

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Program 1.1

Question No. 59

Senator Barnett asked the following question at the hearing on 18 October 2010:

Regarding the David Jones sexual harassment case:

- a. What has been learnt from this case?
- b. What is the average payout where damages are awarded for a quadriplegic claim where there is clear negligence on the part of the defendant and what is the average amount of damages awarded for a sexual harassment claim in Australia?

The answer to the honourable senator's question is as follows:

- a. The Department does not have any formal role in sexual harassment cases brought under the *Australian Human Rights Commission Act 1986* or the *Sex Discrimination Act 1984*.

The Government has put in place a robust legislative framework to prohibit sexual harassment in the workplace, complemented by an effective conciliation mechanism for resolving complaints. In particular, the Government has moved to strengthen protections from sexual harassment under Commonwealth law through the Sex and Age Discrimination Legislation Amendment Bill 2010, which is currently before the Senate.

- b. The first part of question (b) is not something that is within the knowledge of the Department, as the law of negligence is a State and Territory matter. The amount of damages awarded in a particular case would depend on the specific circumstances of each case.

In relation to the second part of question (b), while there are sexual harassment laws at Commonwealth level, there are also State and Territory laws on this subject matter. Claims could be brought under any applicable law. The Department does not have access to information about damages awarded in Commonwealth, State or Territory matters other than what would be publicly available and could therefore not ensure the accuracy of the information provided. Again, the amount of damages awarded would depend on the specific circumstances of the case.

The Australian Human Rights Commission's publication *Federal Discrimination Law* highlights some damages awards in sexual harassment cases since 2000, with damages awarded ranging from \$1000 to nearly \$400,000.¹

¹ Human Rights and Equal Opportunity Commission, *Federal Discrimination Law* (2008), pp 349-359. The publication is also available online at <<http://www.austlii.edu.au/au/other/HRLRes/2009/1/7.html#Heading118>>, section 7.2.4 (accessed 2 November 2010).