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**OFFICE OF THE NORTHERN TERRITORY  
ANTI-DISCRIMINATION COMMISSIONER****Tom Stodulka  
Commissioner**

The Hon Peter Toyne MLA  
Attorney-General  
Parliament House  
State Square  
DARWIN NT 0800

Dear Attorney-General

Pursuant to section 28 of the *Public Sector Employment and Management Act* 1993, I submit to you the Annual Report on the operations of the Anti-Discrimination Commission for the period 1 July 2000 to 30 June 2001.

In providing this report, I advise that the Commission's system of internal control provides reasonable assurance that:

- a. proper records of all transactions affecting the Commission are kept and that employees under my control observe the provisions of the *Financial Management Act*, the Financial Management Regulations and the Treasurer's Directions
- b. procedures within the Commission afford proper internal control and a current description of such procedures is recorded in the accounting and property manual which has been prepared in accordance with the requirements of the *Financial Management Act*
- c. no indication of fraud, malpractice, major breach of legislation or delegation, major error in or omission from the accounts and records exist
- d. in accordance with the requirements of section 15 of the *Financial Management Act*, the results of the internal audit capacity available to the Commission is adequate and the results of internal audit have been reported to me
- e. the financial statements included in the Annual Report have been prepared from proper accounts and records and are in accordance with Part 2 Section 5 of the Treasurer's Direction
- f. all Employment Instructions issued by the Commissioner for Public Employment have been satisfied.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Tom Stodulka'.

Tom Stodulka  
18 September 2001



## Agency Access

**Location:** 7<sup>th</sup> Floor, National Mutual Centre  
9-11 Cavenagh Street, Darwin NT 0801

**Postal Address:** LMB 22 GPO  
Darwin NT 0801

**General Enquiries:** Telephone: (08) 8999 1444  
TTY: (08) 8999 1466  
Freecall: 1800 813 846  
Facsimile: (08) 8981 3812  
  
Website: [www.adc.nt.gov.au](http://www.adc.nt.gov.au)





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## From the Commissioner



**Tom Stodulka**  
**Commissioner**

My appointment as Anti-Discrimination Commissioner took place in August 1999 and I am pleased to present my third annual report.

Over the past two years the Commission has made significant progress in a number of areas including the re-organisation and resourcing of the Commission. A full review of staffing arrangements has been completed resulting in the upgrade of all conciliator positions and efficiencies being gained through the re-focusing of key administrative positions.

This process has had its challenges and placed pressures on all staff. I would like to take this opportunity to publicly acknowledge staff for their support throughout this period of change. I would also like to acknowledge the support of Government throughout the change process.

The Commission has developed a comprehensive business plan and the emphasis of our vision and efforts will be on creating a community, which is empowered to identify discrimination and can take appropriate action to achieve a remedy if it occurs.

The complaint handling section of the Commission has implemented revised procedures that ensure complaints are promptly and impartially handled. The launch of the Commission's comprehensive website in April 2001 is receiving up to 3000 hits per day and raising the profile of the Commission; it has also enabled all Territorians to make enquiries and submit complaints via e-mail. The hearing function of the Commission has been re-organised and a long-term problem with the backlog of cases for hearing has been overcome.

The public education function of the Commission has continued to expand to ensure a greater awareness of human rights issues amongst all Territorians. The Commission is particularly positive about the success of the Territory/Commonwealth "Youth Challenge" initiatives held in Darwin and Alice Springs. These Challenges involved hundreds of young people and representatives from the wider communities engaging in debate about Human Rights and the role each of us can play in promoting just and tolerant communities throughout the Northern Territory.

### **Core Challenges**

Despite progress in a number of areas, the work of the Anti-Discrimination Commission in the Northern Territory has many challenges ahead. While the sources of these challenges are various, the single major factor that should be identified is the continuing disadvantage suffered by many Aboriginal Territorians. Lower economic, health and educational outcomes experienced by Aboriginal Territorians are of themselves an issue of fundamental human rights concern. Further, the disadvantage suffered by many Aboriginal Territorians has a number of consequential effects. For example, many of the allegations of systemic

discrimination in the area of consumer rights that have come to the attention of the Commission stem from the vulnerable educational and economic positions of many Aboriginal Territorians from remote communities. Similarly, issues that are related to the need to access basic employment and health care services are the core of urban community concern regarding itinerants. Undesirable legislative responses, such as Mandatory Sentencing and Anti-Social Conduct legislation, have unfortunately at times been identified as the source of resolution to such core challenges.

Developing more equitable long-term responses to the challenges of disadvantage and discrimination is of course not a straightforward task. However, the Commission has facilitated some very positive initiatives in the following areas:

### **Remote Community Consumer Matters**

In partnership with Commonwealth and Territory agencies such as the Banking Industry Ombudsman, the Australian Competition and Consumer Commission, ATSIIC and the NT Consumer Affairs Division of the Department of Industries and Business, a number of remote communities, Ti-Tree, Utopia, and Laramba in Central Australia and Maningrida in the Top End, have been visited in order to investigate the challenges faced by consumers in these localities. The visit program has not only raised awareness of these issues across the key service delivery agencies, but has resulted in a number of coordinated initiatives between Commonwealth and Territory agencies and the local consumer groups in developing and delivering just and sensitive solutions. This is a priority area for the Commission to target its efforts in the coming years.

### **Liquor Restrictions**

To many remote communities, the issue of liquor sale and consumption restrictions is a central one to their ongoing well-being. Historically, this is a matter the Anti-Discrimination Commission and other human rights agencies have had an involvement in through submissions to Liquor Tribunal hearings and consultations with officers of the Liquor Commission and the community. Over the next 12 months, the Commission will continue to engage with stakeholders and assist in achieving equitable outcomes.

### **Special Measures**

The Anti-Discrimination Act 1992 established a mechanism (at section 57) to allow for special measures to be put in place that target groups who are denied access to the basic human rights enjoyed by others in their community. The development of special measures is an essential component of any effective response to the needs of particular groups of disadvantaged Territorians. The legal staff of the Commission regularly advise government agencies and other bodies in relation to the requirements and limitations of the special measures provisions. The Commission will continue to provide expert advice in the area of Special Measures over the coming year.

## **Mandatory Sentencing**

With the election of a new government comes the prospect of the repeal of the Mandatory Sentencing legislation. I have publicly stated on many occasions that I believed Mandatory Sentencing delivered unfair outcomes for Territorians. I join with many others in supporting its proposed repeal. With any repeal of the Mandatory Sentencing legislation will come opportunities to visit many other aspects of the operation of the criminal justice system in the Territory and the Commission will harness these opportunities to promote debate and review in order to achieve our vision.

The political controversy surrounding mandatory sentencing created the impetus for the development and enhancement of a number of sentencing schemes aimed at diverting young offenders from periods in detention whilst simultaneously involving victims, offenders and the community in the delivery of justice. The genuine involvement of many members from Aboriginal communities in these schemes was evident during my participation in the *Where The Waters Meet Conference* organised by the Aboriginal Justice Advocacy Committee in June 2001. The voice of the Commission must ensure that the anticipated repeal of mandatory sentencing results in the continued examination of how the criminal justice system can deliver better outcomes to all Territory communities in a just, restorative and culturally appropriate way as well as ensure the causes of crime are addressed in this context.

## **DisAbility**

Throughout the year the Commission has continued to enjoy a close relationship with members of the DisAbility community. In addition to the celebration of DisAbility Week in December, the Commission was proud to be involved with the ABC and Department of Defence Access and Equity launches in Darwin, and to have one of the Youth Challenges for High School Students in April dedicated to a DisAbility focus.

## **Aboriginal Interpreter Service**

The Anti-Discrimination Commission has had an ongoing and active involvement in this issue. An effective Aboriginal Interpreter Service (AIS) is central to human rights for many Aboriginal Territorians by creating equitable access to services and informed decision making not only in relation to health care delivery and legal proceedings, but also in respect to utilising the full range of government and non-government services. The celebration of the first year of operation of the AIS has been extremely important but much work remains to be done. Issues relating to funding of the service, training of the interpreters and expansion of the service still remain. There will be negative consequences if the development of the AIS is allowed to stall when the national spotlight arising from mandatory sentencing moves on and the Commission will work hard over the next year to promote the enhancement of the AIS and, ultimately, a harmonious, just and equitable Territory.

## **Anti-Discrimination Act 1992**

The foregoing represents a number of core challenges faced not just by the Commission but the Northern Territory community as a whole. It is timely also to consider how well the legislation that established the Anti-Discrimination Commission is able to cope with those challenges.

The Act has, on the whole, served the Territory well. There has rarely been suggestion that, the grounds of prohibited discrimination in the Act are inadequate. However, the test of time has pointed to a number of shortcomings in the operational provisions of the Act. My role as both a public advocate of the principles of anti-discrimination and as a Commissioner required to hear and determine individual complaints of discrimination is one example of this. The uncertainty of the application of the Act to employers by means of vicarious liability and the nature of appeals to the Local Court are further examples. It is also increasingly apparent that the inter-relation of the anti-discrimination jurisdiction established under the Act with those of jurisdictions such as the Industrial Relations Commission and the Work Health Court needs further examination.

I intend to ensure that the Government has the opportunity to fully consider these matters prior to the tenth anniversary of the Act. Accordingly, I will be establishing a process to review the operation of the Act over the coming year ensuring that all relevant stakeholders and interest groups are given the opportunity to be involved in this review.

## **Conclusion – Working With Government**

Whilst the complaint resolution and public education functions of the Anti-Discrimination Commission represent its core business, the Commission also has an important role to play in the provision of human rights advice to government. This function is set out in section 13(1)(b) of the Act. The relationship between human rights agencies and governments can be problematic. It is a positive challenge for my Commission to work collaboratively, constructively and transparently with the Northern Territory's new Labor Government as well as its constituents over the coming years to ensure the Territory is recognised as a jurisdiction where efforts that promote human rights are seen not as a basis for disunity, but rather as a bond that unites the Government and the community around a shared goal.

**Tom Stodulka**

## Overview

### The Program Objective

The NT Anti-Discrimination Commission's program objective is the promotion of equality of opportunity for Territorians and the protection from unlawful discrimination on defined grounds and in specified areas.

The Commission investigates and conciliates complaints within its jurisdiction. The Commissioner may hold formal hearings where matters cannot be resolved by conciliation and may make certain orders, including the payment of compensation. The Commission provides public education programs, training, consultation and research.

The Commissioner is required to assist both government and non-government organisations develop and implement strategies to overcome unlawful discriminatory acts and practices, and to advise the Northern Territory Government on the laws and regulations of the Territory to ensure they are consistent with the NT *Anti-Discrimination Act 1992* (the Act).

The Commissioner may prepare and publish guidelines and codes of practice to assist people and organisations to comply with the Act.

There is a requirement:

- to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in the Act;
- to examine practices, alleged practices or proposed practices of a person, at the Commissioner's own initiative or when required by the Minister, to determine whether they are, or would be, inconsistent with the purposes of the Act and, when required by the Minister, to report the results of the examination to the Minister; and
- if the Commissioner considers it appropriate to do so, to intervene in a proceeding that involves issues of equality of opportunity or discrimination with the leave of the court hearing the proceeding and subject to any conditions imposed by the court.

### Special Measures

The Act allows for discrimination to take place in a program, plan or arrangement which is designed to promote equality of opportunity for a group of people who are disadvantaged or have a special need because of an attribute. A special measure could be a training program designed for a group of people to access work in areas where the group have not traditionally been employed such as a pre-vocational course for young women in carpentry, or a course at a university for Aboriginal students who have not previously had access to such courses.

## Legislation

The NT *Anti-Discrimination Act 1992* (the Act) is designed, subject to limited exceptions, to eliminate discrimination against persons (and their associates) on the grounds of any of the following attributes:

- a. race (including ethnic origin);
- b. sex;
- c. sexuality;
- d. age;
- e. marital status;
- f. pregnancy;
- g. parenthood;
- h. breastfeeding;
- j. impairment;
- k. trade union or employer association activity;
- m. religious belief or activity;
- n. political opinion, affiliation or activity;
- p. irrelevant medical record;
- q. irrelevant criminal record;
- r. association with a person who has, or is believed to have, an attribute referred to in this section.

### Areas

The Act operates in the areas of work; accommodation and education; the provision of goods, services and facilities; the activities of clubs and in insurance and superannuation. The Act covers both the public and private sectors. Generally speaking, an organisation will be responsible for the activities of its agents, officers or employees while they carry out work on behalf of their organisation.

### Prohibited Conduct

The Act makes unlawful the following prohibited conduct in the areas set out above:

- discrimination
- harassment on the basis of an attribute
- victimisation of a party to a complaint (including witnesses)
- discriminatory advertising
- seeking unnecessary information on which discrimination could be based
- unreasonable failure to accommodate a special need because of an attribute (eg: special facilities needed because of age or impairment)
- aiding the contravention of the Act.

## **Discrimination**

The Act covers both direct and indirect discrimination. Direct discrimination occurs when in any of the defined areas a person is harassed or experiences any distinction, exclusion, preference, or other less favourable treatment because of one or more of the attributes in the legislation. Indirect discrimination occurs where conditions are imposed which do not on their face discriminate against persons but in practical effect do so, and such conditions are not reasonable (eg. arbitrary minimum height restrictions for employment which discriminate against women).

## **Sexual Harassment**

Under the Act, sexual harassment is prohibited conduct in itself in respect of any of the areas covered by the Act. That is, discrimination or less favourable treatment need not be established; only the elements of unwelcome acts of physical intimacy; or demands, requests, remarks or other conduct of a sexual nature which are intended to offend, humiliate or intimidate a person or could reasonably be anticipated to do so.

## **Victimisation**

A person who makes a complaint or intends to make a complaint or is otherwise involved in relation to a matter under the Act is protected from victimisation. Victimisation takes place if a person subjects or threatens to subject another person or an associate of the other person to any detriment.

## **Appeals**

Appeals against decisions of the Commissioner are to the local Court.

## **Protection from legal proceedings**

S.113 of the Act provides protection against proceedings, whether civil or criminal for persons lodging a complaint or providing information or evidence to the Commissioner.

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## Functions of the Commissioner

- (1) The Commissioner has the following functions:
- (a) to carry out investigations and hearings into complaints and endeavour to effect conciliation;
  - (b) to examine Acts and regulations and proposed Acts and regulations of the Territory to determine whether they are, or would be, inconsistent with the purposes of this Act, and to report the results of such examinations to the Minister;
  - (c) to institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination and the effects of discrimination;
  - (d) to consult with organisations, departments and local government and community government bodies and associations to ascertain means of improving services and conditions affecting groups that are subjected to prohibited conduct;
  - (e) to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in this Act;
  - (f) to examine practices, alleged practices or proposed practices of a person, at the Commissioner's own initiative or when required by the Minister, to determine whether they are, or would be, inconsistent with the purposes of this Act, and, when required by the Minister, to report the results of the examination to the Minister;
  - (g) to promote in the Territory an understanding and acceptance, and public discussion, of the purposes and principles of equal opportunity;
  - (h) to promote an understanding and acceptance of, and compliance with, this Act;
  - (j) to promote the recognition and acceptance of non-discriminatory attitudes, acts and practices;
  - (k) to promote within the public sector the development of equal opportunity management programs;
  - (m) to prepare and publish guidelines and codes of practice to assist persons to comply with this Act;
  - (n) to provide advice and assistance to persons relating to this Act as the Commissioner thinks fit;
  - (p) to advise the Minister generally on the operation of this Act;
  - (q) if the Commissioner considers it appropriate to do so, to intervene in a proceeding that involves issues of equality of opportunity or discrimination with the leave of the court hearing the proceeding and subject to any conditions imposed by the court;
  - (r) such functions as are conferred on the Commissioner by or under this or any other Act; and
  - (s) such other functions as the Minister determines.

.....s.13 *Anti-Discrimination Act 1992*



## Some of the Strategies

- Factsheets are produced and distributed in:
  - Tagalog
  - Vietnamese
  - Portuguese
  - Indonesian
  - Mandarin
  - Japanese
  - Thai
  - large type for the visually impaired.
- "Talking tapes" on the Factsheets and the Act are available.
- There is liaison with Aboriginal Land Councils and Community Government Councils.
- Publications are distributed through peak Aboriginal groups, Chamber of Commerce and Industry, libraries, local government bodies, schools, Office of Ethnic Affairs, Alice Springs Migrant Resource Centre, Multicultural Council of the Northern Territory and voluntary organisations.
- Training material targeting Aboriginal people in remote communities on "rights" and "responsibilities" has been produced in the most common Aboriginal languages.
- There are regular regional visits.
- Information on the Commission is available at the electorate offices of all members of the Legislative Assembly.
- The Commission maintains frequent contact with Legal Aid and Advocacy Services throughout the Territory.
- The Commission toll free telephone 1800 813 846 is widely advertised.
- A TTY service is available.
- The Commission has an extensive web site contained at **[www.adc.nt.gov.au](http://www.adc.nt.gov.au)**.
- Development of pro-active workplace training strategies to reflect the number of work place complaints.



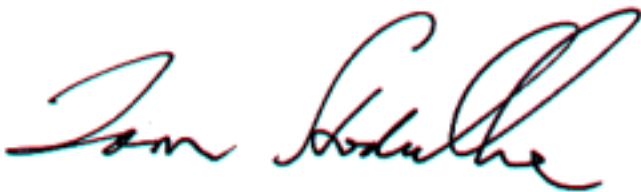
## **Financial Statements**

**For the period 1 July 2000– 30 June 2001**

## CERTIFICATION

The accompanying financial statements in respect of the operation of the Northern Territory Anti-Discrimination Commission have been prepared in accordance with the *Financial Management Act, Procurement Act* and associated Treasurer's Directions and give a true and fair view of the results of the Commission's operations for the financial year ended 30 June 2001.

At the date of signing, we are not aware of any circumstances, which would render the particulars included in the accompanying financial statements misleading or inaccurate.



TOM STODULKA  
Commissioner  
Anti-Discrimination Commission



SOMSONG ALBERT  
Finance/Administrative Officer

**A. EXPENDITURE BY ACTIVITY  
FOR YEAR ENDED 30 JUNE 2001**

<b>Activity/Program</b>	<b>Final Allocation</b>	<b>Actual Expenditure</b>
	\$000	\$000
Anti-Discrimination Commission	943*	1,032
<b>TOTAL EXPENDITURE</b>	<b>943*</b>	<b>1,032</b>

**B. EXPENDITURE BY STANDARD CLASSIFICATION  
FOR YEAR ENDING 30 JUNE 2001**

<b>Category of Costs/Standard Classification</b>	<b>Actual Expenditure</b>
	\$000
<b>PERSONNEL COSTS</b>	<b>782</b>
Salaries	555
Payroll Tax	49
Fringe Benefits Tax	9
Superannuation	33
<b>OTHER PERSONNEL COSTS</b>	
Higher Duties Allowance	16
Leave Loading	7
Northern Territory Allowance	5
Other Allowances	1
Other Benefits Paid by Employer	17
Overtime	
Penalty Payments	
Perishable Freight Allowance	
Recreation Leave Fares	6
Salary Advances	
Termination Payments	83
Workers Compensation	1

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**B. EXPENDITURE BY STANDARD CLASSIFICATION  
FOR YEAR ENDING 30 JUNE 2001 (continued)**

Category of Costs/Standard Classification	Actual Expenditure
	\$000
<b>OPERATIONAL EXPENSES/EXPENDITURE</b>	<b>35</b>
NT Government Repairs and Maintenance Program	
Repairs and Maintenance for Recoverable Works	
Property Maintenance	13
General Property Management	18
Power	4
Water and Sewerage	
<b>OTHER OPERATIONAL COSTS</b>	<b>215</b>
Advertising	
Agent Service Arrangement	
Clothing	
Communications	29
Consultants Fees	5
Consumables/General Expenses	4
Cross Border Patient Charges	
Document Production	2
Energy	
Entertainment/Hospitality	1
Food	
Freight	
Furniture & Fittings	1
Information Technology	12
Insurance Premium	2
Laboratory Expenses	
Legal Expenses	
Library Services	7
Marketing & Promotion	4
Medical Supplies	
Membership Subscriptions	4
Motor Vehicle Expenses	21
Office Requisite & Stationery	8
Official Duty Fares	21

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**B. EXPENDITURE BY STANDARD CLASSIFICATION  
FOR YEAR ENDING 30 JUNE 2001 (continued)**

Category of Costs/Standard Classification	Actual Expenditure
	\$000
Other Plant & Equipment	1
Recruitment Expenses	4
Regulatory & Advisory Boards & Committees	59
Relocation Expenses	
Survey, Drafting and Drilling Costs	
Training and Study Expenses	22
Travelling Allowance	8
Bank Charges	
Fees and Other Regulatory Charges	
<b>CAPITAL EXPENDITURE</b>	<b>0</b>
<b>GRANTS AND SUBSIDIES</b>	<b>0</b>
<b>INTEREST</b>	<b>0</b>
<b>ADVANCES</b>	<b>0</b>
<b>TOTAL EXPENDITURE</b>	<b>1,032</b>

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**C. RECEIPTS BY ACCOUNT  
FOR YEAR ENDED 30 JUNE 2001**

<b>Consolidated Revenue Account</b>	<b>Estimated Receipts</b>	<b>Actual Receipts</b>
	<b>\$000</b>	<b>\$000</b>
Nil	0	0
<b>Total Consolidated Revenue Account</b>	<b>0</b>	<b>0</b>
<b>Operating Account</b>	<b>Estimated Receipts</b>	<b>Actual Receipts</b>
	<b>\$000</b>	<b>\$000</b>
GST Control	0	-1
Interest	0	0
Commonwealth Grants	0	0
Charges for Goods and Services	0	1
Miscellaneous Revenue	0	17
Sale of Assets	0	0
Intrasector Receipts	0	4
<b>Total Operating Account Receipts</b>	<b>0</b>	<b>21</b>
Transfers from Consolidated Revenue Account	<b>0</b>	1 006
<b>Total Receipts to Agency Operating Account</b>	<b>0</b>	<b>1 027</b>



**D. RECONCILIATION SCHEDULE  
FOR YEAR ENDED 30 JUNE 2001**

Nil

**E. ACCOUNTABLE OFFICER'S TRUST ACCOUNT  
FOR YEAR ENDED 30 JUNE 2001**

	Opening Balance 1.7.00	Receipts \$000	Payments \$000	Closing Balance 30.6.01
Anti-Discrimination Commission	0	89	89	0

**F. WRITE OFFS, POSTPONEMENT AND WAIVERS  
FOR YEAR ENDED 30 JUNE 2001**

Nil

**G. DEBTOR AS AT 30 JUNE 2001**

Activity/Program	External		Total	Intrasector			Total	Total
	Charges	Other		Charger	Other	CSO		
Anti-Discrimination Commission	\$000 2	\$000 8	10	\$000 2	\$000 0	\$000 0	\$000 2	<b>\$000 12</b>
Total	2	8	10	2	0	0	2	<b>12</b>
Less: Provision for Doubtful Debts								
NET DEBTORS	2	8	10	2	0	0	2	<b>12</b>
Classified as:								
Current	2	8	10	2	0	0	2	<b>12</b>
Non-current								
NET DEBTORS	2	8	10	2	0	0	2	<b>12</b>

**H. CREDITORS AND ACCRUALS AS AT 30 JUNE 2001**

Activity/Program	External		Total	Intrasector		Total	Total
	Creditor	Accruals		Creditor	Accruals		
Anti-Discrimination Commission	36	19	55	3	4	7	<b>62</b>
Total	36	19	55	3	4	7	<b>62</b>
Classified as:							
Current	36	19	55	3	4	7	<b>62</b>
Non-current							
<b>TOTAL</b>	<b>36</b>	<b>19</b>	<b>55</b>	<b>3</b>	<b>4</b>	<b>7</b>	<b>62</b>

**I. EMPLOYEE ENTITLEMENTS OUTSTANDING  
AS AT 30 JUNE 2001**

ENTITLEMENT	\$000
<b>Current</b>	
Recreation Leave	82
Recreation Leave Fares	6
Leave Loading	9
Long Service Leave	45
<b>Non Current</b>	
Long Service Leave	19
<b>TOTAL</b>	<b>161</b>

**METHODOLOGY**

**Recreation Leave:** The value of recreation leave entitlements are calculated by PIPS, based on employee's actual salaries and entitlements at 30 June 2001.

**Recreation Leave Fares:** Recreation Leave Fares entitlements are calculated based on 2000/2001 actuals.

**Leave Loading:** The value of leave loading entitlements are calculated by PIPS, based on employee's actual salaries and entitlements at 30 June 2001.

**Long Service Leave:** Long Service Leave entitlements are calculated in accordance with Australian Accounting Standard AAS 30. The calculation takes into account the probability of employees reaching ten years of service, the future increases in salary costs and discount rates to achieve the net present value of the future liability.

**J. LEASES LIABILITIES AS AT 30 JUNE 2001**

Nil

**EXPLANATORY NOTES**

**\*Borrow forward allocation**

\$43 000 was borrowed forward from 2001/2002 to cover the short fall in Personnel Costs.

**\*Treasurer's Advance**

\$46 000 was approved by the Treasurer to meet court and hearing costs.

## Administration

### Staffing

Section 12 of the Act states that the Commissioner shall be provided by the Minister with such staff, who shall be employees within the meaning of the *Public Sector Employment and Management Act*, as is necessary for the administration of this Act.

The approved staffing levels as at 30 June 2001 were:

- Director, Law, Policy and Conciliation
- Director, Public Education and Administration
- Conciliators x 2
- Finance/Administrative Officer
- Personal Assistant to Commissioner
- Receptionist
- Administrative Assistant

The Commission provided on-the-job training and support of one NTPS Business Office Skills Apprenticeship.

### Staff Review

In early 2000, the Commission underwent a review of the structure and staffing to determine whether the Commission is appropriately resourced to meet its functions, needs and statutory responsibilities. Staff from the Office of the Commissioner for Public Employment carried out the review.

The review was to examine the existing structure and staffing to determine whether:

- Objectives are being achieved
- Resources are adequate and being used effectively
- Existing classifications are appropriate, with job description and evaluation documents up to date; and
- Communication and Information Technology systems and procedures are effective.

The Commission is in the process of implementing recommendations from the Review Team. The reclassification of the Conciliator positions from AO 5 to AO 7 was one outcome of this review process and the new positions have been advertised and filled.

## **Equal Opportunity Management Plan (EOMP)**

The Commission has a current EOMP, which forms part of the Policy and Procedures Manual. Management monitors the internal environment to ensure that all staff are treated fairly and are given equal opportunity in all employment procedures.

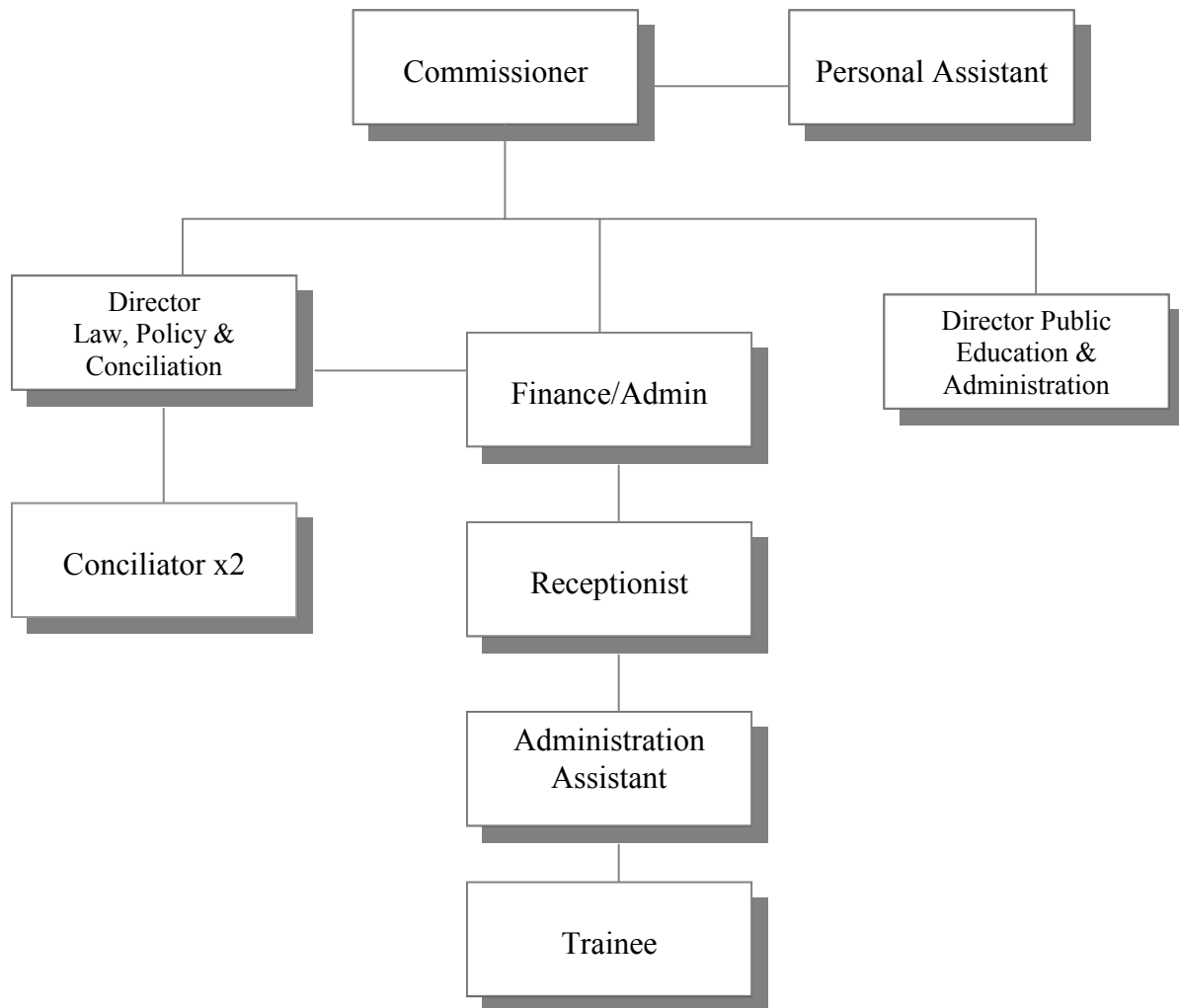
## **Training and Staff Development**

The Commissioner has formalised an in-house training program, as well as approving staff attendance at a range of professional development programs which included formal award courses, short courses, seminars and conferences.

## **Occupational Health and Safety**

The Commissioner affords occupational health and safety a high priority. A formal policy is in place and forms a part of the Commission's Policy and Procedures Manual. Two staff members have been trained as Senior First Aid Officers. There have been two worker's compensation claims in 2000/2001 totalling \$1 083.00.

**APPROVED STAFFING ESTABLISHMENT  
(as at 30 June 2001)**



2 Redeployess

June 2001

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## Publications

### FACTSHEETS

- Fair Go For All Territorians
- Functions Of The Commissioner
- Sexual Harassment
- Eliminating Sexual Harassment – Guidelines for Employers
- Are You Treated Unfairly Because You Are Aboriginal
- People With An Impairment (Disability)
- Guidelines for Preventing Sexual Harassment in the Workplace (joint publication with Northern Territory Chamber of Commerce and Industry Inc)
- How We Handle Complaints
- A Guide on Conciliation Conferences within the Anti-Discrimination Commission

Most Factsheets are available in seven languages:

- Tagalog
- Portuguese
- Mandarin
- Japanese
- large type for the visually impaired
- "talking tapes" are also available
- Vietnamese
- Indonesian
- Thai

### POSTERS

- Fair Go – This is what it's really about!
- Fair Go – Creating a Fair Go for everyone!
- Sexual Harassment – Nobody has to put up with it!
- Know Your Rights, Know Your Responsibilities
- Welcome to my Country

### TRAINING CALENDAR

A schedule of formal training programs offered by the Commission is published twice a year.

### WEB SITE

The Commission has an extensive web site located at [www.adc.nt.gov.au](http://www.adc.nt.gov.au)

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## Public Education



Sue Kasparek  
Director Public Education  
and Administration

### Objectives:

- Provide people with enough information so that they can recognise the potential for discrimination and harassment in their community.
- Empower people to prevent, confront and resolve discrimination and harassment issues themselves.
- Promote an understanding and acceptance of, and compliance with the Act including the principles of equal opportunity.
- Support the NT Government's commitment to equal opportunity for all people in the Northern Territory by fostering fairness.
- Consult with organisations, departments, local government, community government bodies and associations to promote the recognition and acceptance of non-discriminatory attitudes, acts and practices.

### Strategies

Throughout 2000/2001, the Commission conducted 102 training sessions involving more than 2000 people throughout the Territory.

These sessions included:

- Formal training programs
- Workplace training
- Awareness raising sessions and talks
- Community involvement and public events

The Commission is aware that information and training is increasingly becoming available on the internet. With this in mind the Commission launched its training and information website this year and can be visited at [www.adc.nt.gov.au](http://www.adc.nt.gov.au).



The Commission is very pleased with the success of the new charging for training initiative implemented last financial year. The extra resources have enabled the Commission to increase the range of our education programs, jointly sponsor three Youth Challenges, move to employing sessional trainers and produce additional educational material.

The Commission continues to be committed to the principle of free “rights based” training to ensure that the information on rights is available for all people in the Territory.

The Public Education section of the Commission represents a distinct output group for the purposes of the outputs measurement of the Agency.

In Budget Paper No 2 this output group is described as public education. The following performance measures are identified within the agency.

### **Output 1: *Anti-discrimination formal training***

**Description:** This output measures the regular programmed training delivered by the Commission on rights and responsibilities under the Anti-Discrimination Act 1992 to the public and private sector.

<b>Performance measures</b>	<b>Unit of Measure</b>	<b>2000 –01 Estimate</b>	<b>2001-02 Budget</b>
Quantity	Number of “student-hours” of training provided	1760	1945
Quality	% of positive feedback from participant	90	95

The formal training program is produced biannually and circulated throughout the Territory. The main focus is to provide an introduction to Equal Opportunity or Anti-Discrimination laws. Courses are widely available to everyone and participants range from senior executives of large government agencies or private enterprise to year 7 students, to interpreters and aborigines from remote communities, to owners and managers of private sector business to people with disabilities.

The courses include:

- Introduction to Anti-Discrimination Law
- Harassment –What is it and what you can do about it?
- Recruitment
- Introductory Contact Officer Training

Regional visits are an important component of public education, not only in raising public awareness but also in providing crucial feedback to the Commissioner on issues that may be affecting groups in regional and remote areas. Often the Commissioner has an active role in these visits.

Regional centres visited this financial year for community consultation and training have included:

- Alice Springs
- Tennant Creek
- Katherine
- Nhulunbuy
- Batchelor
- Borroloola
- Jabiru
- Groote Eylandt
- Tiwi Islands
- Ti-Tree
- Laramba
- Utopia
- Maningrida

The Commission organises visits to remote communities and regional centres as the need is identified and requests are made.

Each training session is evaluated and reviewed to ensure that the content meets the needs of the participants. The Commission consistently receives positive feedback about its education and training.

## **Output 2: *Anti-discrimination workplace training***

**Description:** This output measures the training delivered by the Commission on rights and responsibilities under the Anti-Discrimination Act 1992 to individual workplaces at the request of that workplace.

<b>Performance measures</b>	<b>Unit of Measure</b>	<b>2000 –01 Estimate</b>	<b>2001-02 Budget</b>
Quantity	Number of “student-hours” of training provided	2600	2800
Quality	% of positive feedback from participant	90	95
Timeliness	Weeks from desired date by client to delivery of program	4	3

There has been a gradual movement towards developing and providing individual workplace training packages as managers better understand their legislative obligations. The training also provides managers and employees with the ability to identify, respond to and manage instances of discrimination and harassment in their workplace.

The packages include:

- tailor made training developed specifically to meet organisational and employee needs using training material focusing on their industry needs
- assistance in the development of discrimination and harassment policies and grievance handling procedures
- involvement and training of all staff, usually within their workplace, anywhere within the Northern Territory

### **Output 3:        *Anti-discrimination rights-based training***

**Description:** This output measures the training delivered by the Commission focussed on improving knowledge of disadvantaged members of the community of their rights under the Anti-Discrimination Act 1992 to the public and private sector.

<b>Performance measures</b>		<b>Unit of Measure</b>	<b>2000 –01 Estimate</b>	<b>2001-02 Budget</b>
Quantity		Number of “student-hours” of training provided	2400	2500
Quality		% of positive feedback from participant	95	95

These sessions aim to:

- raise awareness of rights and responsibilities of employees, students, customers, and members of the public
- present a range of options for complaint handling
- provide a source of information for people with disabilities, Aboriginal people from remote communities, community service providers and members of the public.

### **Output 4:        *Anti-discrimination public awareness activities***

**Description:** This output measures the activities undertaken which raise public-awareness of rights and responsibilities under the Anti-Discrimination Act 1992.

<b>Performance measures</b>		<b>Unit of Measure</b>	<b>2000 –01 Estimate</b>	<b>2001-02 Budget</b>
Quantity		Number of hours of public awareness work	200	250
Quality		Number of individuals contacted	2500	2750
Timeliness		Weeks from desired date of engagement by client to attendance by official	1	1

This year the Commission continued its policy of participating in public events to provide information about people's rights and answer specific enquiries about coverage of the anti-Discrimination legislation and our training.

This year the Commission decided to also target the education sector by providing information to a larger number of students through Youth Challenges.

### **Youth Challenges**

This year, the NT Anti-Discrimination Commission, in conjunction with the Human Rights and Equal Opportunity Commission, held three Youth Challenges in Darwin and Alice Springs. The aim of these Youth Challenges is to bring students, human rights leaders and community representatives together for a one day event to explore how human rights principles and practices impact on social change, and upon the students lives and the lives of others in the community.

In October 2000, more than 100 students from years 9,10, and 11 from Darwin, Palmerston and rural high schools participated in the first Darwin Youth Challenge. This challenge focussed on gender and race issues and sexual harassment that students are sometimes confronted with in the transition from the school to work environment.

In April 2001 we facilitated the first Youth Challenge for Alice Springs with over 70 Students from Alice Springs High schools participating. The next Youth Challenge in Darwin explored disability discrimination issues in the school environment where the students involved in the Youth Challenge showed great insight and problem solving skills to ensure that both the student with the disability and the school's interests were met and any potential discrimination avoided.

As well as excellent student evaluation the schools involved took away valuable teaching resources that can be integrated into many areas of their curriculum.

### **Disability Awareness Week and International Day for the Disabled**

In December, to help "celebrate the ability" of people with disabilities, the Commission helped in the preparations of a Day of Celebrations. It was a great success and many people took part in the fun activities aimed at raising awareness of issues that affect people with disabilities.

Other public events we participated in were:

- Women's Health Day for NESB
- Humans Rights Week
- Education Careers Expo
- Refugee Week
- Law Week
- NAIDOC

AREA OF TRAINING	MONTHS											
	July	August	September	October	November	December	January	February	March	April	May	June
Formal		3	3	2	4			2	2	2	4	
Workplace	1	3	1	8	2	2		4		3	2	3
Awareness		5	1			4		5	2		5	1
Education		1	4	1	1			2	1	1	4	2
Cancellation		2	1		2			3	5		1	
Total Training Sessions	1	14	10	11	9	6	0	16	10	6	16	6
Total Participants	20	170	90	260	54	236	0	220	596	303	420	200

Area of Training	MONTHS											
	July	August	September	October	November	December	January	February	March	April	May	June
Government		2	1	7	1			2	1	1	3	2
Private Sector	1	1	2	3		2		4	1	1		11
Aboriginal		4	1	1	1			2	1	1	4	1
NESB		1				1						1
Disability	1	2	1			2		1		2	2	1
Youth/Aged		1		1	1			3		2	4	1
Women									1		2	
Total	2	11	5	12	3	5	0	12	4	7	15	17

## Law, Policy and Conciliation



**Matthew Storey**  
**Director**

The obligation to investigate, conciliate and, if necessary, hear complaints lies at the core of the Anti-Discrimination Commissioner's functions. The Act provides that if the Commissioner is to hear a matter, he must not have been involved in the investigation or conciliation of the complaint. As a result, the Commissioner has delegated the powers to investigate and conciliate complaints to the conciliators, who act as delegates in receiving complaints, deciding on whether to accept or reject them; conducting an investigation; making a decision as to whether the complainant has established a prima facie complaint; and, where necessary, conducting a conciliation conference.

Throughout all stages of the process, the Office of the Anti-Discrimination Commissioner maintains both absolute confidentiality and absolute impartiality. Often complainants will believe that the Commission's function is to assist them. This is incorrect. The Commission's function is to investigate, conciliate and if need be determine complaints. Each of these functions requires complete neutrality. Any advice the Commission's staff gives to complainants or respondents only goes to the form and procedure of complaints - not as to how to conduct a complaint.

### Complaint Process - Overview

The Act allows for a person to make a written complaint to the Anti-Discrimination Commissioner alleging discrimination or other prohibited conduct (which includes sexual harassment, failure to accommodate a special need and discriminatory advertising). The Act prohibits discrimination on the basis of the following attributes:

- (a) race;
- (b) sex;
- (c) sexuality;
- (d) age;
- (e) marital status;
- (f) pregnancy;
- (g) parenthood;
- (h) breastfeeding;
- (j) impairment;
- (k) trade union or employer association activity;
- (m) religious belief or activity;
- (n) political opinion, affiliation or activity;
- (p) irrelevant medical record;
- (q) irrelevant criminal record;
- (r) association with a person who has, or is believed to have, an attribute referred to in this section

Discrimination on these grounds is only prohibited in the areas of

- (a) education;
- (b) work;
- (c) accommodation;
- (d) goods, services and facilities;
- (e) clubs;
- (f) and insurance and superannuation.

The complaint process involves four stages. A written complaint is received by the Commission. The Commission makes a determination as to whether the complaint on its face is within jurisdiction. If so, the complaint is accepted. The complaint is then investigated, following which the Commission makes a determination as to whether there is prima facie evidence of prohibited conduct. If so, the complaint is referred to conciliation. If the complaint can not be conciliated, it is referred to a Hearing before the Anti-Discrimination Commissioner or a Hearing Commissioner. Because of the risk that involvement in the complaint before hearing may raise an appearance of bias, delegates of the Commissioner, rather than the Commissioner himself, deal with all complaints up to hearing stage. If the complainant can prove their case on the balance of probabilities, the Commissioner may award damages of up to \$60000 and make orders in the nature of an injunction.

An appeal may be made against a decision to reject a complaint at any stage of the process or against the decision at hearing to the Local Court.

### **Complaint Handling in 2000/2001**

Complaint numbers in 2000-2001(333) is roughly equal to the average number of complaints over the last four years. The figure is significantly down from the previous period's total (531 complaints in 1999-2000). Whilst it is refreshing to see a reduction in the number of complaints, the decrease in complaints requires some examination.

Analysis of the complaints by gender of complainant and area of complaint suggests that the major decrease occurred in the number of complaints received in the area of Goods, Services and Facilities (GSF). The number of complaint "files" opened in the GSF area fell from 112 in 1999-2000 to 35 in 2000-2001\*. The number of complaint files opened in the "work" area fell from 138 in 1999-2000 to 99 in 2000-2001. The most significant decrease was in the number of complaints from men about GSF matters (from 76 in 1999-2000 to 20 in 2000-2001). This analysis would support an analysis that the reduction may be due to the establishment of an Aboriginal Interpreter Service.

With very few exceptions, the Commission has fulfilled its statutory obligation to determine the outcome of a complaint to the prima facie stage within six months of accepting the complaint. This is one of the most rapid response times of any similar agency in the country. The Law Policy and Conciliation division is continuing to refine and improve processes to provide for an improved turn around time in complaints. Those complaints that were not dealt

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\* (It should be noted that a "file" is used to describe the investigation of the matters raised by a single complainant with respect to a single factual scenario. A "file" may involve a number of complaints against a number of individual respondents. Thus, the 333 complaints received during 2000-2001 were contained within 160 "files").

with in under six months were, on the whole, received earlier in the period before the implementation of revised, and efficient complaint investigation procedures. The rapid processing of complaints is one significant factor in their eventual successful resolution.

## **Enquiries**

The first contact most people have with the Office of the Anti-Discrimination Commissioner is by making an enquiry. Advice given in response to enquiries is both free and confidential. Advice that is given goes to the issues covered by the Act and the procedures utilised by the Commission.

There is a low number of calls received from rural and remote communities in the Territory. Due to isolation and language barriers, residents in these communities may be among the most in need of the protection afforded them through the Act. It is hoped that the production of additional videos and other material in Aboriginal languages, for distribution to these remote communities, will help redress this need.

The number of enquiries received this year (670) was lower than that received in the previous year (914). However, it should be noted that during the period the Commission commenced its web page which has been recording up to 3000 hits per day.

## **Acceptance of Complaints (Sections 65 and 66)**

It is a requirement of the Act that all complaints be in writing. Complaints must be lodged within 6 months of the alleged prohibited conduct taking place. A delegate has the power to accept complaints out of time, however this discretion is not often exercised, and usually only where a complainant is able to demonstrate that the lapse of time occurred through no fault of their own. The delegate also occasionally allows in material out of time where it forms part of a continuing pattern of prohibited conduct such as sexual harassment.

There is tabular and graphical information relating to complaints at the conclusion of this section.

Upon receipt of a complaint, a delegate, upon being satisfied that a complaint is within time, then examines it to ascertain whether the activity complained of falls within an area covered by the Act and, if it is a discrimination complaint, whether there is any evidence that the activity is related to an area covered by the Act. As noted earlier in this report the Act covers six areas of activity (education, work, accommodation, goods, services and facilities, clubs and insurance and superannuation).

The area that generated the largest number of complaints was that of work. Much educational activity and attention has been directed over the last year to the development and implementation of policies and training in the workplace to help eliminate discrimination.

The other preliminary check is to ascertain whether any of the attributes covered by the Act are related to a complaint of discrimination. The "attributes" as defined by the Act are set out earlier in this report. The Act prohibits discrimination based on any of the specified attributes.



It is here that some misconceptions can arise. The office can be contacted by a potential complainant who alleges that they have been discriminated against, however if they are unable to demonstrate that the discrimination was based on any of the attributes listed above, the complaint is rejected.

The usual practice is to write to the Complainant, pointing out that no attribute appears to be relevant to the complaint.

The decision to accept or reject a complaint must be made by the conciliator within sixty days of the complaint being received by the Commission. If a complaint is accepted an investigation is carried out.

Of the 216 files closed for the year 77 (36%) were rejected at the outset.

Following the decision of Trigg SM in *MAS Berhad v ADC & Lee* appeals from a section 66 decision can only be made by the complainant if a decision is made to reject a complaint. There were 9 appeals from decisions under sections 65 and/or 66 either concluded or on foot in 2000/2001. One of these was successful.

## **Investigation**

Most people are unfamiliar with an investigation or inquisitorial process, many having only had experience of the adversarial process experienced in the courts. The process gives the parties time to think about the issues and clarify them and to gather relevant information. It removes the risk of "sudden death" for the complainant because the necessary information to support the case is not in the first document. It also benefits respondents by acting as a screening process for complaints before they become public matters.

A delegate has a wide discretion in the form that an investigation under the Act may take. The guiding principle is that of natural justice. That is a party is given an opportunity to comment on any issue that may adversely affect their interests.

From time to time, it is necessary to interview witnesses. Up to a dozen witnesses have been interviewed in relation to one complaint. The form of interview may vary. Under the provisions of the Act a delegate may simply note a record of an oral conversation or, at the other end of the spectrum, a witness may be required to attend the Commission and give evidence under oath.

Medical or business records may also be sought, and occasionally police records. There are powers to compel attendance at proceedings under the Act and the production of records if necessary.

## **Representation**

Section 62 of the Act gives a delegate a discretion as to whether to allow representation. Over the period the Commission has altered its view on representation of parties during the complaint investigation process. Parties will now normally be allowed to have legal representation unless a particular detriment to a party to a complaint can be shown.

The liberalization of the ability to be represented ensures both the prompter investigation of complaints, a greater understanding of the role of the Commission and, often, a quicker resolution of complaints without the need to refer a matter to hearing. It also reflects the reality that many parties to a complaint were receiving legal advice "in the background".

The guiding principle in determining whether to allow legal representation in the complaint investigation process is that of fairness to the parties.

### **Prima Facie (section 76) Decisions**

A delegate makes the prima facie decision from information on file. It is not a finding of fact or of liability. But, essentially a test. The test to be applied in order to find that there is prima facie evidence is that described by Martin CJ in the Northern Territory Supreme Court in *Dew v Anti Discrimination Commissioner* (1996) 130 FLR I at 17. His Honour noted "...that if the evidence remains as it is there is a probability that at trial of the action the plaintiff will be held entitled to relief. The complainant bears the burden of proof, i.e. the complainant must be able to demonstrate that there is evidence to establish the probability that they would be entitled to an order as described. At this stage, the complaint is either dismissed or prima facie evidence is found and the complaint proceeds to a conciliation conference or a hearing depending on the circumstances.

Of the 216 complaints closed for the year 37 (17%) were dismissed at the prima facie stage.

As with decisions under section 66, following the decision of Trigg SM in *MAS Berhad v ADC & Lee* appeals from a prima facie decision can only be made by the complainant if a decision is made to reject a complaint. There were 5 appeals from a prima facie finding either concluded or on foot in 2000- 2001.

### **Conciliation Conferences**

Conciliation is at the heart of the Act. Conciliation allows the parties to come together to reach a mutually satisfactory agreement about the complaint. At a conciliation conference the complainant and respondent meet, with a conciliator, to discuss, and if possible, resolve the complaint in an environment that is free from the emotion and formality of a hearing. It also reduces the delay, time and inconvenience of a full hearing.

A conciliation conference can occur during either the investigation phase or after a favourable prima facie decision for the complainant. A Hearing Commissioner may also determine that there is scope for conciliation between the parties during the hearing stage.

Of the 216 complaints closed for the year 38 (18%) were settled between the parties. Generally such settlement occurs with the facilitation of a conciliator either subsequent to a section 76 finding or during the course of an investigation. For details of outcomes of formal complaints files see page 54.

## Hearings

If a complaint cannot be settled by conciliation after the finding of a favourable prima facie decision for the complainant the matter will be referred to hearing. The first step in the hearing process is a Registrar's Conference. At these forums the parties come together to establish dates for filing Points of Claim by the Complainant (a document setting out the substance of the complaint), Points of Defence by the respondent (a document setting out the nature of the defence), the number of witnesses and how much time will be needed, whether or not the parties will be represented, a hearing date and any other matters that need to be clarified.

One of the most serious shortcomings of the procedures established by the Act is there is no clear statutory mechanism to deal with a party who unduly delays in filing their hearing documents.

A total of 31 matters have been referred to hearing over the year. 22 of these involved complaints relating to the establishment of an Aboriginal Interpreter Service (some of these were erroneously reported as having been referred to hearing in 1999-2000). The hearing of these complaints occurred in July 2001. Closing submissions in this matter are set down for September 2001. Of the other matters already listed or referred for hearing, six have settled prior to hearing and the remainder have been set down for hearing later in 2001.

In addition to the matters referred to hearing over the period, significant progress has been made on eliminating a backlog of hearing cases that had been carried over from the previous reporting period. The following table sets out the status of all matters currently listed for hearing before the Commission.

<b>MATTER</b>	<b>OUTCOME</b>
Ankin & Ors v Northern Territory (A large number of complaints are comprised in this Hearing)	Part Heard, set down for September
Barton-Johnson v Darwin Turf Club	Listed for Hearing, October 2001
Bell v Quinlan	s.102 application listed for September 2001
Bishop v Lend Lease	Settled prior to hearing
Cooper v Jewel Group	Settled prior to hearing
Fry v Santos Petroleum	Settled prior to hearing
Garovic v Pinecot P/L	Adjourned, pending judicial review.
Ljuduraj v THS & Ors	Settled prior to hearing
Lewin v TEABBA & Cummings	Dismissed per s. 102
MacLeod v JSK Nominees P/L & Ors	Awaiting Listing

McDonnell v Richards	Direction for pleadings made
Renouf v ABC & Gibson	Heard, awaiting decision
Russell v Chubb Security Ltd	Settled prior to hearing
Smith v Ciarla	Settled prior to hearing
Weigand v NT Correctional Services	Listed for hearing, September 2001
Weigand v Pidgeon	Direction for pleadings made
Page v Fugitives Drift	Direction for pleadings made

## Appeals

Appeals lie from the Commission to the Local Court under s.106 of the Act. Two Local Court decisions decided in May 2001 are of particular significance to the operations of the Commission. These are the interlocutory decisions in *Trenow v ADC* and *Fiorido v ADC & Territory Housing*. Both were decisions of Mr Trigg SM. *Trenow* concerned the nature of an appeal against a decision to reject a complaint pursuant to section 66 (and section 65) of the Act. *Fiorido* concerned the nature of an appeal against a decision to reject a complaint pursuant to section 76 of the Act.

In these decisions Mr Trigg determined that generally an appeal against these decisions will be an appeal on the materials upon which the delegate of the Commissioner made the original decision. These decisions clarify that Mr Trigg's earlier decision of *McDermott v Lawrie* which held that an appeal under section 106 is a hearing de novo only applies in the instance of an appeal against a decision of the Commission reached after hearing, not to decisions under sections 66 and 76.

The decisions in *Trenow* and *Fiorido* have led to a much quicker resolution of decisions appealed to the Local Court. However, a question must still be raised as to the appropriateness of the location of the Hearing and Appeal functions under the Act and whether these lead to the best resolution of grievances for Territorians.

## Appeals Finalised During 2000/2001

### ***Anderson v ADC & Kernich and Eight Ball Assoc of NT Inc.***

Appeal against s. 76 decision - withdrawn.

### ***Doidge v ADC & Bridge Autos***

Appeal against s. 76 decision - withdrawn (August 2001)

### ***Gough v ADC***

Appeal against s. 66 decision - withdrawn (August 2001)

***Harris v ADC***

Appeal against s. 66 decision - withdrawn (September 2001)

***Keen v ADC & SSL Nationwide***

Appeal against s. 76 decision - withdrawn

***Lambe v ADC & Commissioner of Police***

Appeal against s. 76 decision - dismissed (August 2001)

***Smith v ADC***

Appeal against s. 65 decision - withdrawn

***Trenow v ADC***

Appeal against decision under s. 65 - allowed

**Matters Part Heard*****Spires v ADC & Darwin International Hotels & Ors.***

Appeal against s. 76 decision - part heard.

***Spires v ADC and Department of Transport & Works***

Appeal against s. 76 decision - part heard.

***Fiorido v ADC & Territory Housing***

Appeal against s.76 decision - part heard.

***Martin v ADC***

Appeal against s. 76 decision - heard, awaiting decision

**Outputs Outcomes**

The Law, Policy and Conciliation section of the Commission represents a distinct output group for the purposes of the outputs measurement of the Agency.

In Budget Paper No 2 this output group is described as complaint resolution. The following performance measures are identified in the Budget Papers.

## A. Complaint Resolution

Complaint acceptance, investigation, conciliation and hearing

Performance Measures		Unit of Measure	2000 – 01 Estimate	2001- 02 Budget
Quantity		Number of Complaints processed	531	550
Quality		Successful appeals against rejection to Local Court	1	0
Timeliness		% Under statutory limit	95	100

The broad heading of complaints resolution is further refined for the purposes of performance measurement within the agency. The following outputs have been identified as representing the activities of the section. The 2000-2001 figures in the following tables now represent actual figures (unlike the estimates included in Budget Paper No. 2).

### Output 1: *Answer enquiries*

**Description:** This output refers to phone, email written or in person enquiries about rights and obligations under the Anti-Discrimination Act 1992.

Performance measures		Unit of Measure	2000/01 (Actual)	2001/02 (Estimate)
Quantity		Number of Enquiries	734	800
Quantity		Negative comments to supervisor	3	0
Timeliness		Average under 24 hours	96%	98%

### Output 2: *Assess Complaints*

**Description:** This output refers to the acceptance or rejection of written complaints lodged with the Commission under section 66 of the Anti-Discrimination Act 1992.

Performance Measures		Unit of Measure	2000/01 (Actual)	2001/02 (Estimate)
Quantity		Number of complaints processed	333	367
Quality		Successful appeals against rejection to Local Court	1	1
Timeliness		% under statutory limit (60 days)	90	95

**Output 3: *Investigate Complaint files***

**Description:** This output refers to the investigation of complaints under section 74 of the Anti-Discrimination Act 1992 (note the measure of this output "complaint files"; differs from output 2 in that one "complaint file" may contain a number of "complaints").

Performance Measures	Unit of Measure	2000/01 (Actual)	2001/02 (Estimate)
Quantity	Number of Complaints investigated	214	234
Quality	Number of successful appeals against rejection to Local Court	0	1
Timeliness	% under statutory limit (6 months)	95	98

**Output 4: *Conciliate Complaints***

**Description:** This output refers to the conciliation of complaints under section 78 of the Anti-Discrimination Act 1992.

Performance Measures	Unit of Measure	2000/01 (Actual)	2001/02 (Estimate)
Quantity	Number of Complaints conciliated	60	74
Quality	% of received complaints settled by conciliation	18	20
Timeliness	Average time from reference to conclusion	3 months	1 month

**Output 5: *Hear Complaints***

**Description:** This output refers to the hearing of complaints under section 83 of the Anti-Discrimination Act 1992.

Performance Measures	Unit of Measure	2000/01 (Actual)	2001/02 (Estimate)
Quantity	Number of Complaints heard	31	15
Quality	Number of successful appeals against decision to Local Court	0	0
Timeliness	Average time from reference to conclusion	12 months	4 months

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## Indicative Complaints

The following are complaints that indicate the nature of those brought before the Commission:

### Parenthood

The Complainant was employed as an instructor in remote communities. He had a three-year-old daughter and sought permission from his employer for his daughter to regularly accompany him to work. When this permission was refused he made a complaint alleging that his employer had discriminated against him on the basis of parenthood and engaged in the prohibited conduct of failing to accommodate his special need as a parent. The Commissioner rejected the complaint on the ground that the complaint was misconceived because the provisions of the Anti-Discrimination Act 1992 do not go so far as to produce a requirement for employers to permit employees to regularly bring their children to work with them.

The Complainant was a mother with a baby. She was refused access to some public buses unless she folded up the baby's pram. This was a problem because the baby had a medical condition that required it to lay flat as much as possible. The bus drivers were of the view that prams had to be folded for safety and the convenience of other passengers. A conciliation conference was held involving the Complainant, a number of bus drivers, and personnel and management representatives from several bus companies. The conference was a positive and productive venue for all parties, and led to a satisfactory resolution of the Complainant's concerns, and a redrafting of the policies and practices relating to the special needs of parents travelling with children on buses.



## Impairment

The Complainant was a diabetic. He applied for employment and was refused on the basis that the employer would not consider diabetics for the job. There had been no attempt made to ascertain if he could meet the inherent requirements of the job. At a Conciliation Conference the Respondent came to understand that automatically assuming a diabetic would be unable to do the job was discriminatory and very hurtful to the Complainant. The Respondents apologized to the Complainant, paid him a cash settlement, and gave him a job.

## Sex

The Complainant was a man who upon marriage had changed his name to his wife's name. Following a divorce he sought to change his passport back to his birth name. He was told that because he was a man he would have to pay the full cost of a new passport, whereas a woman in similar circumstances receives a new passport free of charge. He complained that this was sex discrimination. On investigation of this complaint it was discovered that in fact the policy of the passport office was identical for both men and women, and that the Complainant had been incorrectly advised and should not have had to pay for his passport in those circumstances. The Respondent apologised, refunded the fee charged for the passport, and sent out a memo to all passport offices in Australia ensuring that all staff were informed of the correct policy.

## Age

The Complainant was given a trial shift as a shop clerk in a retail store. When she returned for a shift the next day she was told that she was not needed. When she asked for a reason she was told that she was the "wrong age". The Respondent demonstrated that age was not the real reason they did not hire the Complainant, but acknowledged that giving age as a reason was hurtful and distressing to her. They offered an apology and a settlement to compensate her.

## Race

The Complainant claimed that it was race discrimination that he wasn't eligible for jobs which are reserved for persons of Aboriginal or Torres Strait Islander descent. It was explained to him that, while this is a form of discrimination on the basis of race, it is not unlawful, because the *Anti-Discrimination Act 1992* provides an exemption for programs, plans or arrangements designed to promote equality of opportunity for a group of people who are disadvantaged. Aboriginal people are a disadvantaged group within society. Specifically designated jobs for this group are a special measure and the complainant therefore did not disclose discrimination within the meaning of the Act.

## Religious Belief

The Complainant applied for a position at a church-operated organisation. She was not hired for the job, and comments made by the employer led her to believe that only people who practiced a certain religion had been considered for the job. At a conciliation conference the Respondent satisfied the Complainant that religion had not been a factor in the decision not to hire her, and apologised for the distress this impression had caused her. The Respondent also came to understand that, unless affiliation with a certain religion was clearly a requirement for carrying out the duties of a job, it was unlawful discrimination to use religion as a criterion for hiring. They agreed to implement changes to the organisation's hiring practices to ensure that they were non-discriminatory.

## Enquiries

## Categories Of Prohibited Conduct

1 July 2000 - 30 June 2001

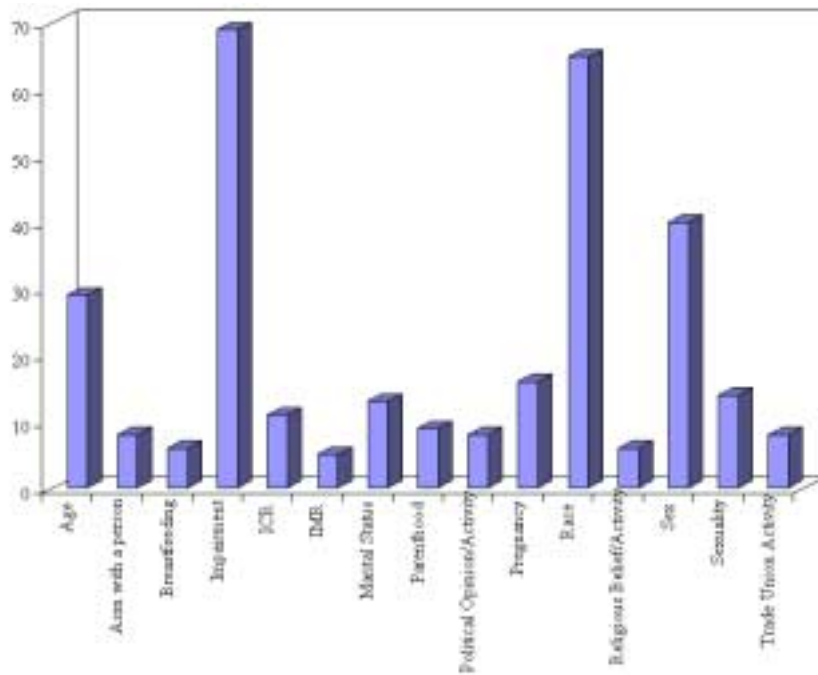
<b>PROHIBITED CONDUCT</b>	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Discrimination	33	46	27	23	34	29	18	19	19	15	26	18	307
Sexual Harassment	4	1	5	5	9	0	0	5	1	2	0	2	34
Victimisation	1	3	2	0	0	1	0	0	0	0	0	0	7
Failure to Accommodate Special Need	1	4	0	1	4	1	1	1	1	1	0	1	16
Discriminatory Advertising	0	2	2	2	0	0	0	0	0	0	1	0	7
Seeking Unnecessary Information	0	0	0	0	0	0	1	0	1	0	0	0	2
Aiding Contravention of Act	0	0	0	0	0	0	0	1	0	0	0	0	1
<b>NOT UNDER ACT</b>													
- Referred to other Agencies	8	12	12	10	8	10	6	8	13	21	19	12	139
- Information Posted	0	2	6	2	0	2	1	3	2	1	2	2	23
- Information Given	5	4	2	4	7	5	8	11	2	1	10	7	66
- Appointment	0	0	0	1	0	0	0	0	0	0	1	0	2
<b>GENERAL INFO.</b>													
- Referred to other Agencies	3	1	0	1	1	1	0	1	2	0	0	0	10
- Information Posted	5	6	2	5	2	2	1	1	3	2	0	3	32
- Information Given	4	13	10	7	8	5	0	6	9	6	6	13	87
- Appointment	0	1	0	0	0	0	0	0	0	0	0	0	1
<b>MODE OF ENQUIRY</b>													
- Telephone	59	82	59	57	67	52	34	52	48	46	55	49	660
- Personal	5	13	9	4	6	4	2	4	4	2	10	6	69
- Email	0	0	0	0	0	0	0	0	0	1	0	1	2
- Mail	0	0	0	0	0	0	0	0	1	0	0	2	3

**Enquiries (Prohibited Conduct)****Areas Of Activities****1 July 2000 – 30 June 2001**

PROHIBITED CONDUCT – DISCRIMINATION Grounds/Attributes	education	work	accommodation	goods/ service/ facilities	clubs	insurance/ super	Total
Age	0	25	0	2	1	1	29
Association with a person who has, or is believed to have, an attribute referred	1	5	0	2	0	0	8
Breastfeeding	0	6	0	0	0	0	6
Impairment	5	43	3	17	0	1	69
Irrelevant Criminal Record	1	8	0	2	0	0	11
Irrelevant Medical Record	0	5	0	0	0	0	5
Marital Status	0	9	0	3	0	1	13
Parenthood	0	6	1	2	0	0	9
Political Opinion, Affiliation or Activity	1	3	2	2	0	0	8
Pregnancy	0	15	0	0	1	0	16
Race	0	39	3	21	2	0	65
Religious Belief/Activity	0	4	1	1	0	0	6
Sex	0	32	1	7	0	0	40
Sexuality	0	12	0	2	0	0	14
Trade Union Activity	0	8	0	0	0	0	8
<b>Total</b>	<b>8</b>	<b>220</b>	<b>11</b>	<b>61</b>	<b>4</b>	<b>3</b>	<b>307</b>

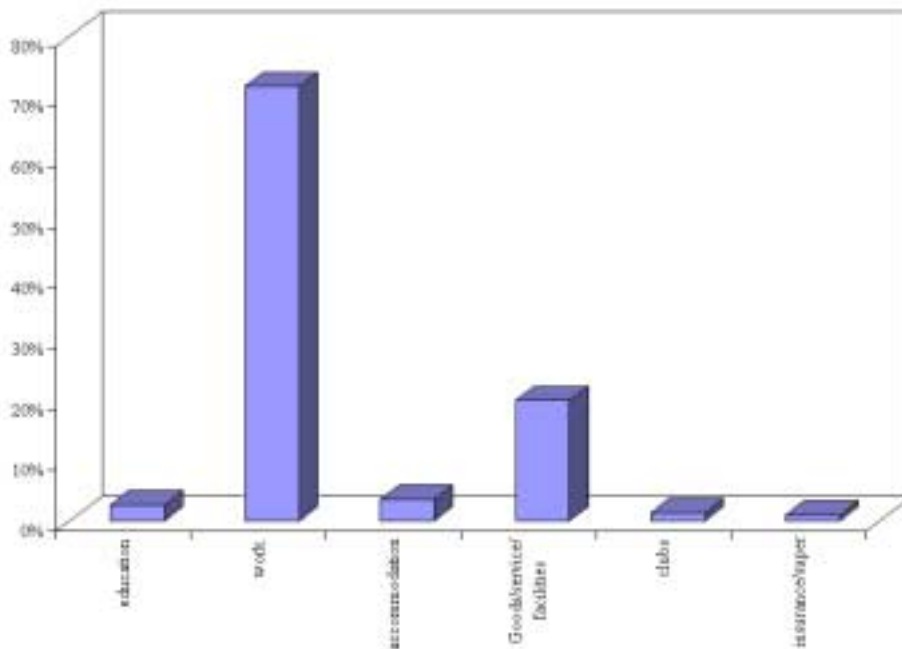
OTHER PROHIBITED CONDUCT Grounds	education	work	accommodation	goods/ service/ facilities	clubs	Insurance/ Super	Total
Aiding Contravention of Act	0	1	0	0	0	0	1
Discriminatory Advertising	0	7	0	0	0	0	7
Failure to Accommodate Special Need	2	8	2	4	0	0	16
Sexual Harassment	0	33	1	0	0	0	34
Seeking Unnecessary Info	0	2	0	0	0	0	2
Victimisation	2	5	0	0	0	0	7
<b>Total</b>	<b>4</b>	<b>56</b>	<b>3</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>67</b>
<b>TOTAL ENQUIRIES</b>	<b>12</b>	<b>276</b>	<b>14</b>	<b>65</b>	<b>4</b>	<b>3</b>	<b>374</b>

**Breakdown of Discrimination Enquiries Transactions**



\* ICR = Irrelevant Criminal Record  
 \* IMR = Irrelevant Medical Record

**By Areas by Percentage**



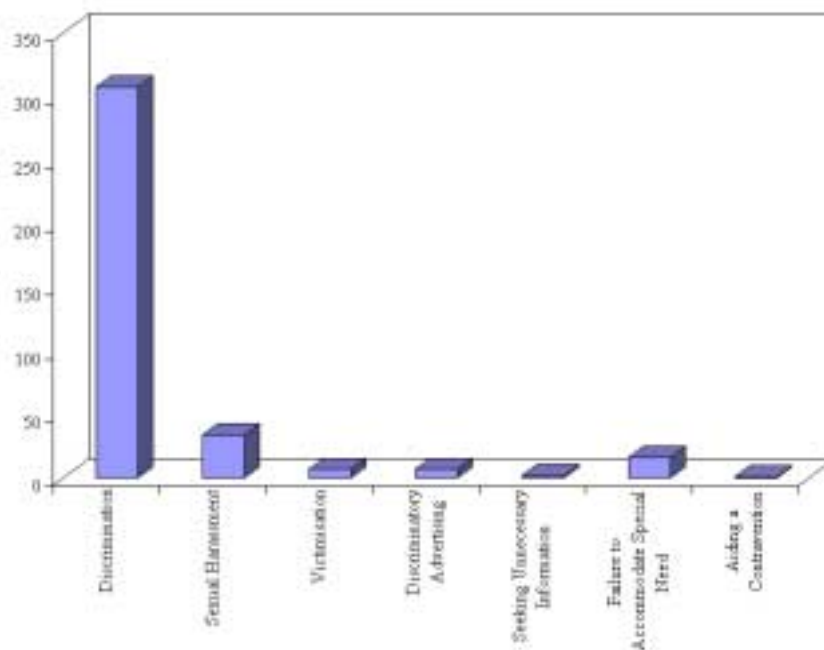
## Enquiries Transactions - 1 July 2000 - 30 June 2001

### Category of Prohibited Conduct

Discrimination	307
Sexual Harassment	34
Victimisation	7
Discriminatory Advertising	7
Seeking Unnecessary Information	2
Failure to Accommodate Special Need	16
Aiding a Contravention	1
<b>Total</b>	<b>374</b>

Note: does not include enquiries "not under Act".

### By Prohibited Conduct



### Comparison of Enquiries Received by Month and Year

	1996/97	1997/98	1998/99	1999/2000	2000/2001
<b>July</b>	82	78	81	71	60
<b>August</b>	79	99	64	82	85
<b>September</b>	82	123	120	65	62
<b>October</b>	66	91	97	77	56
<b>November</b>	51	72	115	74	59
<b>December</b>	53	55	49	60	51
<b>January</b>	65	72	59	57	32
<b>February</b>	77	101	89	77	52
<b>March</b>	54	80	101	81	49
<b>April</b>	75	76	81	75	46
<b>May</b>	76	89	81	106	62
<b>June</b>	72	77	73	90	56
<b>Total</b>	<b>832</b>	<b>1013</b>	<b>1010</b>	<b>915</b>	<b>670</b>

### Yearly Comparison of Enquiries Received

Year	Total Enquiries Received
1 July 1995 – 30 June 1996	903
1 July 1996 - 30 June 1997	832
1 July 1997 - 30 June 1998	1013
1 July 1998 - 30 June 1999	1010
1 July 1999 - 30 June 2000	915
<b>1 July 2000 - 30 June 2001</b>	<b>670</b>

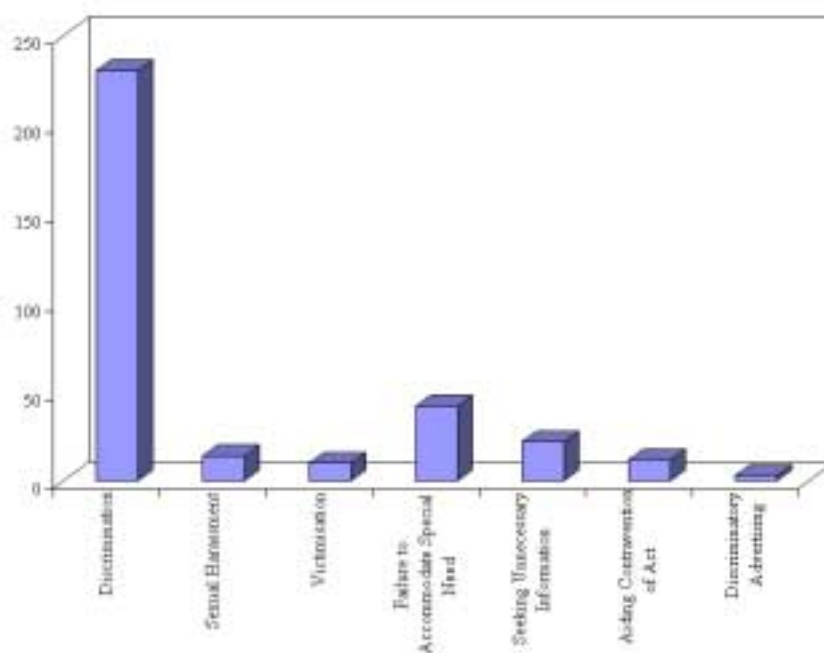
These figures relate to the particular year, they are not cumulative.

## Formal Grounds/Complaints 1 July 2000 – 30 June 2001

### Categories of Prohibited Conduct

Discrimination	230
Sexual Harassment	14
Victimisation	10
Failure to Accommodate Special Need	42
Seeking Unnecessary Information	22
Aiding Contravention of Act	12
Discriminatory Advertising	3
<b>Total</b>	<b>333</b>

### By Prohibited Conduct





**COMPLAINTS  
(AREAS OF ACTIVITIES)  
1 July 2000 – 30 June 2001**

PROHIBITED CONDUCT – DISCRIMINATION Grounds/Attributes	Education	Work	Accommodation	Goods/ Services/ Facilities	Clubs	Insurance/ Super	Total
Age	6	15	1	1			<b>23</b>
Association with person who has, or is believed to have, an attribute referred	1	10	1	6	2		<b>20</b>
Breastfeeding							
Trade Union/Employer Assoc. Activity		11					<b>11</b>
Impairment	3	25		10		2	<b>40</b>
Irrelevant Criminal Record		4					<b>4</b>
Irrelevant Medical Record	2	5		1			<b>8</b>
Marital Status		13	2	1			<b>16</b>
Parenthood		8	1	5			<b>14</b>
Political Opinion, Affiliation /Activity	2	6	3	2	1		<b>14</b>
Pregnancy		4					<b>4</b>
Race		18	1	11	1		<b>31</b>
Religious Belief/Activity	2	3					<b>5</b>
Sex		24	2	5			<b>31</b>
Sexuality		7			2		<b>9</b>
<b>Total</b>	<b>16</b>	<b>153</b>	<b>11</b>	<b>42</b>	<b>6</b>	<b>2</b>	<b>230</b>

OTHER PROHIBITED CONDUCT Grounds	Education	Work	Accommodation	Goods/ Services/ Facilities	Clubs	Insurance/ Super	Total
Aiding Contravention of Act	4	7	1				<b>12</b>
Discriminatory Advertising		2		1			<b>3</b>
Failure to Accommodate Special Need	3	24		12	2	1	<b>42</b>
Sexual Harassment		13	1				<b>14</b>
Seeking Unnecessary Information	1	11	1	9			<b>22</b>
Victimisation	1	8		1			<b>10</b>
<b>Total</b>	<b>9</b>	<b>65</b>	<b>3</b>	<b>23</b>	<b>2</b>	<b>1</b>	<b>103</b>

**TOTAL COMPLAINTS FOR 2000/2001**

**333**

**FORMAL GROUNDS/COMPLAINTS ON HAND**

	OPENED				CLOSED			
	97/98	98/99	99/00	00/01	97/98	98/99	99/00	00/01
July	15	39	46	8	9	26	29	49
Aug	19	19	32	8	26	30	31	12
Sept	21	18	32	13	19	30	26	16
Oct	17	25	18	9	17	11	7	21
Nov	13	52	19	15	23	10	16	19
Dec	24	31	14	6	12	28	17	18
Jan	20	15	16	20	12	21	29	13
Feb	35	23	8	22	9	18	25	15
Mar	22	85	30	12	25	23	36	26
Apr	30	49	15	7	15	52	23	8
May	27	23	24	12	19	29	34	12
June	24	68	25	28	29	39	16	7
<b>Total</b>	<b>267</b>	<b>447</b>	<b>279</b>	<b>160</b>	<b>215</b>	<b>317</b>	<b>289</b>	<b>216</b>

**Note 1:** One 'file' may contain a number of different grounds of complaint as described in the footnote to "Complaint Handling in 2000-2001" above.

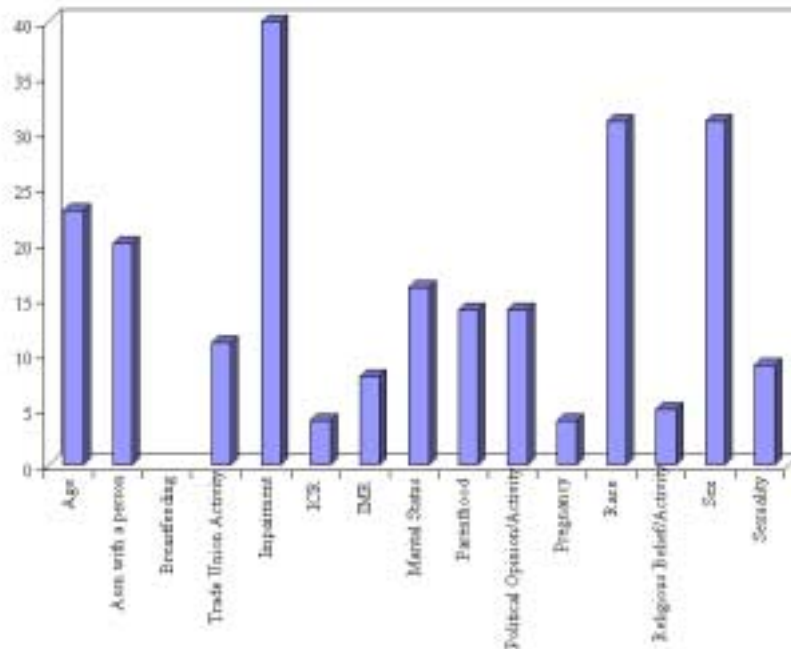
**Note 2:** As at 30 June 2001 there were **69** files "on hand". This is a significant decline from the 277 files reported as "on hand" at 30 June 2000. It appears there was a significant statistical error involved in previously reported file "on hand" statistics. This error appears to have existed since the 1997-1998 annual report when a distinction was first drawn between "complaints" and "files".

**Outcomes of Formal Complaints Files**

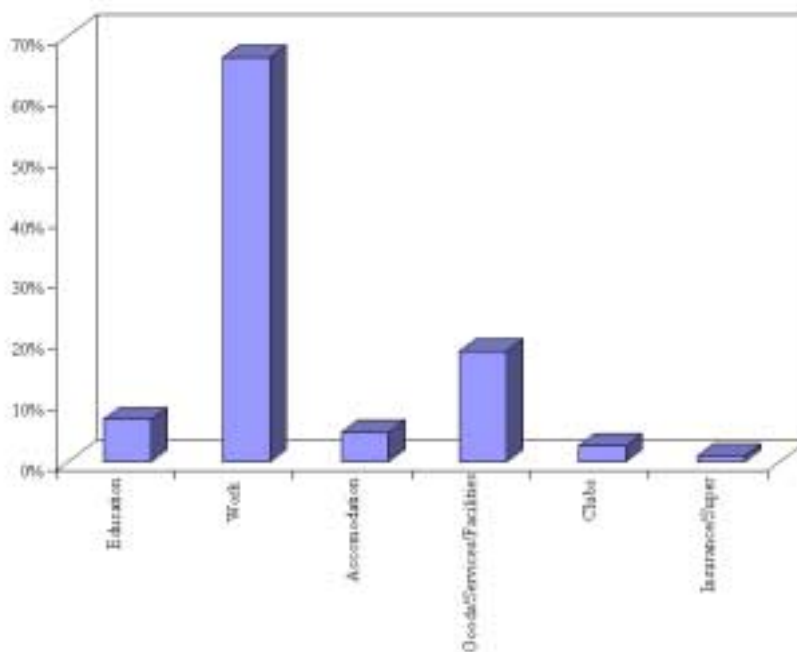
Discontinuance by Commissioner (s102)	2
Dismissed - no prima facie found (s76)	37
Lapsed or Lost Interest (s72)	10
Referred to Hearing	31
Rejected at Outset (s66-69)	77
Settled	38
Withdrawn by Complainant (s71)	21
<b>Total</b>	<b>216</b>

**Areas of Activities  
1 July 2000 – 30 June 2001**

**Formal Complaints: Breakdown of Discrimination**

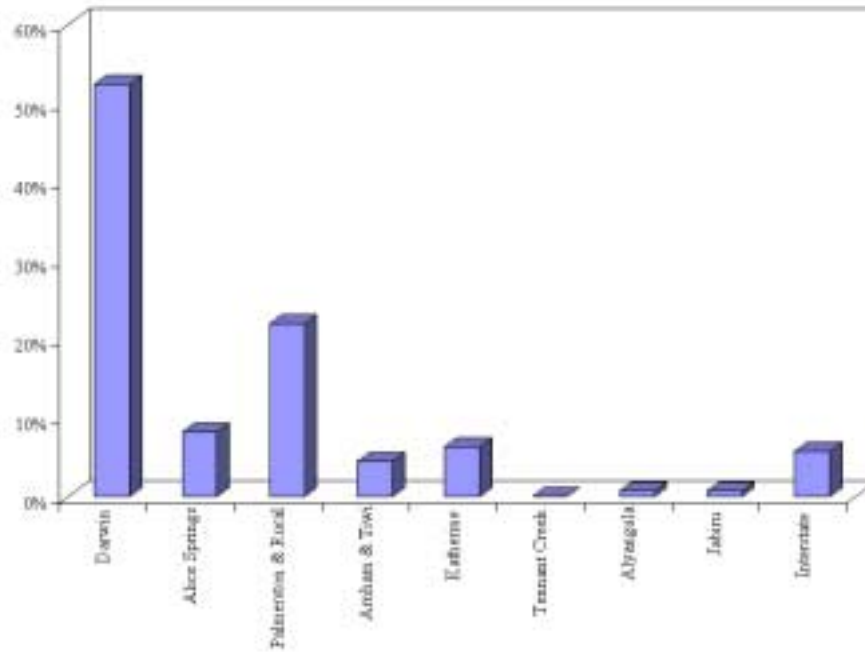


\*ICR – Irrelevant Criminal Record  
\*IMR – Irrelevant Medical Record

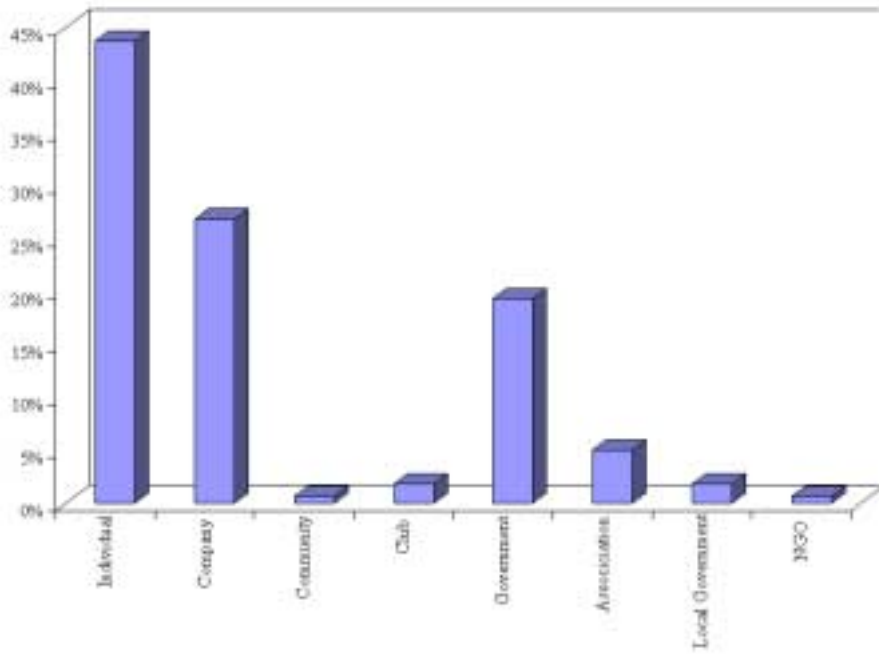


**By Area by Percentage**

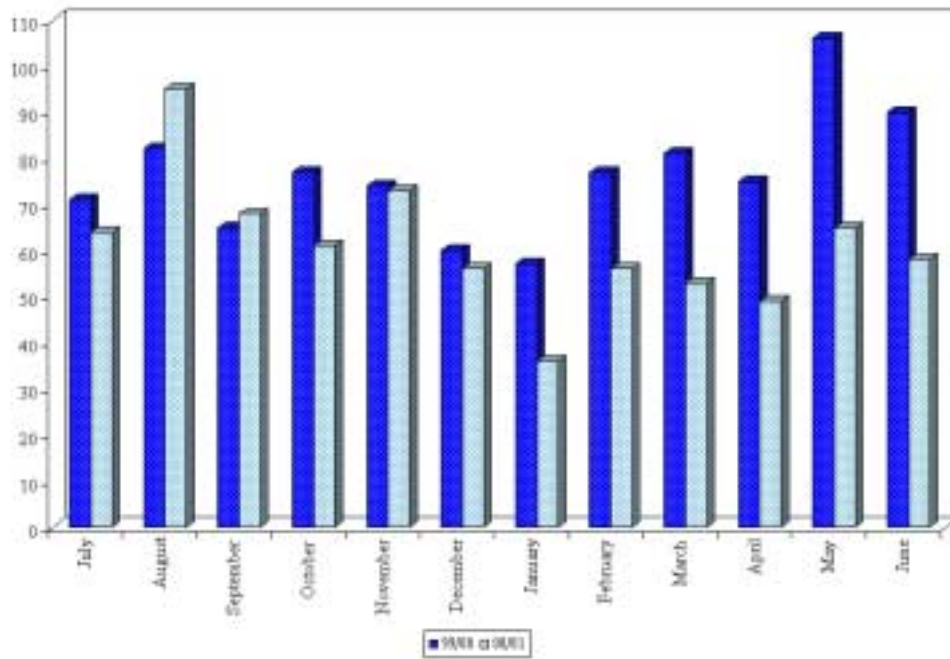
**By Percentage By Region**



**Respondents' Profile By Percentage**



### Comparative – Enquiries Received



### Comparative – Complaints Received

