



Anti-Discrimination
New South Wales

1 September 2020

Dear Portfolio Committee 5,

The Hon Mr Robert Borsak, Chair of Portfolio Committee 5, provided me with 6 written questions from the Hon Mr Mark Latham. I provided responses to the Hon Mr Latham's first 3 questions when they were asked during the *in camera* hearing on 18 August 2020 into the Anti-Discrimination Amendment (Complaint Handling) Bill.

Please see my responses to questions 4 to 6 from the Hon Mr Latham below.

Please note question 5 should be treated as **confidential**

Question 4:

What has been the estimated cost and staff-time in dealing with the serial complainants in (1)-(3) above?

This information is not available. Anti-Discrimination NSW does not track the time used for each activity and cannot determine the resources used for individual complaints.

Question 5:

Question 6:

[Part 1] For each of the past 7 years, how many complaints has the ADB accepted that are more than 12 months old (contrary to Section 89B guidelines), as flagged in their submission? [Part 2] And how many other times has the ADB President used her discretion in similar fashion?

Part 1

This information is not available as Anti-Discrimination NSW (ADNSW) does not count the number of complaints accepted that are more than 12 months old.

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The question is however based on an incorrect premise: Section 89B of the *Anti-Discrimination Act 1977* (ADA) is not a guideline. It is not contrary to the section to accept a complaint that is more than 12 months old. Section 89B in fact gives the President an unfettered discretion when deciding to accept or decline complaints. The discretion allows the President to take into account relevant factors such as the reason for the delay in lodging a complaint. For example, events occurring more than 12 months prior to the lodgement of the complaint may provide context and background to more recent events of alleged discrimination, particularly where there is a pattern of behaviour spanning a long period of time.

People who experience harassment and discrimination are often vulnerable people and members of minority groups who may not be aware of appropriate avenues to complain and/or may have other issues in their lives preventing complaints from being lodged sooner. Complainants may have experienced trauma or be people with various types of disability. People who have experienced discrimination may need to attend health or counselling appointments (whether or not this is related to the discrimination) or have other important life events (such as deaths of loved ones) which may delay their complaint to ADNSW. Removing the President's discretion under s89B would make the complaints process less accessible and responsive to complainants seeking the protection of the ADA, particularly to people who may already have significant barriers to access justice.

ADNSW has records of how many complaints were **declined** under s89B(2) but not how many were **accepted** for investigation that were lodged more than 12 months after the alleged conduct.

Complaints **declined** under s89B(2)(b) "*the whole or part of the conduct complained of occurred more than 12 months before the making of the complaint*" for the last 7 financial years are publicly available in the ADNSW annual reports. These were:

- Year 2012-13: 12
- Year 2013-14: 24
- Year 2014-15: 12
- Year 2015-16: 16
- Year 2016-17: 16
- Year 2017-18: 34
- Year 2018-19: 28

Part 2

This question is not clear. The President has discretion under the *Anti-Discrimination Act 1977* (NSW) and her decisions are not "contrary to guidelines" when she exercises her discretion.

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President

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