



Anti-Discrimination
New South Wales

Dear Parliamentary Committee 5,

Please see my responses to the Questions on Notice received during the 9 June 2020 hearing into the Anti-Discrimination Amendment (Complaint Handling) Bill.

Question 1:

The Hon. SHAOQUETT MOSELMANE: *“You have indicated in your opening statement that about 17 per cent of the applications are withdrawn and another 15 per cent are abandoned. I hope I have got that right. Are they encouraged to be abandoned or withdrawn or do applicants suddenly withdraw or abandon their application? What is the process? What is the background of the statistics?”*

Response:

Anti-Discrimination NSW (ADNSW) does not encourage complainants to abandon or withdraw their complaints.

Conciliation Officers at ADNSW maintain contact with all parties throughout the complaint handling process and provide information about the status of the complaint. ADNSW is impartial and does not advise parties what steps to take in relation to complaints.

Complainants who withdraw their complaint must do so in writing (s92B). Complainants do not always advise ADNSW of their reasons for withdrawing complaints. Some reasons complaints may be withdrawn include:

- the complaint is not covered by the *Anti-Discrimination Act 1977* (NSW)
- the complainant may be satisfied with the respondent’s response
- the complainant may lack support for the complaint
- the complainant may be unable to provide the information ADNSW has requested
- the complainant may lack confidence that the respondent will provide a satisfactory response.

Complaints are considered abandoned if the complainant does not respond to ADNSW’s requests for information, there is no indication they intend to proceed with the complaint, or if ADNSW loses contact with the complainant. Complainants are

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given a warning under s92C before the file is closed. The complaint may be reopened in certain circumstances.

Question 2:

Ms ABIGAIL BOYD: *“Of the 8 per cent that were declined, plus the 4 per cent that were declined but then went to NCAT, were any of those declined on the basis of vexatious complaint?”*

Response:

No complaints were recorded as declined under s 92 only for being vexatious for the last five years. This statistic may not reflect complaints that were declined for multiple reasons that included vexation.

ADNSW's database only allows a single reason to be recorded when a complaint is declined. As such, if a complaint were declined for multiple reasons, such as 'lacking in substance' **and** vexatious, only one reason would be recorded.

Question 3:

Ms ABIGAIL BOYD: *“Do you have any statistics for how many complainants are repeat complainants?”*

Response:

I do not have full statistics. ADNSW can only provide information on multiple complaints made within a single year. Our database does not allow accurate tracking of multiple complaints made over several years.

A complainant may experience multiple events of discrimination over a period of time. These may be legitimate allegations on each occasion. An example is an ongoing dispute with a local government authority or an employer.

A single written complaint made to me can involve several separate respondents, or several grounds within the one matter leading to the creating of several separate complaint files. For example, a person may complain about both race and sex discrimination in a single event. ADNSW will create separate files in order to capture the different aspects of the whole complaint. That in and of itself does not make the complainant a repeat complainant.

A complaint of workplace sexual harassment could involve potential liability for each of several respondents, including the employer and any individual harasser/s. Because each complaint could have a different outcome – some might settle whilst others may proceed to the Tribunal – a separate complaint file is created in relation to each respondent.

A parent might make a number of complaints on behalf of several family members, especially children, which arise from a single event of alleged discrimination against the family as a group. The statistics below do not include where multiple complaints were made by the same person on behalf of another person/s.

To allow for accurate recording of outcomes, each file is recorded as a separate complaint in ADNSW's database.

The statistics below do not indicate if repeat complaints were made on the same or similar grounds as previous complaints.

Each file may have a different outcome and is recorded as a separate complaint. This is demonstrated by the fact that in 2018-19, ADNSW received 1027 complaints from 556 complainants.

Please see statistics below for complaints received by ADNSW over the last five financial years:

In 2018-19, 223 complainants had 2 or more complaint files and 23 had 5 or more complaint files.

In 2017-18, 218 complainants had 2 or more complaint files and 29 had 5 or more complaints files.

In 2016-17, 178 complainants had 2 or more complaint files and 18 had 5 or more complaint files.

In 2015-16, 182 complainants had 2 or more complaint files and 18 had 5 or more complaint files.

In 2014-15, 214 complainants had 2 or more complaint files and 22 had 5 or more complaint files.

Dr Annabelle Bennett AC SC

President

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