

Equal Time

Number 59 March 2004

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

Skilled migrants have much to offer our economy and society. On page 2-4 we examine why many of these migrants have difficulty gaining employment that uses their skills

From the President

It is interesting to sit in this position and to observe how many areas of society are addressing discrimination and harassment. You will see in the contents of this ET that sporting bodies across Australia are accessing online programs to become informed about appropriate behaviours; workplaces are now very accepting of the need for policies and training to ensure their employees are aware of their rights and responsibilities; community groups – whether voluntary or funded – frequently contact the Board to ensure that they are providing non discriminatory services to clients; professional groups frequently have workshops on non discriminatory policies and practices in conferences they organise.

This is not to say that such a heightened awareness results in no discrimination. We hope that it results in less discrimination but it is wise for organisations to remain vigilant as you will see from the conciliations and case law outlined in the contents of this edition of ET. You will also see from some of these cases that they can become complicated legal arguments.

It still surprises me that some employers and managers are either not aware of the behaviour of their staff towards fellow employees and clients or are aware and chose to do nothing about it.



Also, there is still little understanding by many of the carers' responsibilities ground within the Legislation.

As the Board settles in to 2004, the success of its hard working teams is producing results. The Education team is as busy as usual and has taken on an extra trainer, Simon Barton whose brief biography is contained in this edition. In the first few months of this year Enquiries and Complaints Branch has finalised over 220 complaints. The backlog of complaints is being eroded. The Board continues to improve efficiency in complaint handling.

The Anti-Discrimination Board continues to perform its important role of working towards a society where every person is able to live and work free from unlawful discrimination, harassment and vilification in their public life.

Stepan Kerkyasharian AM

Join the Brain Gain

What skilled migrants can offer

Skilled professionals are able to migrate to Australia depending on the economy and the employment market. Migrants coming under other humanitarian and refugee programs may also have many skills to offer the Australian economy.

However, many of these migrants have a great deal of difficulty finding a job where they can use their skills. They may end up having long periods of unemployment, or working in positions in which their education and experience are wasted.

A survey of more than 100 skilled migrants found that 90% had sent more than 200 job applications during the first 6 months they were in Australia, but received no interviews.

In gaining employment the most common problem faced by skilled migrants is lack of local experience. It is the old story of not being able to get local experience until you can get a job, but not being able to get a job until you have local experience.

This is exacerbated by lack of awareness among employers about the skilled migration program. Employers may be experiencing difficulty employing suitably qualified people for certain positions due to a labour shortage in the area, but not know that the government has targeted migrants with these skills. While the employer therefore continues to place local experience over skills, they may overlook a potentially suitable candidate from the migrant program.

In an attempt to gain local experience, many skilled migrants apply for positions that are at a lower level than they are qualified for or at which they worked in

their home country. However they are often rejected for these as well, on the grounds that they are overqualified.

Some employers are wary of overseas qualifications, particularly from developing countries. This may be the case even when the person has gained full recognition from the relevant professional association in Australia.

Employers may also be wary of employing someone who speaks with a strong accent or is unfamiliar with colloquial Australian, but in many cases this will not affect their ability to do the job or communicate with their fellow employees. In addition, skilled migrants generally have good basic English skills and the jargon of their industry and will quickly pick up more colloquial language once they are in a position to do so.

There are also issues relating to the recruitment process in Australia. Adequately addressing the selection criteria for a position may require a higher level or style of English than the position itself, new migrants may not have the language skills or cultural familiarity to pick up the nuances of the interview process, as

well as cross-cultural issues, for example, in some cultures the very idea of promoting yourself is looked on unfavourably. In addition, many positions are filled via professional networks which new migrants may not have.

People migrating to Australia under the skilled migration stream are not eligible for unemployment assistance, and may find themselves in serious financial hardship. They are often forced to take low-paid manual jobs which are frequently casual, making it difficult for them to make plans or borrow money. Some give up the struggle and return to their country of origin with an unfavourable impression of Australia and increased financial problems.

Voluntary work experience placements often provide the best means for skilled migrants to gain a foothold in their field, and give employers a chance to assess whether a potential recruit is suitable for permanent work. This can also provide other benefits for employers, such as new ideas from an international perspective, improved information about ethnic markets, and the opportunity to work on projects currently on the back burner.

Gaining that vital foothold

Funded by the NSW Department of Education and Training, the Skilled Migrant Placement Program helps migrants with preparing resumes and applications, preparing for interviews, planning how to get a job in their field, approaching employers, getting qualifications recognised and organising work experience placements. This assistance is crucial in gaining that vital first placement which can establish a skilled migrant in their profession in Australia.

Clients of the Program have established a Skilled Migrant Network in Auburn, an area in Western Sydney where many skilled migrants live. The network has been very successful in providing support for skilled migrants and a forum for discussion and education.

Guest speakers have given members very valuable training on the process of recruitment in Australia and strategies for keeping motivated in the search for a job. Informal networking at the meetings has resulted in a number of members gaining work placements and permanent positions. The group is also becoming a forum for consultation on multicultural issues.

If you want more information or would like to consider providing a work experience placement for a skilled migrant, please phone the Inner West Skills Centre on 9749 5063, and they will put you in touch with your nearest Skilled Migrant Placement Officer.

Four years after he first arrived in Australia, Said Mohamud was finally able to obtain a professional job with the assistance of the Skilled Migrant Placement Program.

Said comes from Somalia. His father was an academic who was co-opted to “advise” the military government which was in power in Somalia until 1990, and his uncle was also a minister in that government. When the regime was overthrown, several family members were killed and others were brutally victimised.

Said’s family moved to Kenya when he was in his early 20s, and he went to Pakistan to study. He completed a Bachelor of Applied Science in Agriculture at the University of Faisalabad, and a Masters in Biotechnology at Sindh University. These degrees were completed in English and his spoken English is very fluent.

It was difficult for Said to find a job in Pakistan due to the economic situation and perhaps because employers preferred local residents. His student visa had expired, so he came to Australia where he was granted refugee status almost immediately.

He then set about trying to find a job in his field, but had no success even when he offered to work for free for several months as a trial. He received many refusal letters over the next two years.

From the feedback he was given and his own impressions, Said feels that employers were concerned that he would not adjust to the workplace culture in Australia. He thinks they also might have a negative reaction to a foreign accent, particularly over the phone.

Said worked in a factory for some time, undertook studies in information technology at the University of Western Sydney and continued his job search. Eventually, with the assistance of Jennie Dunlop, the Skilled Migrant Placement Officer at the Inner West Skills Centre, he found a position as the laboratory assistant manager at a biotechnology laboratory.

Said says the assistance of the Skilled Migrant Placement program was



Continued on page 4

Gaining that vital foothold

continued from page 3

very important in securing his position – a maternity leave replacement that was subsequently extended. Jennie helped him to develop his resume and address the selection criteria, and liaised with the employer about the position. Many other skilled migrants have been helped in similar ways.

Once in the position, Said learned a lot about Australian workplace culture. He believes that some of the problems faced by skilled migrants do not result from discrimination based on colour, but relate more to cultural differences and lack of local experience. He believes that confidence is the key – if skilled migrants believe in themselves and their skills, eventually they will be successful.

He also says that learning to deal with human resources personnel is very important. HR people are often the ones who decide whether to give a skilled migrant a chance, but have their own protocols and ways of operating which are difficult for the uninitiated to negotiate.

Said was retrenched. He has however, been offered a 12 month

contract with the same company at another site.

Despite the difficulties he has encountered, Said believes he made the right decision in coming to Australia, as it is the best place for him to reach his ambitions. Eventually he hopes to work for an international company or agency and contribute to the emerging biotechnology industry in Africa.

Migrant Career Development Program

The Migrant Career Development Program is another initiative funded by the Department of Education and Training to assist skilled migrants. Delivered by the Office of Employment Equity and Diversity, it offers skilled migrants the opportunity to undertake paid work experience placements in the NSW Public Sector. Agencies receive an incentive payment and gain access to a field of highly-skilled and experienced applicants to carry out valuable projects. Many applicants have a tertiary education from overseas, some at Masters or PhD level, and extensive overseas experience in their profession. If you would like more information on offering a placement you can contact Victoria Jovanovski on (02) 9248 3513.

The Labour-Management Studies Foundation at Macquarie Graduate School of Management (MGSMS) presents the

16TH WOMEN, MANAGEMENT & EMPLOYMENT RELATIONS CONFERENCE



- managing change
- leadership
- gender

22-23 July 2004 Hotel InterContinental Sydney
Corner Philip & Bridge Streets, Sydney

<p>CONFERENCE TOPICS</p> <ul style="list-style-type: none"> • Is Gender still on the Agenda? • Women in Management: A CEO's Perspective • Managing Change: Managing Stress • Leadership is Women's Business • The Sex Discrimination Act: 20 Years On • Women at Work: Tackling Prejudice • Parental Leave: Who's Rocking the Baby? 	<p>SPEAKERS INCLUDE:</p> <ul style="list-style-type: none"> • Sharan Burrow • Commissioner Pru Goward • Mary Kostakidis • Margy Osmond • Dr Barbara Pocock • Senator Natasha Stott Despoja • Dr Anne Summers 	<p>KEY-NOTE ADDRESS</p> <p>Mara Moustafine</p>
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Combined forums Do it right project

The third combined information forum, in which a number of government agencies combine to provide information for Aboriginal and Torres Strait Islander workers and community members, was held in Tamworth in December 2003.

As well as the Anti-Discrimination Board, the organisations involved included the State Office of Industrial Relations, the Office of Fair Trading, the Australia Taxation Office, the Federal Office of Industrial Relations and the NSW Work Cover Authority of NSW.

The forums aim to provide people with their rights and responsibilities as well as those who advise the Aboriginal and Torres Strait Islander community with information on a range of rights issues, including harassment and discrimination, workplace occupational health and safety, workers compensation laws and entitlements, employment and industrial relations laws in NSW, tax and superannuation issues, consumer rights and fair trading.

As with similar events held previously, participants were very positive about how well the forum worked. Having all the agencies in one place is particularly helpful because it enables people to look at all the relevant jurisdictions simultaneously. Local community workers can also establish personal contact with the relevant advisor from each agency, which will streamline future communication.

Issues which emerged as being particularly relevant to the Aboriginal and Torres Strait

Islander community included:

- employers' and employees' rights and responsibilities under the different jurisdictions;
- what benefits are available to organisations and individuals;
- what pitfalls to avoid and what rights people have when making a purchase;
- the roles and liabilities of coordinators and board members in community organisations;
- what training is appropriate for staff; and

- suitable policies and procedures for community employers and organisations.

The next five forums will be at Armidale on 18th and 19th March, Orange on 1st and 2nd April, Wagga Wagga on 13th and 14th May, Condoblin on 10th and 11th June, and Narrandera on 26th and 27th August.

For more information phone the Board on (02) 9268 5555 and ask for Narelle, Felicity or Nathan.



Back Row: Kim Connors, Margaret Quinlan, Donna Taylor. Seated: Will Paulson, Carol Duke, Troy Cochrane



Back Row: Anthony Whyburn (RLWhyburn & Assoc), Tony McEnally (Australian Taxation Office), Robert Snell (Australian Taxation Office). Second Row: Peter Schmarr (Federal Office of Industrial Relations), Rae Hamilton (State Office of Industrial Relations), Sally-Anne Burrow (Office of Fair Trading), Russell Webb (Workcover Authority of NSW), Jeff King (Office of Fair Trading). Front Row: Felicity Huntington, ADB

Carer's responsibilities and the question of 'reasonableness'

A recent decision of the appeal bench of the Administrative Appeals Tribunal has shed further light on the question of "reasonableness" in relation to carer's responsibilities.

The case had been the first to be decided under the carer's responsibility provisions contained in the NSW Anti-Discrimination Act, 1977. It involved a WorkCover manager who argued that, rather than relocate to the Central Coast, she could remain in Sydney and work from Sydney based Workcover offices. She said that the amount of travelling between her home and the Central Coast would prevent her from caring properly for her children in that she would have very restricted time to see them on the days she travelled to Gosford.

She argued that requiring her to move her office to Gosford was indirect discrimination on the ground of carer's responsibilities.

The definition of indirect discrimination is if the employer "requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have such responsibilities comply or are able to comply, being a requirement that is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply." (49T1(a) ADA).

Along with a high proportion of

other people with carers' responsibilities, the applicant could not, she said, comply with the requirement to relocate to the new offices. Indeed, all of the managers who did not have specific, direct carers responsibilities, as defined by the legislation, were men. All of them could comply with the requirement. Both of the women managers had specific, direct carers' duties and neither was able to relocate.

The applicant claimed that the discrimination was unlawful, because it was not a reasonable requirement.

What were the arguments?

The applicant said that she hadn't known the proposed move would affect her when she accepted her position. She said that she hadn't taken up the offer of another job, or help with relocation, because she was hoping to stay in Sydney in her present position.

WorkCover tried to negotiate a compromise arrangement, offering her the opportunity to work more flexible hours. The applicant claimed, however, that despite flexible hours, the extra travelling meant that she could not care for her children.

The tribunal dismissed the application because, it said, she had the onus of proving that the requirement to work five days per fortnight at Gosford was "not reasonable having regard to the

circumstances". She hadn't proved the requirement was unreasonable.

The Tribunal stated that, to decide whether the requirement was reasonable, it had to balance the nature and extent of its discriminatory effect against:

- The reasons for the requirement, including commercial considerations;
- Whether the requirement is appropriate, adapted to its purpose, and has a logical and understandable basis; and
- Whether there is a less discriminatory option, accommodating the needs of the aggrieved person and the possibility of alternative action which would achieve the object of the condition.

It accepted that Workcover had good management reasons for the move to Gosford, and the applicant had known about it for some time. Workcover had made a serious attempt to find an accommodation that would allow the applicant to fulfill her caring responsibilities, including reducing the number days she had to work in Gosford.

The applicant appealed.

The appeal

Before the appeal bench, it was argued on behalf of the applicant that the tribunal had imposed the wrong test. It wasn't a question of "balancing" the arguments for and against the requirement, it was

Play by the Rules

Fair and safe behaviour in sport and recreation

claimed. Rather, the tribunal should have “weighed” the arguments. The appeal bench did not find this argument very strong.

It also rejected the applicant’s argument that the tribunal had not taken into account the right considerations in reaching its conclusions.

The applicant’s legal representative produced a list of considerations that should be taken into account. These included the nature of the employer, the job, the requirement and its rationale. Other relevant considerations listed included the effect of the requirement on the applicant, the interests of third parties, financial implications, the employer’s EEO policies, the availability of less discriminatory options.

The appeal bench noted that there is no list of considerations contained in the Act but that the tribunal had considered most of the factors listed anyway. It stated that the tribunal had found that there “was no disproportion between imposition of the requirement ... and the efficient and effective performance of the activity in which [WorkCover] was engaged.

The appeal was dismissed.

Gardiner v NSW Workcover Authority [2003] NSWADT 184 911 August, 2003;

Gardiner v WorkCover Authority of NSW (EOD) [2004] NSWADTAP 1.

Behaviour within sport can be discriminatory or harassing, as many of us have experienced or witnessed.

Although voluntary sporting groups are not covered by NSW Anti Discrimination Act, many have decided that they do not want discriminatory or harassing behaviour within the code. Many sporting codes view harassment and discrimination as unacceptable behaviour and not at all reflective of what sport is about - that is teamship.

Recently, a national conference of governmental equal opportunity bodies and sporting bodies met to further promote Play by the Rules. The South Australian Equal Opportunity Commission and the South Australian Office for Recreation, Sport and Racing has written and developed this excellent program to assist various sporting codes to educate coaches and players. It provides information and online learning on Equal Opportunity and other relevant legislation to address inappropriate behaviour in sport. It compliments the Australian Sports Commission’s harassment free Sport strategy. It encourages people to see that everyone needs to feel safe and to act fairly and respectfully towards each other.

To find out more about Play by the Rules visit www.playbytherules.net.au.

The NSW department of Sport and Recreation website (www.dsr.nsw.gov.au) also has information about appropriate behaviour, including a report on the conference held on Sportrage.

NEW FACES

Simon Barton joined the Board’s Senior Workplace Relations team. Simon is highly regarded as an engaging and knowledgeable presenter. His background is in both public and private sector organisations developing, delivering and evaluating specialist training programs such as Occupational Health and Safety, Mediation, Communication Skills and Team Development and EEO. He has worked extensively in rural and regional areas providing HR advice and consultancy for local councils, schools, government agencies and rural industries. Simon has Bachelor of Economics degree, Diploma of Education, Certificate IV in Workplace Training and Assessment, Certificate IV in Occupational Health and Safety and is an accredited WorkCover Trainer and accredited mediator.



Legal developments

Queensland Industrial Relations Commission

Badke v Orchid Key No 2 Pty Ltd, No B1172 of 2003

Race discrimination

Date: 13 January, 2004

Ms Badke was employed as a part-time clerk in a Queensland club. The club had Japanese management and catered for Japanese visitors.

She did not speak Japanese, but during the three years she was employed, management accommodated this lack by providing an interpreter each week to assist with necessary communication.

After a restructure, Ms Badke's employment was terminated. She was told that the company needed someone who could read and write both Japanese and English. Incensed, she then took her case to the Industrial Relations Commission and argued that her dismissal was unfair.

She had, she said, been discriminated against on the ground of her race. Under anti-discrimination laws, "race" can include "attributes" of race, such as skin colour or language. Racial discrimination can involve being treated less favourably than others in similar circumstances because of an attribute of your race.

The Commissioner, however, said that Ms Badke had not been discriminated on the ground of

race. Less favourable treatment because of an inability to speak a particular language, such as English, may well constitute race discrimination. In this case, the Commissioner said, the ability to read and write in Japanese was a genuine job requirement.

Federal Magistrate's Court

Rispoli v Merck Sharpe & Dohme & others [2003] FMCA 160

Maternity leave

Date: 3 October, 2003

Before she went on maternity leave, Ms Rispoli agreed, in principle, to taking on a different role when she returned. The new role would, she was assured, be comparable in remuneration and status.

Ms Rispoli took six months maternity leave then applied for a further three months. This was granted on condition that she agreed to move permanently into another equivalent role. The company wanted to appoint the person currently acting in her job to a permanent position.

When she returned to work, Ms Rispoli found herself in a lower grade job with less responsibility and no budget. She had previously been responsible for a \$1 m budget. The "developmental opportunity" she had been promised failed to materialise.

She stayed with the company, however, and eventually moved to a more satisfactory project. Sixteen

months down the track, however, she resigned.

Ms Rispoli claimed, successfully, that she had been discriminated against on the ground of sex under the federal Sex Discrimination Act.

Despite her win, the fact that she stayed in the job meant that Ms Rispoli couldn't claim compensation for financial loss. The magistrate, however, awarded her \$10,000 for the loss of status and the company was ordered to give her a written apology.

WA Administrative Appeals Tribunal

Taylor v Comcare/Department of defence, AAT, W2000/429

Grievance handling

Date: June, 2003

It is becoming increasingly obvious that employers need to ensure that their grievance handling processes are impeccably fair.

Ms Taylor alleged that she was sexually harassed by her superiors on board the HMAS Stirling. When her complaint was investigated, however, she was found guilty of "collusive conduct" with two colleagues to prevent their superior's promotion. An internal investigation declared that she was not a credible witness and recommended that she be charged with "prejudicial behaviour" and given a formal, written warning.

How then, did she manage to win a stress claim?

After the investigation was completed, Ms Taylor consulted a navy medical officer and a civilian GP for depression. She lodged a claim for anxiety, alleging that the stress of the investigation had contributed to her condition. She was discharged, but Comcare

doctor's argued that her depression was caused by personal factors unrelated to the investigation.

The AAT disagreed, and decided that she had been incapacitated by the investigation. She was awarded worker's compensation.

Australian Industrial Relations Commission

Robert Douglas Korten v Serco Sodexho Defence Services Pty Ltd.

Policy development/grievance handling

Date: 3 October 2003

This isn't an EEO/discrimination/harassment case, but the decision is important because of what it says about policies.

The applicant claimed that he had been unfairly dismissed after approaching a fuel spill with a lighted cigarette. He claimed the risk was minimal. He'd put out his cigarette at least 17 metres away from the spill, which was small and involved a fuel that had a high flashpoint.

Serco Sodexho's policy, however, stated that employees should not approach within 25 metres of a fuel spill.

The Commissioner agreed that the firefighter's attitude was "cavalier" and "complacent" and that Serco was justified in dismissing him. Serco hadn't, however, considered his 20-year good service record, and hadn't investigated the matter fairly.

Of particular interest, are his comments on Serco's policy for emergency procedures. It was, he said, inadequate. It didn't set out a procedure for dealing with fuel spills. Rather, it relied on employees' commonsense. This, he said was too subjective and too variable.

Finding also that Serco had not made sure staff knew about its smoking rules, and hadn't consistently enforced the rules, the Commissioner found that the dismissal was "harsh, unreasonable and unjust".

Australian Industrial Relations Commission

Williams V Centrelink

Emails, harassment contact officers

Date: February 2004

Twenty four staff at this Centrelink office were investigated after a report alleging breach of Centrelink's email policy. Of the 24, 2 resigned and 2 were dismissed. The others were subject to disciplinary action.

The applicant was one of those dismissed and he felt hard done by. He argued that his dismissal was unfair. He hadn't, he said, read the relevant policy document because he was too busy. He had, at one time, asked his manager (one of those who resigned) whether breaching the email policy was a

disciplinary matter. He'd been told that it was a performance issue only.

The applicant complained that his dismissal was unfair. No-one was offended, he said, the others hadn't been dismissed and he didn't believe he'd done anything wrong.

The Australian Industrial Relations Commission was not impressed. For one thing, the applicant had been trained as an Harassment Contact Officer, and should have had some appreciation of the issues. The Commission said that this was a position of responsibility.

The Commission thought that if the applicant hadn't spent so much time sending and receiving pornographic emails, he might have had more time to read the APS Code of Conduct.

The investigation had been fairly conducted and the applicant had had a fair chance to put his case. The evidence showed, however, that he had sent and received more, and more offensive, emails than anyone else!

The Commission upheld the dismissal.

FOR MORE INFORMATION

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

Guidelines for union representatives

Identifying and eliminating discrimination in NSW industrial instruments

How to implement EEO in any organisation

Harassment in the workplace

Grievance Procedure Guidelines

To order, contact Milly Stylli on 9268 5555

Conciliations

Disability discrimination in employment

The complainant was a customer service officer for a manufacturing company. She alleged that after injuring her back she was refused permission to sit rather than stand at the customer service counter, was denied treatment for her injury during working hours and was unable to access locations for staff functions. She was also disciplined for allegedly not performing her duties adequately and ultimately her employment was terminated.

The respondent disputed which job the complainant had been employed to do, and said that she was terminated because of poor performance not because of her disability. The complaint was resolved when the respondent agreed to pay the complainant \$2,500.

Sexual harassment in employment

The complainant was an accounts manager for a small business that operated out of the owner's home. She alleged that she was sexually harassed by a number of the directors of the company, who did things like appearing where she was working wearing only a towel, making comments about her clothing, kissing her on the lips and talking about sex. She eventually resigned and got another job, but this had a lower rate of pay.

The respondent did not deny the allegations, but disputed some

details and alleged that the complainant had invited a level of informality by bringing personal issues into the workplace. The complaint was resolved when the respondent agreed to pay the complainant \$5,000.

Disability discrimination in employment

The complainant worked for the respondent as an outdoor hand. He had sustained a prior work injury and was consequently on restricted duties. He alleged that his supervisor verbally abused during a meeting between him, his employer and his rehabilitation provider, after he had expressed concern about the discussion of his ability to perform certain tasks.

The complaint was resolved when the complainant and the supervisor exchanged statements of regret regarding their verbal exchange during the meeting.

Sexual harassment in employment

The complainant was employed as a reception clerk in the hospitality industry and made a complaint of sexual harassment against his employer and an individual respondent. He alleged that the individual respondent prepared a meal for him which consisted of a sausage and two cherry tomatoes arranged to resemble male genitalia, and also pinched him on the buttocks.

The individual respondent

admitted to the conduct but said that the complainant's prior actions had led him to believe it would not be unwelcome, as the complainant had engaged in conduct of a sexual nature towards the respondent and other employees on numerous occasions. The employer did not have a sexual harassment policy at the time of the incidents.

The complaint was resolved when the respondents agreed to provide the complainant with statements of regret, a statement of service, and \$5,000, and the complainant agreed to vacate the premises of the respondent where he was still residing. The parties also agreed that the employer would implement a sexual harassment policy and train all its staff.

Sex (pregnancy) discrimination in employment

The complainant worked for a company which ran a chain of shops. She became pregnant, and during her pregnancy renovations began in the shop in which she was working. While this was being completed, the company only had a kiosk in this shopping centre, which meant that the complainant would not have the same level of responsibility.

She alleged that when she requested a transfer to another shop where she could work at the same level, the respondent said they would do this, but when she turned up for work at the new location she was told there was no job there for her.

She also said that a new person was employed for her old position when the renovations were completed and she was forced to resign.

The complaint was resolved when the respondent agreed to pay the complainant \$6,000.

Sex (pregnancy) discrimination in employment

The complainant was employed as a housekeeping manager of a large hotel. She informed her manager that she was pregnant in the early stages of the pregnancy. She was hospitalised due to pregnancy related illness for a period of 2 weeks. Upon her return, her manager informed her that he was placing her on light duties which she later discovered was on reception. Her salary was to be maintained, but she lost a number of entitlements such as parking and meal privileges. Another person was appointed to her position. She was greatly distressed by the hotel's actions and left employment earlier than planned and was unable to find another position. The hotel admitted that things could have been managed more appropriately and the matter was settled for \$8,000.

Sexual harassment in employment

The complainant was a regular customer at this entertainment venue and alleged she was sexually

harassed by another customer whilst she was drinking at the bar. A security officer was called and he undertook certain 'investigations' which did not result in any action being taken against the alleged harasser. In fact the complainant was asked to leave. Although the venue believed it had acted appropriately the matter was settled for \$1,000.

Sex (pregnancy) discrimination in employment

A woman working in an administration job informed her employer when she became pregnant and asked for light duties. Her employer raised an issue of work performance and time taken off by the complainant which they said was not pregnancy related. The woman became stressed and went on maternity leave earlier than she had planned to. The matter was listed for a conciliation conference, but resolved prior to a conference being held after intensive negotiations with both sides by the ADB. The employer agreed to pay \$2,500 and the complainant resigned from the position.

Race, sex and disability discrimination in employment

The complainant was an Aboriginal woman working in an organisation. She alleged that she was treated unfavourably because of her race and sex. Despite being fully qualified she believed that her supervisor undertook unnecessary monitoring

of her work and generally treated her in a patronising way in comparison with non-indigenous workers.

She also developed a back problem which meant that she was unable to continue working with the group she had originally been assigned. Despite continual requests that she be transferred to work with another group her request was not met. This was despite a vacancy occurring with a suitable group. This vacancy was filled by a casual worker.

The complaint was resolved at conference with \$2,500 paid to the complainant. The employer also undertook to request that the supervisor make a written apology to her and be made aware of the employer's policies regarding Aboriginal cultural awareness.

Worried that you're not up on the latest developments in discrimination law?

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

For more information contact Lesley Ashwood on 9286 5520

The Anti-Discrimination Board of NSW



What types of discrimination do we deal with?

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

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

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

Grounds

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

Areas

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

Where we are

Sydney

Level 17, 201 Elizabeth St, Sydney NSW 2000
PO Box A2122, Sydney South NSW 1235
ph (02) 9268 5555, fax (02) 9268 5500, TTY (02) 9268 5522
Enquiries/Employers Advisory Service (02) 9268 5544

Wollongong

84 Crown St, Wollongong NSW 2500
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Level 1, 414 Hunter St
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Toll free number — 1800 670 812

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