Information about the changes was placed on the Board's website, including the text of the factsheet and answers to common questions about the new carers' responsibilities amendment.
- Board staff presented four carers' responsibility breakfast seminars to help people understand the impact the amendment will have on employers and workplace practices. 162 people attended the seminars from both the public and private sectors.
- Board staff gave numerous presentations about the changes to the Act and how they would impact on work practices to a variety of conferences and forums, including conferences organised by Australian Business, IIR and IES.
- The Board's President, Chris Puplick, and the Attorney General, the Hon Bob Debus MP, launched the carers' responsibilities amendments to the *Anti-Discrimination Act* at State Parliament on 28 February 2001.



Right: Guidelines explaining how the new ground of carers' responsibilities works were released at the launch.

Far right: The Attorney General, the Hon Bob Debus MP launched the carers' responsibilities amendment at Parliament House in February 2001.



### New publications

We produced 13 new publications this year:

- Annual report 1999–2000
- Carers' responsibilities discrimination: your rights factsheet
- Community workers training calendar
- Equal time newsletter (4 issues)
- Guidelines for employers: Carers' responsibilities discrimination
- Indigenous wallet card
- NSW anti-discrimination and equal employment opportunity guidelines for small business owners and managers
- Seminar program brochure (x 3)

For a complete list of all Board publications, see page 67.

## Publications

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

While the first copy of most of the Board's publications is available free of charge, a few are not and bulk supplies of publications are generally charged for. Sales of these publications paid for approximately 70% of the cost of printing and reprinting all Board publications in 2000/2001.

We have two main types of publications — factsheets and guidelines. Factsheets are written for people who may have complaints of discrimination. They explain a type of discrimination and the procedure for lodging a complaint. The other major type of publications is guidelines for employers and service providers who have responsibilities to keep businesses and services free from harassment.

In 2000/2001 we sold nearly 6000 copies of our publications. In addition, as part of our training program we distributed over 10,000 copies of our employer guidelines to people who attended our employer training sessions, whether inhouse or as part of the seminar program. We also freely distributed copies of our publications at information days and in response to enquiries. All of the Board's information on people's rights under anti-discrimination law is downloadable free of charge from our website. This is continuing to reduce the demand for printed copies of our factsheets.

The carers' responsibilities amendment meant that many of our publications had to be revised. We produced amendment sheets outlining the changes caused by the carers' responsibilities amendment to send out with existing publications. As our existing stock of publications was reprinted to meet demand, revisions arising from the carers' responsibilities amendment were incorporated.

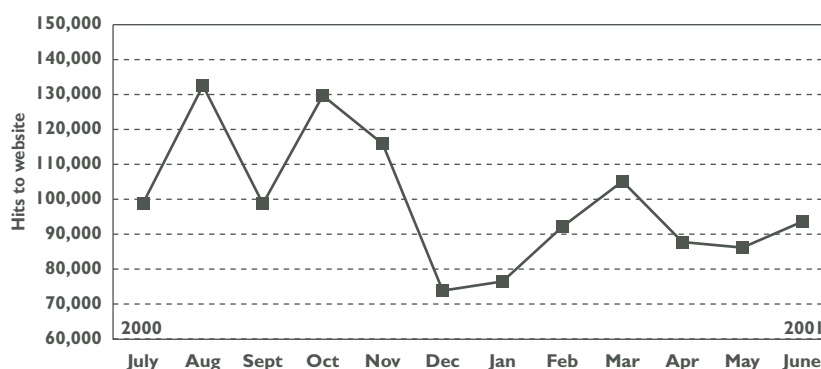
## Internet even more popular

The Board's website is a complete guide to people's rights under NSW anti-discrimination law. As part of Lawlink NSW, it is a gateway into legal resources on the internet. Use of the Board's website has increased during 2000/2001, averaging 99,229 hits per month. This is a 22% increase over the average 81,049 hits per month in 1999/2000. The Board's website has consistently

Below: Anna Forsyth, the Board's Librarian.



Website usage 2000/2001





been one of the five most popular sites on the Lawlink network. This is reflected in the popularity of the word 'discrimination' as a search term by customers of Lawlink, showing that discrimination is an issue that interests people accessing Lawlink.

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

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

Basic information about people's rights is also provided in 23 community languages. All our factsheets are on the website in full. Extracts from some of our workplace guidelines are included, as well as information about our seminar and training programs. People can also download publication order forms. Links to other human rights agencies are a useful resource for researchers and students.

## Media

Media provides an important tool for informing people in NSW about discrimination and human rights. The Board enjoyed considerable media coverage on a wide range of topics, across the spectrum of media outlets. Requests for interviews are nearly always fulfilled on the same day, not only because of the availability of appropriate 'talent', but also because of the informed response that staff are able to supply. Journalists with requests specific to the Act are routinely emailed the relevant sections, and the Legal and Policy Branch are instrumental in providing plain explanations of the Act relevant to the query.

Radio interviews with the President are granted on average about three times a week, while newspaper journalists often ring for comment in response to both State and federal matters. Television coverage tends to centre on the news of the day — it is not unusual for the President to do eight interviews in one day on a major topic.

This year the Board has enjoyed extensive coverage for the carers' responsibilities amendment, both in the lead-up to the launch, and for the launch itself. The carers' responsibilities amendment launch also proved that coverage is more likely if many elements of the story are available in one spot. The Media Officer, Anna Cooper, was able to contact carers prepared to speak to journalists, and their stories were also featured in a CD-ROM that was issued with copies of the amendments and invitations to the launch.

The Hepatitis C Enquiry launch a few weeks later also benefited by having the right people available for interview. ABC Radio recorded a detailed feature at the opening, and interviewed two women living with hepatitis C, both with compelling and very different stories to tell. Their experience of discrimination told listeners exactly why the hearings were so important.

## The Library

In 2000/2001, the librarian Anna Forsyth continued to review the library's collection to better reflect the current work of the Board. Collection development focused on management, training, human resources, women and Aborigines. The library moved to electronic provision of current awareness services and research material that can be accessed via the State Library's portal Ilanet. This has allowed more cost-effective and timely access to quality online information from within the Board.

The library's reference service supported the work of the Board. This ranged from provision of statistics, legal decisions and research materials on carers' discrimination; literature reviews and provision of overseas cases on genetic discrimination and insurance; legal decisions and cases for speeches and training on issues surrounding bullying; and literature reviews for the Hepatitis C Enquiry. The librarian has continued to train Board staff in information skills, including training in the use of the internet, electronic databases and legal research skills.

Joint projects with other libraries in Attorney General's Department included authority work on the library's catalogue to ensure that users can more easily use the catalogue. We also participated in trials of electronic databases to a number of legal and news services. The librarian has continued to participate in library groups such as the Government Library and Information Network and the Libraries of the Social Sciences.

# 4 *improving the law*





*we seek to eliminate discrimination in  
NSW through legal & policy initiatives*

2000/2001 was another busy year for the Legal and Policy Branch and other staff involved in legal and policy activities. The Branch continued to provide legal advice on complaints, responded to requests for information and advice from people outside the Board, and processed applications for exemptions from the *Anti-Discrimination Act*. Staff:

- prepared for the impact of the *Anti-Discrimination (Carers' Responsibilities) Act 2000*
- responded to the Law Reform Commission's proposed amendments to the *Anti-Discrimination Act*.
- participated in a variety of committees aimed at eliminating discriminatory practices in the wider community
- undertook work relating to discrimination issues in the industrial relations arena, including work and family issues
- participated in the Board's regular consultations with the community.

Below is a summary of some of the highlights of the year.

## **Changes to the *Anti-Discrimination Act***

### **Carers' responsibilities recognised**

The *Anti-Discrimination (Carers' Responsibilities) Act 2000 (NSW)* introduced the ground of carers' responsibilities into the *Anti-Discrimination Act 1977 (NSW)* in the area of employment. From 1 March 2001 it is unlawful for an employer to discriminate, directly or indirectly, against an employee or an applicant for employment on the ground of their actual or presumed past, present or future responsibilities as a carer. The amendment defines 'responsibilities as a carer' as a person's responsibility to care for or support a child or immediate family members — such as de facto and same sex spouses, brothers, sisters, parents and grandparents — who are in need of care or support.



### Carers in NSW

The introduction of carers' responsibilities as a ground of discrimination under the *Anti-Discrimination Act* has highlighted the changing nature of the workforce in NSW, and the issues people face in balancing work and family responsibilities.

Everyone will give or receive care at some stage in their life. Many people will receive formal care, but the majority of caring is still undertaken informally by immediate family members: parents, partners, siblings and children.

People's caring responsibilities and needs change over time — not just in relation to caring for children, but also for elderly parents or a partner or relative who may have a long-term or temporary disability or illness.

Statistics show that women still have responsibility for much of the informal caring of family members. However, many of these women are also in full or part-time work.

Most of the existing case law relating to discrimination on the ground of carers' responsibilities concerns the use of flexible work practices by women. Complaints of discrimination on the ground of carers' responsibilities have in the past, and still can, be argued as cases of sex discrimination. However, the needs of men with caring responsibilities, as well as those who have responsibility for family members who are ageing or have a disability, have been supported by the amendment.

This amendment requires employers to carefully assess requests from employees to accommodate their caring needs. In many instances, they will be acting unlawfully if they do not accommodate the request. The introduction of part-time work, job sharing, flexible working hours, the capacity to work from home and other options is enabling many people to better negotiate and balance their work and family commitments.

The new ground of discrimination recognises the changing structure of work and family life, and the growing number of women and men in the work force who are the carers of children, adults with disabilities, or other family members in need of care and support. The amendment provides important protection for workers balancing their carers' responsibilities.

The ground of carers' responsibilities does not apply to employment in a private household or where an employer has five or fewer employees. Other employers are generally required to accommodate the caring needs of their employees. Arrangements that may be necessary in order for an employee or applicant to fulfil their carers' responsibilities may include flexible start and finish times, the capacity for employees to attend functions or appointments related to their carers' responsibilities, or flexibility in the hours of work including the provision of part-time work.

## Proposed changes to the *Anti-Discrimination Act*

### Law Reform Commission Review

In its December 1999 *Report on the Review of the Anti-Discrimination Act 1977 (NSW)* the NSW Law Reform Commission (LRC) recommended significant changes to the Act including a new approach to discrimination and the extension of the Act to cover new grounds. The Board has made extensive submissions to the Attorney General regarding the report and its recommendations. In general, the Board is supportive of the policy shift proposed by the LRC report.

The major recommendations of the report include:

- 1 Grounds of discrimination.** The LRC recommended the addition of religious belief, political opinion and carers' responsibilities as grounds of unlawful discrimination. As indicated above, the Act has since been amended to include carers' responsibilities in the area of employment. The LRC recommended changing the existing ground of homosexuality to sexuality defined as heterosexuality, homosexuality, lesbianism and bisexuality. The LRC also recommended the expansion of the current ground of marital status to domestic status, including Indigenous Australian customary marriages and cohabitation with another person in a domestic relationship other than marriage.
- 2 Definition of discrimination.** The LRC recommended a new test for direct discrimination that shifted the focus from the current test of less favourable treatment to one of 'conduct causing detriment or disadvantage on the ground of an irrelevant characteristic'. The LRC also recommended that the definition of indirect discrimination be amended and that the burden of establishing reasonableness should rest with the respondent.
- 3 Areas of discrimination.** The LRC recommended that new areas of disposition of land and local government be added to the legislation and that the current area of 'registered clubs' be broadened to include other clubs and some voluntary organisations.
- 4 Serious vilification.** The LRC recommended that the offence of serious vilification be relocated into the *Crimes Act 1900 (NSW)*.



### Bullying

Bullying rears its ugly head, more often than not, in the workplace. Surprisingly, it is not exclusively the domain of the older or stronger person, but is often the weapon of choice for managers or groups of individuals targeting one worker.

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

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

Bullying is a form of harassment. Like all forms of discrimination and vilification it is steeped in ignorance. Its eradication requires that bullies not only admit that the behaviour is unacceptable — but that there are far better ways to effectively communicate with employees.

- 5 **Obligation to provide reasonable accommodation.** The LRC recommended that an obligation to provide reasonable accommodation should be imposed in relation to the grounds of disability, pregnancy, breastfeeding and carers' responsibilities.
- 6 **Streamlining of exceptions.** The LRC recommendations include the removal of the exception for small businesses and partnerships with less than five persons; the introduction of a general special measures clause; the limitation of the exception for private educational authorities to religious educational authorities where the activity relates to the protection of religious freedoms; and the amendment of the general exception for religious bodies so that the exception refers to the religious personnel of all faiths and only covers positions requiring a commitment to the tenets of the particular religion concerned.
- 7 **Time limit for lodgement of complaints.** The LRC recommended the extension of the time limit for lodgement of a complaint from six months to twelve months with the retention of the President's discretion to accept complaints lodged outside the time limit on good cause being shown.
- 8 **Initiation of complaints.** The LRC recommended that the Minister be able to refer matters to the President for investigation. In addition, the LRC recommended that the President have the power to recommend to the Minister the referral of a particular matter for investigation by the President.
- 9 **Remedies.** The LRC recommended that the current damages ceiling of \$40,000 be increased to \$150,000, except in cases where the panel has a District Court judge as its presidential member where the higher District Court limit should apply.
- 10 **Enforcement of conciliation agreements and orders of the Administrative Decisions Tribunal.** The LRC recommended that the President have the power to enforce conciliation agreements and orders of the Administrative Decisions Tribunal. In the case of individual complainants the President could take steps to enforce the order with the complainant's consent. In the case of representative complaints, or in any other case where the President believes the public interest demands, the President could take enforcement steps on his or her own motion.

## Industrial relations initiatives

The *Industrial Relations Act 1996 (NSW)* requires the Industrial Relations Commission to take into account the principles of the *Anti-Discrimination Act* when exercising its functions. In 2000/2001, the Board was involved in providing information and advice to industrial parties regarding issues such as access to paid maternity leave, access to services and facilities for lactating mothers at work, and provisions relating to casual and part-time workers. Due to resource constraints we had to decline to intervene in a number of industrial matters. We were, however, involved in several cases, including two major cases before the Industrial Relations Commission: the *Review of the Principles for Approval of Enterprise Agreements 2000* and the *State Wage Case 2001*.

Maggie Smyth, Manager,  
Legal and Policy Branch.



### FOI requests

In 2000/2001, the Board received one Freedom of Information (FOI) request. The applicant sought their own complaint file so we informed them that they did not require an FOI application and we produced the documents.

### Review of the Principles for Approval of Enterprise Agreements 2000

In this case, the Industrial Relations Commission reviewed the principles it must generally adhere to when deciding whether to approve an Enterprise Agreement. Some of the principles already talked about discrimination issues, for example, all agreements had to comply with the *Anti-Discrimination Act*. However, we undertook a survey of some agreements that had been approved by the Commission since the principles were first made and found that a number of them raised discrimination issues, particularly indirect discrimination. Some agreements used seniority as a way of deciding who would be retrenched, how much overtime would be paid and who would have access to overtime. In other agreements, carer's leave was not available for employees who wished to care for their same sex partner.

The President submitted that:

- consideration has to be given in the negotiation process to the particular needs and circumstances of the employees to be covered by the agreement so that the process is not discriminatory, eg agreements may need to be translated into languages other than English
- the principles should be strengthened to ensure that agreements comply with the *Anti-Discrimination Act* and do not discriminate against some workers
- agreements should provide equal remuneration for men and women for work of equal or comparable value
- agreements should contain the model anti-discrimination clause that is currently in all NSW awards
- dispute procedures in agreements need to be capable of being used to resolve discrimination and harassment complaints.

The industrial parties generally agreed with most of our suggestions and the Commission decided to make the proposed changes to the principles.

### State Wage Case 2001

In the *State Wage Case 1999* the Industrial Relations Commission ordered the insertion of a model anti-discrimination clause in every NSW award. Following the insertion of carers' responsibilities as a ground of unlawful discrimination under the *Anti-Discrimination Act*, we liaised with the industrial parties prior to the *State Wage Case 2001* in relation to amending the model anti-discrimination clause in all awards to include reference to the new ground of carers' responsibilities. The NSW Industrial Relations Commission in the *State Wage Case 2001* decided to make that order and also ordered amendment to the Principles for Approval of Enterprise Agreements to include a reference to carers' responsibilities.

### Catholic Personal Carer's Leave Clause

The Catholic Commission for Employment Relations (CCER) is seeking to amend various awards to replace the Standard personal/carer's leave clause with the Catholic-specific personal/carer's leave clause. The President has intervened in this case before the Industrial Relations Commission. The Board's position is that the proposed Catholic clause discriminates against employees in de facto relationships on the grounds of marital status and homosexuality. This is because an employee who is married is specifically entitled to care for their spouse, whereas no specific reference is made to an unmarried employee's entitlement to care for their opposite or same sex partner.



## Parental leave

The Board made a submission to the Minister for Industrial Relations in support of the extension of unpaid parental leave to a casual employee who works for an employer on a regular and systematic basis, and who has a reasonable expectation of ongoing employment on that basis. In October 2000 the government amended the *Industrial Relations Act 1996* (NSW) to provide for such leave where a person had been working for a period of at least 24 months. This is an important reform which seeks to redress the unequal position of the increasingly large numbers of workers, many of whom are women, who are engaged in casual employment in New South Wales.

The Board submitted, however, that workers who fall within the proposed definition of a 'regular casual employee' should be entitled to parental leave if they have worked as such for a period of 12 months. In May 2001 the Australian Industrial Relations Commission granted federal award employees such an entitlement after 12 months. The NSW law was brought into line with the federal entitlement in July 2001.

## Salaried Senior Medical Practitioners Award

The Board has been working for some time on helping to remove discriminatory provisions from the *Senior Salaried Medical Practitioners (State) Award*. In December 2000 the Industrial Relations Commission conducted a hearing into this award and the Board's President intervened in relation to the definition of 'specialist' which appeared to discriminate indirectly against overseas trained doctors on the ground of race. After discussions with the parties about our concerns, we made some suggestions for amending the definition to remove any discrimination. The parties agreed to those suggestions. In addition, the award now states that any decision made by the employer in determining whether any person is eligible to be appointed as a specialist shall not contravene the *Anti-Discrimination Act*. This is a most satisfactory solution to a long-running dispute.

## Policy initiatives

The Board has undertaken a range of policy initiatives aimed at improving the position of those whom the *Anti-Discrimination Act* is intended to assist. An example is the Board's work in advancing the need for comprehensive and nationally consistent State and Territory legislation in relation to recognition of transgender people and adequate mutual recognition provisions which ensure that recognition of a transgender person obtained in one State or Territory will be recognised in another State or Territory. We have raised this issue with the NSW Attorney General and promoted the issue as one appropriate for consideration by the Standing Committee of Attorneys General. We have also liaised with the NSW Registry of Births, Deaths and Marriages and other State anti-discrimination/equal opportunity commissions in order to progress reform in this area.

As part of our involvement with the Industrial Relations Commission Users Group we assisted the Commission to make its application form (used by people filing an unfair dismissal claim and requesting an exemption from the payment of fees) simpler and more easily understood by the community. Advice was also sought from Privacy NSW on issues relating to the collection of information.

## Genetic testing

Current genetic tests have the potential to be used discriminatorily, especially in the areas of insurance and employment. Some employers may be tempted to screen out job applicants who have tested positive for a particular condition, while insurers may refuse to offer various types of insurance to people with positive genetic test results.

Many tests can only indicate whether a person has a genetic predisposition for a particular illness, not whether they will actually develop it. But even if the tests were accurate predictors of future illness, that should not mean that people with positive genetic tests have no protection from discrimination.

Discrimination on the ground of presumed future disability because of a positive genetic test would be covered under the existing disability discrimination provisions of the *Anti-Discrimination Act*.

However, there has been some discussion about whether the protection should be made explicit by making discrimination on the ground of genetic test results unlawful. Some States in the USA have enacted legislation to protect workers against genetic discrimination in the workplace. At a national level, President Clinton signed an executive order prohibiting the Federal Government from using genetic information in any decision about who should be hired or fired.

The Australian Health Ethics Committee and the Australian Law Reform Commission are jointly conducting an inquiry into issues surrounding genetic testing, including discriminatory use of genetic information. The President of the Board serves on the Advisory Council for this project.





### Is drug addiction a disability?

All health professionals recognise that alcoholism is a disease with its own natural history, specific symptoms and treatment.

Addiction is an enormous health problem in the western world. Discrimination against people with drug addictions is linked closely to popular perceptions that drug addicts are entirely responsible for their condition, without taking into consideration circumstances in an individual's life that may have made them more vulnerable to using drugs. People who use drugs are often characterised as unreliable or automatically involved in crime — all of these perceptions relate only to a small minority of drug users. It is also widely assumed that people who use drugs can stop any time, and only have themselves to blame for any illnesses or harm they may incur.

People make a range of assumptions about drug addicts instead of assessing each person individually. The Board believes that a person's drug dependence should not be used as a basis upon which to arbitrarily determine whether a person should be given services, can perform the requirements of the job or pay the rent.

Although at present there is no test case which could set a precedent for addiction to be viewed as a disability, the Board believes that discrimination on the basis of a person's drug dependency, past dependency, assumed dependency or drug dependency treatment may amount to disability discrimination. Accordingly the Board will accept complaints on this basis, although ultimately it may be a matter for the Administrative Decisions Tribunal to decide.

## Enquiry into Hepatitis C Related Discrimination

The Board commenced a public Enquiry into Hepatitis C Related Discrimination in February 2001. The Enquiry is investigating the extent and nature of discrimination against people who have, or are thought to have, hepatitis C in New South Wales. The Enquiry members are Chris Puplick, President of the Anti-Discrimination Board, and two statutory Board members, Fr Hugh Murray and Suzanne Jamieson. The Board will prepare a report documenting the problems which exist and make recommendations for combating and eliminating discrimination and its effects. We anticipate that the Enquiry's report will be released in November 2001.

### Why is the Enquiry necessary?

Hepatitis C is a chronic, blood-borne viral infection that affects up to 200,000 Australians. Around 11,000 new infections occur each year — more than half of them in NSW.

Hepatitis C is an important public health issue. The stigma and discrimination many people living with hepatitis C experience often discourages people from testing, which in turn reduces the extent to which people with hepatitis C will access treatments and information and support to reduce the risk of transmission to others.

Hepatitis C can be contracted when the blood from a person infected with hepatitis C enters the bloodstream of another person. The primary mode of transmission for hepatitis C is through the sharing of injecting equipment. As a result there is a complex interplay between hepatitis C discrimination and discrimination on the basis of drug use, or assumed drug use, which frequently results in people with hepatitis C experiencing discrimination in a variety of ways.

In November 1998 the NSW Legislative Council's Standing Committee on Social Issues, released its report *Hepatitis C: The Neglected Epidemic*. The Committee recommended that the Government fund the NSW Anti-Discrimination Board to undertake an Enquiry into the nature and extent of hepatitis C related discrimination in NSW because of the lack of research on hepatitis C related discrimination.

The information gathered through the Enquiry will ensure we have a more comprehensive understanding of hepatitis C related discrimination. Improved understanding of the extent and nature of discrimination will enable better targeted education strategies — strategies designed to both make people aware of their rights and to prevent hepatitis C related discrimination.

## The progress of the Enquiry

The Board has sought the widest possible input from people living with hepatitis C, community-based organisations, relevant government and private sector institutions, and experts in the field. The Board conducted public hearings in Sydney, Goulburn, Wollongong, Newcastle, Dubbo and Lismore and also conducted hearings at a number of NSW prisons. These hearings were widely publicised through newspaper advertisements. To date the Enquiry has received over 100 written submissions: approximately 70% of submissions are from individuals who outline circumstances where they believe they have been discriminated against or treated unfairly. A significant number of submissions from community-based organisations, such as the NSW Hepatitis C Council and NSW Users and AIDS Association, and government organisations, such as Area Health Services, have provided numerous well documented individual stories as part of comprehensive submissions. Over 70 people have participated in the Enquiry's hearings.

At the time of writing, evidence gathered during the course of the Enquiry is being analysed. Early indications are that discrimination against people living with hepatitis C is widespread. By far the most common setting for discrimination is in the health care system. The Enquiry has heard about discriminatory conduct, unfair treatment and inaccurate information about hepatitis C being provided by health care workers. Such discrimination can occur in a variety of settings including in hospitals, dental surgeries, doctors' surgeries, chemists and in the provision of alternative therapies. Many submissions reflect the inter-relationships between hepatitis C and injecting drug use, and many specifically identify that the poor treatment they received was because of discrimination on the basis of drug use or assumed drug use. Oral and written submissions also detail many experiences of discrimination by the insurance and funeral industries, discrimination in education, accommodation, and in the workplace.

### Interest in the Enquiry

The rural hearings of the Hepatitis C Enquiry gave the Board an excellent opportunity to reach new audiences. Media outlets in each town were approached with press releases and specially prepared fact sheets, which resulted in plenty of interest in the hearing and in the illness itself. Coverage in Newcastle, Goulburn, Dubbo and Wollongong was excellent — feature stories in newspapers, long interviews with the President on local and regional radio stations and stand alone stories on the local news. By far the best piece went to air nationally on the *7.30 Report* — an 8 minute story detailing the discrimination faced by people with hepatitis C, with good coverage of the hearings and an interview with the President.

*The Hepatitis C Enquiry members sitting at Dubbo; from left Chris Puplick, Hugh Murray and Suzanne Jamieson. Photo courtesy The Daily Liberal, Dubbo.*





### Talks & conference presentations

Staff from Legal and Policy Branch prepared and delivered a number of papers about discrimination law for legal professionals and others working in the area, including:

- a presentation on remedies to protect prisoners rights under the *Anti-Discrimination Act* at a Prisoners as Citizens Seminar organised by HREOC
- a paper on recent developments in discrimination law for an IES Conference on New Employment Law
- a paper on bullying and harassment for a Legal and Accounting Management Seminar
- a paper on how to manage pregnancy at work delivered at a Legal and Accounting Management Seminar
- a paper 'Anti-Discrimination Law — An Update' for a Business Law Education Centre HR Law Master Class
- a paper on understanding recent and proposed changes to anti-discrimination laws for an IIR Conference on Employee Relations
- a paper on maternity rights, parental leave, and work and family issues for an IES Conference on New Employment Law.

In December 2000, the Board jointly hosted the National Legal Officers Conference of human rights lawyers with the Human Rights and Equal Opportunity Commission. The theme for the conference was 'The Integration of Law and Policy'.

### Submissions

In 2000/2001, Legal and Policy Branch prepared various submissions on issues of importance, for example:

- The President made a submission to the Human Rights and Equal Opportunity Commission regarding their *Discussion Paper on Avoiding Religious Discrimination in Employment*, November 2000. We believe that the rights of religious bodies must be balanced with other human rights principles contained in international conventions to which Australia is a signatory, and which are embodied in domestic anti-discrimination laws. The Board is of the view that there should be an exception for religious bodies based only on the principle of genuine occupational qualification.
- A written submission was provided to the Senate Legal and Constitutional Legislation Committee Inquiry on the Sex Discrimination Amendment Bill (No 1) 2000. The Board strongly opposed the proposed amendments to the *Sex Discrimination Act 1984* because they would allow the States and Territories to discriminate against women on the grounds of marital status in the provision of fertility services. The Board submitted that were the Bill to be made law it would have grave consequences for human rights in Australia. The proposed amendments severely erode women's right to non-discrimination on the ground of marital status and set a dangerous precedent which may be used to justify further erosion of human rights protection in Australia. The President also gave oral evidence before the Committee.
- A written submission was provided to the NSW Parliamentary Committee's review of the Administrative Decisions Tribunal. Section 146 of the *Administrative Decisions Tribunal Act 1997* (the ADT Act) required a Parliamentary inquiry to be held into the jurisdiction and operation of the Tribunal as soon as practicable after 18 months of the Tribunal's operation. The President emphasised the need to increase the amount of damages the Tribunal may award in matters of discrimination, harassment, vilification and victimisation. This is needed both as a deterrent to discriminators, and as recognition of the impact that discrimination and harassment (which is often both systemic and ongoing) can have on an individual's ability to work and participate in society. The President also highlighted that in order for the Tribunal to act as an effective deterrent, there is a need to ensure compliance with the important orders it may make which have a broader effect on lives other than that of an individual complainant. For example, an order that an apology be published in relation to all Aboriginal people who have been found to have been vilified, or an order that a sexual harasser undergo training and that an employer develop policies and procedures for dealing with such matters. Given the fundamental public interest component inherent in the discrimination jurisdiction, the President also submitted that it is imperative that the Board's President is given the right to intervene in matters before the Tribunal. Such intervention should be at the President's initiative in relation to matters of particular public importance which have the potential to have broad ranging implications for the protection of human rights in NSW.

## Development of a self-funding service

In 2000/2001, the Board received additional funding from the Attorney General's Department to assess the feasibility of establishing some form of self-funding legal service. This is in response to a huge increase in the amount of legal work the Board has to do, without a corresponding staffing increase. Some options canvassed have been whether the Board could charge for some of the legal research we currently provide for free or whether we could increase the amount of legal education we undertake. We are currently assessing the advantages and disadvantages of the proposals, as well as whether we can do this without compromising our independence and impartiality.

## External involvements

The Board participates in a number of committees and working parties to monitor and try to reduce the impact of discrimination on our community. Committees which Board staff participated in throughout the year included:

- **Department of Corrective Services: Women's Advisory Network**

The Board participated in this committee, which advises the Commissioner for Corrective Services on issues affecting women.

- **Department of Women Transgender Working Party**

This Committee looked at cross government policy and procedural change necessary to ensure discrimination against transgender people is removed from public sector employment and service provision.

- **Industrial Relations Commission Users Group**

This group of users of the Industrial Relations Commission, such as unions, community legal centres and peak employer groups, is consulted about its views and recommendations on procedural matters in the Industrial Relations Commission.

- **Law Society's Human Rights Committee**

This committee is set up by the Law Society. It monitors human rights issues and makes submissions regarding human rights to government and non-government bodies.

- **Olympic Co-ordinating Authority Access Committee**

This committee was set up by the Olympic Co-ordinating Authority to advise it on access and disability issues in relation to all major Olympic venues and facilities.

- **Ombudsman's Complaint Handling Agencies Network**

This group look at ways complaint handling agencies can develop joint initiatives.

- **Pregnancy Code of Practice Taskforce**

This taskforce is developing a pregnancy code of practice under the *Occupational Health and Safety Act*.

## The President's involvement

The Board's President was involved in a number of committees and working parties established among agency chief executive officers throughout the State public sector:

- Department of Health Government Action Plan Committee
- Council on Cost and Quality of Government
- 2002 Gay Games Advisory Committee
- Attorney General's Disability Advisory Committee
- Department of Corrective Services: Anti-Violence Committee
- Small Agencies Forum
- Ombudsman's Network Group.

He also participates in a number of Commonwealth-State joint consultations.

The President also presented a number of papers at conferences during 2000/2001, including:

- *Safe Kids in Macarthur* — Child Protection Conference
- *Building a Community of those with very little in Common* — Local Community Services Association
- *Sticking Points: Immunisation, Technology and Rights* — National Public Health Immunisation Conference
- *Positive Programmes* — NSW Mature Age Workers and Aboriginal Employment Programmes.



### Homophobia in schools

It is widely acknowledged that school children can be cruel to each other, particularly when one of their peers differs from the accepted norm. This cruelty is at its most vehement when it comes to the treatment of gay and lesbian students. At this young age, the impact of such cruelty can be devastating and life long.

Unfortunately, it is not only students who discriminate against their gay and lesbian peers but teachers and education administrators as well.

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

The Board strives to inform students through its education programs of their rights and how they can seek redress for any discrimination they have been subjected to.

The age of consent also indirectly discriminates against gay students — the heterosexual age of consent is 16 and the homosexual age of consent is 18. Gay students can also be targeted for further harassment because of the illegality of acting on their sexual preference.

Public schools are, on the whole, more receptive to preventing discrimination and harassment. Private education facilities are not covered by the *Anti-Discrimination Act* in regards to homosexual discrimination, so unless an act against a student contravenes a criminal law, it is likely that a student has little formal recourse.

## Consultations

The Board organises a number of regular consultations with various groups within the community. The consultations organised in 2000/2001 included:

### Women's Consultation

In recognition of the discrimination and harassment that women experience, the Board has held a women's consultation since 1995. The consultation met four times during 2000/2001 and focused on gender discrimination and human rights in NSW as they affect women, including:

- the *Anti-Discrimination Act* and law reform
- the Board's internal procedures, policies and education programs
- substantial issues of discrimination facing women.

### What was achieved over the year?

This year participants were briefed on the following issues:

- amendment of the *Anti-Discrimination Act* to include carers' responsibilities as a ground of discrimination in employment
- the Board's interventions in a number of industrial relations cases, including the Equal Remuneration Principle Decision
- the Board's response to the Law Reform Commission report on the review of the *Anti-Discrimination Act*
- the Board's Enquiry into Hepatitis C Related Discrimination
- relevant recent decisions, including a Federal Court case relating to the unlawful termination of an employee on the ground of family responsibilities.

### Who participates

The Board's Women's Consultation includes representation from the Women's Refuge Working Party, Aboriginal Women's Legal Centre, NSW Working Women's Centre, Disability Discrimination Legal Centre, Older Women's Network, Australian Federation of Business & Professional Women — NSW, CRC Justice Support, Coalition of Activist Lesbians, Gay & Lesbian Rights Lobby, AIDS Council of NSW, Women's Electoral Lobby, People With Disabilities — NSW, NSW Council of Social Services, Immigrant Women's Speakout, Rural Women's Network, Women's Health Information Resource & Crisis Centre Association, Association of Non-English Speaking Background Women of Australia, Sex Workers Outreach Project, Tenants' Union, Women's Legal Resource Centre, Women's Health in Industry, NSW Labor Council, Women's Information & Referral Service, and Department for Women.

## Gay and Lesbian Consultation

The Board has convened consultations with gay and lesbian communities for well over 10 years. The consultation met three times during 2000/2001.

### What were the major achievements?

This year participants discussed the following issues:

- the Board's response to the Law Reform Commission's report on the *Anti-Discrimination Act* and the proposed change to expand the current ground of homosexuality to include all forms of sexuality
- the new *Property Relationships Act* and 'Acts of Passion' campaign, and outstanding areas of the law that discriminate against gays and lesbians
- access to IVF treatment for single women and lesbians
- the new carers' responsibilities ground of discrimination, and the matter before the Industrial Relations Commission from Catholic employers seeking exemption



- the impact of changes to taxation Benevolent Institution Status for charitable organisations.

### **Who participates?**

2010 (gay and lesbian youth refuge), Access Plus, AIDS Council of NSW, Anti-Violence Project, Coalition of Activist Lesbians, Community Support Network, Country Network, Ethnic Communities Council, Gay and Lesbian Counselling Service, Policy Officer Gay and Lesbian Liaison Attorney-Generals Department, Gay and Lesbian Rights Lobby, Gender Centre, HACC, Inner City Legal Centre, InterSection, Lesbian and Gay Solidarity, Lesbians on the Loose, Matrix Guild, Office of Tanya Plibersek MP, Order of Perpetual Indulgence, People Living with HIV and AIDS, People with Disabilities, Pride Centre, Police Consultant to Gay and Lesbian Communities and several Police Liaison Officers with special responsibility for dealing with gay and lesbian issues, Sex Workers Outreach Project, South Sydney Council, SPAIDS, Sydney Bisexual Network, Sydney Bi-Youth, Sydney Star Observer, Vincare, Westguys, several individual participants, representatives from various government departments and union representatives.

### **Transgender Consultation**

The Board met with the transgender community twice during 2000/2001 in recognition of the harassment and discrimination experienced by transgender people. The Board has met with members of the transgender community since 1996 when the *Anti-Discrimination Act* was amended to include transgender as a ground of discrimination.

### **What were the major achievements?**

Achievements this year included:

- discussion of the *Anti-Discrimination Act* and law reform — participants are particularly concerned about the distinction in the Act between 'recognised' and 'non-recognised' transgender people. In its submission to the Law Reform Commission, the Board recommended that this distinction be removed
- participants were briefed on the work between the Board, ODEOPE (Office of the Director of Equal Opportunity in Public Employment) and the Department for Women's Transgender Committee to revise the NSW public sector manual
- discussions with NSW Births, Deaths and Marriages to clarify or improve procedures or policies that may impact upon transgender people.
- discussions with Gay Games 2002 organisers to identify issues relating to transgender people as athletes or in other capacities
- participants were briefed on the Board's role in contacting other State discrimination bodies to promote a consistent national legal framework for recognition of transgender people.

### **Who participates?**

The consultation includes representatives from the AIDS Council of NSW, NSW Births, Deaths and Marriages, Gay Games 2002, Gender Centre, Inner City Legal Centre, Sex Worker's Outreach Project and individuals from the transgender community.

### **Indigenous Advisory Committee**

Details of this committee are outlined on page 34.

### **Intellectual Disability Consultation**

Details of this committee are outlined on page 46.

### **Transgender discrimination**

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

The law in NSW creates two categories of transgender people — recognised and non-recognised. Legal recognition of a person's change of sex is through an amended birth certificate or an interstate recognition certificate. However, some people who have had sexual reassignment surgery are unable to have their birth certificate amended because the registry that issued the original certificate does not issue amended birth certificates. The Board is also aware that many transgender persons do not want to have gender reassignment surgery because, for example, it has various significant risks attached or it is prohibitively expensive. Non-recognised transgender persons represent a significant proportion of the group requiring protection by anti-discrimination legislation in NSW, but they may not be fully protected by the current legislation. It is the Board's view that the distinction between non-recognised and recognised transgender persons should be removed.

The Board is also working to promote a national legal framework for recognition of transgender persons. The lack of national consistency has led to practical difficulties for transgender people who obtain recognition in one State or Territory and subsequently move to another State or Territory.



Ruth McCausland, Policy Officer in  
Legal & Policy Branch.

## Exemptions

There are two types of exemptions available under the *Anti-Discrimination Act* — s 126 and s 126A.

### Section 126A exemptions

This exemption is required when an employer or service provider wishes to run a special needs program or activity that would be discriminatory on a ground covered by the *Anti-Discrimination Act*. To apply for an exemption for a special needs program or activity, a person must apply to the Attorney General.

### Section 126 exemptions

These 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 *Anti-Discrimination Act*. To gain this exemption, the applicant should write to the President of the Anti-Discrimination Board setting out the nature of the exemption sought and arguments in support of it. The Statutory Board decides whether to recommend to the Attorney General that an exemption be granted. In making their recommendation, the Board takes into account the purpose of the *Anti-Discrimination Act* as legislation designed to promote equality of opportunity. The initial period of exemption can be for up to ten years with the possibility of further renewal for another ten years. Exemptions are granted under this provision when, for example, a job is designated for a person of a particular race or gender.

### Exemptions granted in 2000/2001 under section 126A of the *Anti-Discrimination Act*

Department or organisation	Special needs program or activity	Period of exemption
Contrary Mary Wimmin's Refuge Inc	Crisis accommodation for women and children experiencing domestic violence	10.5.2001 for an indefinite period
Dubbo Women's Housing Programme Inc	Housing program for homeless women and their dependent children	2.12.2000 for an indefinite period
Elsie Refuge for Women and Children Inc	Domestic violence refuge for women and their dependent children	23.8.2000 for an indefinite period
ISIS Fitness	Women's only fitness centre	29.6.2001 for 5 years
NSW Teacher's Federation	Annual Women's Conference exclusively for women members of the Federation	24.4.2001 for 10 years
QANTM Australia, in partnership with Northern Sydney Institute of TAFE	Diploma of Multimedia and Certificate IV in IT (Multimedia) program for women only	13.2.2001 for 5 years
Tweed Shire Women's Service Inc	Health Centre for women only	28.1.2001 for an indefinite period
Women's Activities and Self Help House (WASH House)	Small Loans Scheme to operate for women only and Mt Druitt Social Club to operate for adults with a mild intellectual disability	9.10.2000 for 10 years



**Exemptions granted in 2000/2001 under section 126 of the *Anti-Discrimination Act***

<b>Applicant</b>	<b>Program</b>	<b>Sections</b>	<b>Date granted</b>	<b>Expiry</b>
Bretrow Pty Ltd	To allow 'Value Over 40' Personnel Consultants to provide services to people over 40 years of age only	49ZYH & 51	13.2.2001 (5 years)	13.2.2006
Central Coast Volunteer Referral Agency	To employ a person under the age of 25 as a part-time co-ordinator of the pilot program 'Experienced Hands'	49ZYB & 51	23.11.2000 (10 years)	23.11.2010
Go Shigen Ryu — Martial Arts & Self-Defence School	To provide classes for women only	33 & 51	14.9.2000 (10 years)	14.9.2010
Livingstone Road Sexual Health Centre	To establish a sexual health clinic for men only to be staffed by a male sexual health doctor; a male sexual health nurse, a male social worker & a male receptionist	25, 33 & 51	28.5.2001 (10 years)	28.5.2011
Local Community Services Association with other education providers	To provide the course 'Life Experience Counts' to single gendered groups	31A & 51	23.11.2000 (5 years)	23.11.2005
Mission Australia	To designate and recruit for a traineeship position with Mission Employment in the Wollongong region for an Indigenous person	8 & 51	27.6.2001 (5 years)	27.6.2006
Mitsubishi Motors Australia, in conjunction with Horwath Recruitment & Training Pty Ltd	To recruit and employ women only for positions of sales consultants in the motor vehicle industry	25 & 51	8.5.2001 (2 years)	8.5.2003
National Trust of Australia (NSW)	To designate and recruit for a position as a Conservation Officer for an Aboriginal person	8 & 51	5.4.2001 (10 years)	5.4.2011
Office of the Children's Guardian	To designate and recruit for two positions of Case Monitoring & Review Officers for Indigenous people	8 & 51	27.6.2001 (10 years)	27.6.2011
Olympic Roads & Transport Authority, the State of NSW, Bus 2000 Ltd, certain other public & private bus operators	To limit the provision of accessible bus services on regular routes to provide accessible buses on routes servicing athletes and spectators for the Olympic and Paralympic Games (subject to certain conditions)	49M & 51	2.9.2000 (2 months)	2.11.2000
Penrith City Council	To designate and recruit for two positions as Child Care Assistants as positions for Indigenous people	8 & 51	8.5.2001 (10 years)	8.5.2011
Sutherland Shire Council	To designate a position on the Council's Environmental Services Division for an Aboriginal person	8 & 51	29.9.2000 (10 years)	29.9.2010
Sutherland Shire Council	To designate and recruit for three positions — a Records Assistant, an Administration Assistant at the Hazelhurst Regional Gallery and a Support Officer in the Cultural Planning and Events Unit — as positions for Indigenous people	8 & 51	28.5.2001 (10 years)	28.5.2011
Wollongong City Council	To designate and recruit for up to a total of 10 positions for trainees, apprentices or cadets for Indigenous people	8 & 51	2.4.2001 (5 years)	2.4.2006
Wyong Shire Council	To designate and recruit for the positions of Engineering Design Officer; Labourer: Water and Sewerage Operations and Child Care Assistant as positions for Indigenous people	8 & 51	15.5.2001 (4 years)	15.5.2005



# *appendices*



## Our guarantee of service

### Why is there an Anti-Discrimination Board?

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

### What do we do?

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

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

### How can the Board help me?

The Board provides the following main services:

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

### How will the Board's staff treat me?

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

### What can I expect from each of your services?

#### **General Enquiry Service & Employers Advisory Service**

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

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

You can use either of these services by phoning any of offices (in Sydney, Wollongong or Newcastle) between 9 am and 5 pm, Monday to Friday or visiting any of our three offices between 9 am and 4.30 pm. You can also write to us. You can expect accurate, prompt, sympathetic, confidential and

free advice. You do not have to give us your name if you do not want to. If you visit us, a duty officer will see you as soon as possible. You do not need an appointment in the Sydney office. However, as our Newcastle and Wollongong offices are very small, it is probably best to phone before you visit.

### ***Discrimination Complaints Service***

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

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

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

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

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

### ***Talks and training sessions***

The Board has an ongoing program of providing training/information sessions to various groups in the community who need to know about their responsibilities and/or rights under anti-discrimination law. As part of this program, the Board can usually provide speakers and trainers on request. Phone our Education Services Branch at our Sydney Office, or one of our Regional Offices.

### ***Publications***

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

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

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

## *Publications list*

### **Factsheets**

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

### **Posters**

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

The Anti-Discrimination Board of NSW produces a wide range of publications. The publications available from the Board are listed here. Please call in, write or telephone us if you want any of our publications. Office hours are Monday to Friday, 9 am – 5 pm. Information is also available on our website. Our addresses are on the back cover.

*Below: Milly Stylli processes the Board's publications orders.*



### **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 (revised edition)
- Anti-discrimination guidelines for people who advise clients, consumers and members of the community about their rights (revised edition)
- Conciliation — a guide for complainants and respondents
- Exemption guidelines
- Guidelines for advertisers
- Guidelines for financial advisers
- Guidelines for media (vilification)
- Guidelines for providers of goods & 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 & procedures disk

### **Other publications**

- Anti-Discrimination Board Annual Report 1999–2000
- Anti-discrimination law and charities
- Discrimination and harassment: The rights and responsibilities of employees (training kit for vocational teachers)
- Equal Time quarterly newsletter
- Guarantee of service
- Know your rights: A guide for Aboriginal and Torres Strait Islander people
- Know your rights wallet card
- Pre-employment medicals
- Services for employers brochure
- Services for you, your clients and communities brochure
- Training sessions for employers and service providers