

**Submission  
No 53**

## **INQUIRY INTO EMERGENCY SERVICES AGENCIES**

**Organisation:** Anti-Discrimination Board of NSW

**Date received:** 20 July 2017

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Our ref: LS/17/006

The Director  
Portfolio Committee No. 4 – Legal Affairs  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

**BY POST AND EMAIL:** [portfoliocommittee4@parliament.nsw.gov.au](mailto:portfoliocommittee4@parliament.nsw.gov.au)

Dear Sir / Madam,

***Inquiry into emergency services agencies***

The Anti-Discrimination Board of NSW (ADB) thanks Portfolio Committee No. 4 – Legal Affairs (the Committee) for the opportunity to make a submission to its inquiry into NSW emergency services agencies.

***Bullying, harassment and discrimination***

The ADB administers the *Anti-Discrimination Act 1977* (ADA), which makes it unlawful to discriminate on the grounds of sex, age, race, homosexuality, carer’s responsibilities, marital or domestic status, disability, or transgender status in certain areas of public life. Sexual harassment and vilification on the grounds of race, homosexuality, transgender or HIV/AIDS are also unlawful.

In their capacity as employers, NSW emergency services agencies are subject to the ADA and job applicants, employees and contract workers are entitled to lodge a complaint with the President of the ADB if an agency has subjected them to unlawful discrimination or harassment in the course of, or in connection with, their work.

Similarly, to the extent that emergency services agencies provide ‘services’ to individuals or to the general public, they may face complaints of discrimination or harassment in the provision of goods and services.

On receipt of a complaint, ADB staff exercise statutory functions (under delegation from the President of the ADB) to investigate and, where appropriate, attempt to conciliate the complaint to assist the parties to resolve their differences. Where conciliation is unsuccessful, or is not appropriate in the circumstances, the complaint may be referred to

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**[www.antidiscrimination.justice.nsw.gov.au](http://www.antidiscrimination.justice.nsw.gov.au)**

the NSW Civil and Administrative Tribunal, which has powers to determine the dispute and make orders for its resolution.

#### Secrecy provisions in the Anti-Discrimination Act 1977

Information about complainants and respondents gathered during the course of investigating and conciliating complaints is protected by secrecy provisions in the ADA. Section 124A makes it an offence to for officers and members of the ADB to disclose such information except to the Minister, in situations where the President has certified that the disclosure is necessary in the public interest.

As a result, the ADB is unable to provide detailed information about the prevalence of discrimination complaints within any of the emergency services agencies listed in the terms of reference. Additionally, the ADB is not in a position to comment on the effectiveness of the protocols and procedures in place to manage and resolve such complaints within emergency services agencies

#### Support structures and services

Whilst the ADB is unable to comment on either the availability or effectiveness of support structures and services available to emergency services workers and volunteers, we note that ongoing stigma surrounding mental health issues may present a barrier to individuals seeking help, and can lead to discrimination.

The ADA contains broad protections against disability discrimination, which include mental health issues. Its provisions cover discrimination:

- based on a physical, mental, psychological and learning impairments, whether temporary or permanent;
- because of a disability the person had in the past or will have in the future;
- where it is presumed that the person had, has, or will have a disability, whether or not this presumption is correct;
- on the ground of a relative or associate's disability or presumed disability, whether past, present or future.

The ADB encourages the use of programs to assist workers with mental health issues, whether these result from workplace trauma or otherwise. However, where workplace programs do not effectively prevent discrimination, the ADB's complaint-handling and conciliation processes provide an opportunity for parties to air and resolve problems, and to consider ways to prevent future discrimination.

Appropriateness of uniforms

Emergency services agencies in NSW should ensure that dress codes are not discriminatory. A dress code that appears to treat everyone the same but which actually disadvantages some people because of their personal characteristics may be discriminatory if it is not reasonable in the circumstances.

All employers should ensure that uniform codes are reasonable and do not treat staff or volunteers unfairly because of characteristics protected under the ADA, including sex (including pregnancy), age, disability or gender identity. The ADA does not cover discrimination on the ground of religion itself, but 'race' is broadly defined to include ethno-religious origin, which may extend to wearing items of cultural or religious significance.

Yours sincerely,

**Elizabeth Wing**  
**Acting President**  
Anti-Discrimination Board of NSW

Date: 20 July 2017