



**Anti-Discrimination Commission
Northern Territory**

Annual Report 2001 – 2002

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**OFFICE OF THE NORTHERN TERRITORY
ANTI-DISCRIMINATION COMMISSIONER**
Matthew Storey
Acting Commissioner

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

Dear Attorney-General

Pursuant to section 16 of the *Anti-Discrimination Act 1992*, please find attached the Annual Report on the operations of the Anti-Discrimination Commission for the period 1 July 2001 to 30 June 2002.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Storey', with a long horizontal flourish extending to the right.

Matthew Storey

16 October 2002

Agency Access

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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, 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.

From the Acting Commissioner



Matthew Storey
Acting Commissioner

This Annual Report covers the period from 1 July 2001 until 30 June 2002. This reporting period has been a time of extraordinary change in the global, national and local contexts. It has also been a period of significant change in the Anti-Discrimination Commission.

However unlike some of the recent changes in the global situation, the change experienced by the Commission has generally been positive and has laid the foundation for a strengthening role for the Commission into the future.

The process of change is likely to continue into the future with the commencement of a new Anti-Discrimination Commissioner, Mr Tony Fitzgerald, in November 2002 and a significant review of the *Anti-Discrimination Act 1992* (the Act) being undertaken by the Commission to coincide with the tenth anniversary of our legislation. I warmly wish the new Commissioner every success in the future.

Administrative Changes

The most significant administrative change that occurred over the reporting period is the integration of the Anti-Discrimination Commission under the auspices of the Department of Justice in November 2001. The other administrative elements that went to make up the Department of Justice were the Attorney General's Department (including the Office of Public Trustee and Registrar General), Department of Correctional Services, Office of Courts Administration, Office of Business and Consumer Affairs and Office of the Director of Public Prosecutions.

Subsequent to the formation of the Department of Justice, the Anti-Discrimination Commissioner maintains an independent role and a direct relationship with the Attorney General with respect to statutory functions under the Act. The Commissioner is, however, an Executive Director of the Department of Justice responsible to the Chief Executive of that Department with respect to administrative matters. This same structure has been adopted with respect to other statutory officers within the Department such as the Director of Public Prosecutions and Commissioner for Consumer Affairs.

It should be noted that, as a Division of the Department of Justice, the Anti-Discrimination Commission has contributed to the Department's Annual Report. The Department of Justice Annual Report addresses the reporting requirements imposed under section 28 of the *Public Sector Employment and Management Act 1993* and the *Financial Management Act*.

Accordingly, this Annual Report is freed of the requirement to include detailed accounting and other administrative reporting information. Such material is now contained in the Department of Justice Annual Report.

Integration within the Department of Justice has had other benefits for the Anti-Discrimination Commission. The Commission has had access to expert staff to assist with matters such as Information Technology, Strategic Planning, Budget Planning, Personnel and Corporate Services. This access has relieved a significant load from an organisation that had less than ten staff but “agency” status and administrative responsibilities.

Budget and Staffing

Budget

The 2001/2002 budget allocation for the Commission was \$1 161 000. The allocation for the year was 11 percent higher than the previous year. The increase was primarily a result of three matters. First additional funds (\$179 000) were made available by way of Treasurer’s Advance in respect of the costs of particular hearings and appeals. The hearing of the matter of *Mamarika & Ankin & Ors v Northern Territory of Australia* (the Aboriginal Interpreter Service Case) and the Supreme Court proceedings in *Pinecot v Anti-Discrimination Commissioner* (the vicarious liability case) were the two most significant matters in this respect.

The increased funding also resulted from one off funds (\$45 000) being made available for the establishment by the Anti-Discrimination Commission of the Community Visitor Program pursuant to Part 13 of the *Mental Health and Related Services Act 1999*. This program is now permanently run under the auspices of the Anti-Discrimination Commission. It has led to the creation of an additional staff position at the Commission.

Finally, the Commission carried forward from the previous financial year, and continued to incur over the reporting period, a significant shortfall in its personnel funding. This shortfall arose from a number of positions being classified above their funded level. Additionally there was a shortfall in the operational budget arising from the IT outsourcing project. Funding (\$30 000 for personnel and \$33 000 for IT outsourcing) to overcome this shortfall was received through the Department of Justice following the integration of the Commission with the Department.

A summary of the 2001/2002 budget with these “extraordinary” items not included appears below. This summary is produced alongside the approved budget for 2002/2003.

	2001/2002	2002/2003
Allocation	1161	930
LESS extraordinary items	287	
Balance	874*	930
Complaint Resolution		
Personnel	411	441
Operational	113	150
Sub-total	524	591
Public Awareness		
Personnel	274	253
Operational	76	86
Sub-total	305	339
TOTAL	874	930

(*This figure, \$874 000, is the allocation against the Anti-Discrimination Commission in 2000-2001 Budget paper 2)

The Commission's 2002/2003 budget represents an improvement in terms of overall funding. Most significantly however the Commission now has secure funding for all staff at current levels. In addition there is funding to allow the creation of a junior complaints officer. At the time of writing no final decision had been made on the creation of this position.

Staffing

The diagram which follows illustrates the current staffing profile of the Anti-Discrimination Commission. The most notable changes from previous years are the upgrading of the two conciliator positions from AO5 to AO7, the abolition of the position of Director of Law, Policy and Conciliation and Receptionist and the creation of the position of Community Visitor Program Administrative Officer. As noted, funding is also available for the creation of a Junior Complaints Officer at the AO5 level.

Community Visitor Program

The Anti-Discrimination Commission has been responsible for the establishment and operation of this program which is funded through the Department of Health and Community Services. The program is established pursuant to Part 14 of the *Mental Health and Related Services Act 1999*. It provides an independent mechanism for redress of the concerns of clients of Mental Health Services in the Territory. The operations of the Anti-Discrimination Commission with respect to this program are the subject of a separate Community Visitor Program Annual Report. In summary the Anti-Discrimination Commissioner has been appointed Principal Community Visitor and the conciliation staff of the Commission serve as Community Visitors under the program. The Principal Community Visitor is also responsible

for the appointment of Community Visitor Panels which undertake regular inspections of agencies and facilities under the relevant legislation. The Commission now employs a Community Visitor Program Administration Officer to assist in the administration of the program.

Vicarious Liability Matters

The *Anti-Discrimination Amendment Act 2002* commenced on 24 April 2002. The Amendment Act inserts a new s 105 into the principal Act. Section 105 defines and limits the “vicarious” liability of employers and principals for the actions of their employees or agents. In summary the section makes employers and principals liable for the unlawfully discriminatory actions of the employees and agents unless the employer (or principle) took “all reasonable steps” to prevent the unlawful behaviour. Such a provision is contained in all other anti-discrimination legislation in the country. The new Northern Territory provisions however contain some innovations. The section contains guidance for a Commissioner as to what sort of actions may constitute reasonable steps (and thus raise the defence). Matters such as anti-discrimination training, equal opportunity policies, and the size and circumstances of the employer are referred to. The new section also provides that in the event a Commissioner determines that an employer has undertaken some preventative actions but not “all reasonable steps” the actions they have taken can be considered in determining any award of compensation.

The Act as originally enacted contained no explicit vicarious liability clause such as s 105. The existence of vicarious liability had been assumed because of a perceived equivalence between a right of action under the Act and that under a common law tort (such as negligence). This was the basis of the 1999 interlocutory decision of Commissioner Stodulka in *Garrovic v Mudge & Pinecot Pty Ltd*. This decision was the subject of judicial review proceedings in the Northern Territory Supreme Court in *Pinecot Pty Ltd v Anti-Discrimination Commissioner* (2001) NTSC. Mildren J in that matter determined the Act did not include a vicarious liability component. Prior to the handing down of that decision the Government had introduced the amendment bill.

The new section 105 does not have retrospective operation. It applies only to allegations of discriminatory behaviour that occur after 24 April 2002. However, as noted by Mildren J, in many cases the actions of an employee will be performed “in the course of their duties” and thus be the basis of a direct and not vicarious liability of their employer.

Complaint Trends

Complaint statistics for the reporting period and an analysis of them is contained in the Law Policy and Conciliation Division’s section in this Report. Comment here is restricted to two features of this material. The first is that for the first time complaints arising from the area of goods, services and facilities have exceeded those arising from the work area. This arose because “work” based complaint declined from 218 in 2000/2001 to 86 in 2001/2002 whereas complaints involving the provision of Goods Services and Facilities increased from 65 in 2000/2001 to 110 in 2001/2002. It is impossible to determine with any accuracy why this has occurred. However, it can be hoped that it is a result of improved training and personnel

management in work-places such that work complaints are reducing and a greater awareness of consumer rights leading to the increase in complaints in that area.

The number of files that were opened has decreased by 10 compared to 2000/01 (from 160 to 150). (The term "file" is used to describe investigation of the matters raised by a single complainant with respect to a single factual scenario. Therefore, a ' file ' may involve a number of complaints against a number of individual respondents). However, the overall number of complaints has reduced from 333 in 2000/2001 to 223 in 2001/2002. These two factors suggest that while the number of matters (represented by files) remains at comparable levels, the subject matter of each matter has become more straightforward. This trend may well be conformable with the reduction of more complex "work" based complaints, leaving the (comparatively) more straightforward consumer based Goods Services and Facilities complaints.

The overwhelming majority of complaints emanate from Darwin. Approximately 80 percent are from the Darwin, Palmerston and Rural areas. These areas represent only (approx) 50 percent of the Territory's population and do not include the majority of the Territory's Aboriginal population. This suggests that the representation of Aboriginal people in the complaints process grossly under-represents both the proportion of this segment of the Territory population and the reality of their social experience. This has been a matter of some concern to the Commission for a considerable period. The continuation of this under-representation suggests that measures beyond increased publicity may be required. The forthcoming review of the Act may provide mechanism to develop such measures.

In particular I believe serious consideration should be given to developing structures that provide for a complainant to have direct access to a determinative tribunal in combination with the creation of mechanisms to ensure that such a complainant has access to necessary resources. These developments would in turn have the effect of reducing the role of agencies such as the Anti-Discrimination Commission in the compliant process, thus allowing it to develop a greater concentration on public education and awareness functions, including an enhanced ability to have input into government policy.

Review of the Act

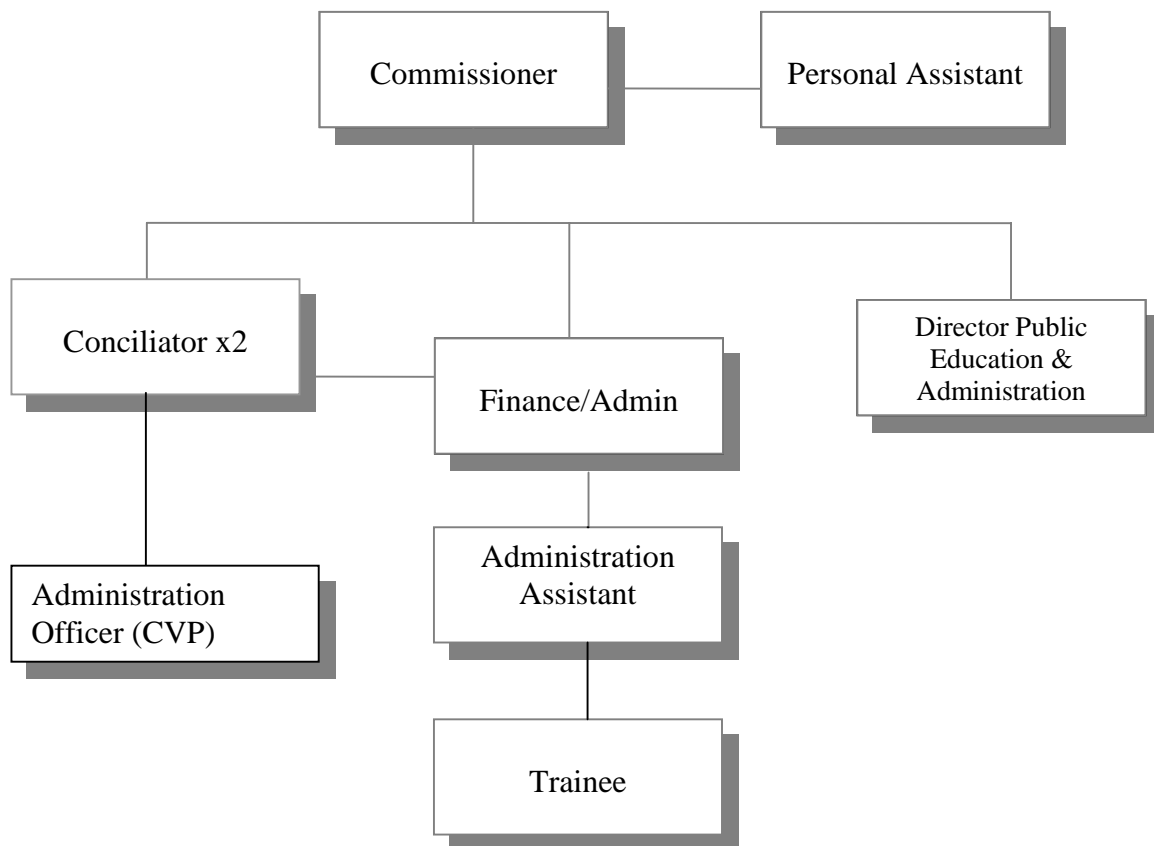
As noted earlier the Act is approaching its tenth year of operation. To coincide with this anniversary the Commission is finalising an Anti-Discrimination Act Review discussion paper. This paper will form the basis of public consultations and submissions regarding desirable amendments to the Act. It is likely this discussion paper and the public consultation process will commence shortly after the new Commissioner begins his duties.

It is hoped that this Review will ensure that the Territory continues to be well served by anti-discrimination legislation that enhances and protects the human rights of all Territorians.

Matthew Storey
Acting Anti-Discrimination Commissioner

15 October 2002

APPROVED STAFFING ESTABLISHMENT
(as at 30 June 2002)



Law, Policy and Conciliation

The *Anti-Discrimination Act 1992* (the Act) provides that the Commissioner, or his delegate, may investigate, conciliate and, where necessary, the Commissioner may hear complaints. This is the primary area of operations of the Anti-Discrimination Commission to fulfil the functions of the Commissioner as described in the Act.

As a result of section 85 of the Act, if the Commissioner has been involved in the investigation or conciliation of a complaint he is unable to conduct a hearing into the same matter. 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 conciliation conferences.

The Anti-Discrimination Commission maintains absolute confidentiality and impartiality throughout every stage of a complaint handling process. There are times when complainants believe that one of the Commissioner's functions is to assist or advocate for them. This is not so. The only functions of the Commissioner in relation to complaints is to investigate, conciliate, and if need be determine the complaints. In order to do this complete neutrality is required. Advice that may be given by the Commission's staff to either complainants or respondents. Such advice is only concerned with the form and procedure of complaints. The Commission does not advise either party about how they should conduct a complaint.

Complaint Process

Complaints alleging discrimination or other prohibited conduct (which includes sexual harassment, failure to accommodate a special need and discriminatory advertising) must be in writing. Discrimination is prohibited by the Act 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;
- (l) religious belief all activity;
- (m) political opinion, affiliation all activity;
- (n) irrelevant medical records;
- (o) irrelevant criminal record;
- (p) association with a person who has an attribute

Discrimination on any of these grounds is only unlawful in the areas of:

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

Once a written complaint is received by the Commission, there is a determination made as to whether the complaint on its face is within jurisdiction. If it is, the complaint is accepted and then investigated. At the completion of an investigation, the Commission determines whether there is *prima facie* evidence of prohibited conduct. If there is, the complaint is referred to conciliation. If the Conciliation Conference fails to resolve the matter it is referred to Hearing. This is usually before the Anti-Discrimination Commissioner but maybe before a Hearing Commissioner.

Delegates of the Commissioner, rather than the Commissioner himself, deal with complaints up to hearing stage. This is because there is a risk that involvement in the complaint before hearing may raise issues of an appearance of bias.

At the hearing if the complainant can prove their case on the balance of probabilities, the Commissioner may make orders awarding damages of up to \$60,000 and may make further orders in the nature of an injunction.

Any decisions of the Commissioner or his delegates may be appealed to the local Court. This includes decisions to reject complaints, dismiss complaints at the *prima facie* decision-making stage, or a decision at the hearing stage.

Complaint handling in 2001/2002

The number of complaints (223) decreased since the previous year. However, it is still not a significant decrease from the average number of complaints over the last five years. If the decrease in complaints could be taken to be a positive sign that the awareness of discrimination is increasing, leading to fewer complaints, or that there was a reduction in the conflict within the community, this would be very pleasing. However, the Commission considers that the reduction may reflect a failing in the complaints process, in particular its accessibility. It is hoped that the planned review of the Act will highlight any such failings.

All *forms* of prohibited conduct (ie. discrimination, failure to accommodate a special need, etc.) have decreased this year with the exception of “seeking unnecessary information”. Complaints of this type involve a person asking another person either verbally or in writing for information on which discrimination might be based.

All but one of the grounds (ie race sex, age etc.) for a complaint had a decrease. The exception is the ground of race.

The number of files that were opened has only decreased by 10 compared to 2000/01. The term “file” is used to describe investigation of the matters raised by a single complainant with respect to a single factual scenario. Therefore, a ' file ' may involve a number of complaints

against a number of individual respondents. For example 2001/02 the number of files opened was 150 however the number of complaints received was 223. This indicates that a “file” may contain more than 1 complaint.

The number of grounds for a complaint, and the areas of activities and other prohibited conduct have decreased significantly from 374 last year to 266 this year. This, combined with, the small decrease in files opened, may reflect a decrease in the number of files containing multiple complaints.

The Commission has continued to improve its response time in relation to inquiries with 99% of inquiries responded to in less than 24 hours. All stages of complaint handling have shown an improvement in the time taken by the Commission to deal with complaints. This is a reflection of the continued refinement and improvement of the processes of the Law, Policy and Conciliation division.

Enquiries

For most people the first contact they have with the Anti-Discrimination Commission is when they make an enquiry. The Commission provides free and confidential advice in response to these enquiries which concerns both the procedures of the Commission and issues covered by the Act.

The Commission dealt with basically the same number of inquiries this year as compared to last year, and the majority of enquiries came from the Darwin region (53%). This is similar to last year and may still reflect the fact that there are a low number of calls received from rural and remote communities. This continues to be of concern to the Commission.

It is hoped that additional material may be produced for distribution in rural and remote communities to overcome this problem. It is also hoped that the review of the *Anti-Discrimination Act 1992* to be carried out during 2002/03 may identify and offer solutions to any inherent problems within the Act itself.

The Commission's website is also used by many to obtain information that might otherwise be obtained by using the telephone or by coming in person to the Commission's office. The website recorded an average of 38 visits per day for the 2001/2002 financial year. The average time of each hit was approximately 23 minutes. This represents as many as 13,870 visits to the website for the year, spending a total of approximately 5,316 hours on the site. It could be considered that many of these hits would have otherwise been direct enquiries to the Commission.

The area that generates the most number of inquiries continues to be work. There has been a small decrease in the number of enquiries in this area. The provision of goods, services and facilities is the second largest area to generate enquiries.

Acceptance of Complaints (Sections 65 and 66)

The Act requires that all complaints be in writing and lodged within six months of the alleged prohibited conduct taking place. Whilst a delegate has the discretion to accept complaints out of time this is not often exercised. This exercise of discretion usually only occurs where a complainant is able to demonstrate that the time has elapsed through no fault of their own. Material that is out of time will occasionally be allowed to form part of a complaint if it is shown that the material forms part of a continuing pattern of prohibited conduct.

The delegate must decide within sixty days of the complaint being received by the Commission whether to accept or reject the complaint. If a complaint is accepted an investigation is then carried out. If a complaint is rejected the Commission writes to the complainant and explains the reasons for the rejection. A decision to reject a complaint may be appealed by the complainant to the Local Court. Of the 167 complaints finalised for this year, 53 were rejected at the outset.

94% of complaints lodged with the Commission are assessed and either accepted or rejected within the sixty days required by the Act. Those that weren't took longer because Complainants had either moved or were living in remote locations making the exchange of information difficult and time consuming.

Once a complaint is received a delegate determines whether or not a complaint is within time. The complaint is further assessed to see whether the activity falls within one of the six areas covered by the Act (education, work, accommodation, goods, services and facilities, clubs and insurance and superannuation).

For many years the highest number of complaints have been in the area of work. This year, however, the provision of goods, services and facilities has overtaken the area of work, generating the most complaints. Approximately 48 percent of complaints came from this area. However, work continues to be a significant area for complaints. During 2001/2002 approximately 41 percent of complaints came from the area of work, a fall of 21 percent from the previous year. This may be due to the educational work of the Commission and the provision of a hotline for managers which provides free confidential advice.

The delegate must also ascertain whether a complaint alleging discrimination concerns actions that were done because of any of the attributes covered by the Act. These have been described earlier in this report. It should be noted that the attributes contained in the Act are limited. Not every act which may appear to be discrimination is necessarily unlawful. For example a person may complain about not being given a service because of where they live. Where a person lives is not an attribute under the Act. Many misunderstandings concerning discrimination as defined by the Act arise from a misconception that the *Anti-Discrimination Act 1992* covers anything that may be described as discrimination.

Investigation

The investigation phase of complaint handling involves giving the parties to a complaint the opportunities to comment on any of the issues which may adversely affect their interests. This is consistent with the guiding principles of natural justice. It involves giving them time to gather relevant information, allowing them to answer allegations, and to clarify what the issues are.

A delegate has wide discretion in the form the investigation may take under the Act, always taking into account natural justice. The delegate may interview witnesses, seek medical or business records, and on occasions other relevant records. If necessary, production of records may be compelled or a person may be compelled to attend proceedings under the Act.

Prima Facie (section 76) Decisions

At the end of the investigation stage, the delegate makes a prima facie decision from information on the complaint file. This decision is not a finding of fact or liability, it is essentially a test to find if there is prima facie evidence of the prohibited conduct.

Of the 167 files completed this year 20 were dismissed at the prima facie stage as there was no prima facie evidence that prohibited conduct had occurred.

Prima facie decisions which dismiss complaints are able to be appealed by the complainant through the Local Court.

Conciliation Conferences

Conciliation conferences may be held at various stages of the complaint handling process. A voluntary conciliation conference may be held during the investigation phase, a prima facie decision may refer a complaint to a compulsory conciliation conference, or the Hearing Commissioner may determine that there is some scope for a conciliation conference during the hearing stage.

Conciliation conferences allow the parties to come together with a conciliator to discuss the issues of the complaint and explore possible resolutions. If the parties resolve the complaint to their mutual satisfaction it is usual for a written settlement agreement to be executed by the parties.

Of the 167 files that were closed during this year, 43 were settled. This represents a settlement rate of 26 percent, an increase from last year's rate of 18 percent.

Of the 47 conciliation conferences held, 94 percent were successfully conciliated and the average time taken from when they were referred to conciliation was 3 months. This is an improvement from last year.

The details of the outcomes of formal complaints are listed in a table headed Outcomes of Formal Complaints Files.

Hearings

A hearing is the final stage of the complaint handling process. A complaint may proceed to a formal hearing by one of three ways. The first and most frequent way is that the complaint cannot be settled through a conciliation conference after a prima facie decision has been made.

Under section 84 of the Act either party may request that the complaint proceed directly to hearing if the Commission has failed to deal with a complaint within six months. In previous years it was not uncommon for this to occur, however, since the Law, Policy and Conciliation division has refined and improved its processes, this section is now infrequently used.

The Commissioner may refer a complaint direct to hearing if satisfied that there is prima facie evidence to substantiate the allegation of prohibited conduct and believes that it cannot be resolved by conciliation. This section (section 76 (b) (ii)) has not been used this year and is, in fact, rarely used at all.

The hearing stage begins with a Registrar's Conference during which the parties come together to establish dates for the complainant to file Points of Claim which set up the substance of the complaint, and for the respondent to file Points of Defence, which set out the nature of the defence. The parties also discuss whether or not they will be represented, the number of witnesses they intend to call, how much time will be needed, a hearing date and any other matters that need to be clarified.

After preliminary documents and materials have been exchanged a formal hearing occurs. The hearing is, in appearance, similar to other hearings of tribunals or courts, however, hearings often have less formality, and the Commissioner is not bound by the rules of evidence and may obtain any information on any matter as the Commissioner considers appropriate. The Commissioner also acts according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

Of the seven complaints referred to hearing as listed in the Outcomes of Formal Complaints Files table, only one has not been finalised prior to hearing. It should also be noted that the backlog that has been carried over from previous reporting periods, has now been cleared.

Matter

Outcome

Ankin & Ors v Northern Territory (a large number of complaints are comprised in this hearing)

Matter was heard and currently awaiting the decision of the Hearing Commissioner Southwood

Barton-Johnson v Darwin Turf Club

Hearing commenced and was adjourned after 1.5 days for conciliation discussions which resulted in the matter being settled

Bell v Quinlan

Settled prior to hearing

Garovic v Pinecot Pty Ltd

Vicarious liability complaint dismissed on

	basis of the Supreme Court decision in <i>Pinecot v Anti-Discrimination Commission</i> that there was no vicarious liability under the <i>Anti-Discrimination Act 1992</i> . Victimisation complaint will continue and is awaiting listing.
Garovic v Mudge	To be listed for hearing
MacLeod v JSK Nominees Pty Ltd & Others	Withdrawn by complainant
McDonnell v Richards	Complainant has been served with s72 notice due to apparent lapse of interest
Renouf v ABC & Gibson	Complaint was heard and dismissed
Weigand v NT Correctional Services	Complaint was heard and dismissed
Weigand v Pidgeon	Settled prior to hearing
Page v Fugitive Drift	Settled prior to hearing
Bourke v Department of Employment, Education, Training & McCormick	Hearing scheduled for 22 January 2003
Sharma v Mathews	Complaint lapsed and discontinued under section 72 of the Act - Complainant lost interest

Appeals

Under section 106 of the Act decisions of the Commissioner may be appealed to the Local Court. Decisions of the Local Court may also then be appealed to the Supreme Court.

Appeals finalised during 2001/2002

Spires v Anti-Discrimination Commission & International Hotels & Others	Dismissed by Local Court
Spires v Anti-Discrimination Commission & Department of Transport and Works	Dismissed by Local Court and dismissed by Supreme Court
Florido v Anti-Discrimination Commission & Territory Housing	Appeal allowed. Returned to Anti-Discrimination Commission for further investigation

Martin v Anti-Discrimination Commission	Dismissed by Local Court
Lambe v Anti-Discrimination Commission	Dismissed by Local Court
Lewin v TEABBA	Dismissed by Local Court

OUTPUTS

Output Group A: Complaint Resolution

Description: This output group describes the complaint acceptance, investigation conciliation and hearing function of the Commission.

Outcome: the disposal of complaints in accordance with the provisions and requirements of the Anti-Discrimination Act 1992

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	2001 -02 Actual	2002-03 Budget
Quantity		Number of Enquiries	666	700
Quality		Negative comments to supervisor	0	0
Timeliness		Average under 24 hours	99%	99%

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	2001 -02 Actual	2002-03 Budget
Quantity		Number of Complaints processed	223	235
Quality		Successful appeals against rejection to Local Court	0	0
Timeliness		% Under statutory limit (60 days)	94	97

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	2001 –02 Actual	2002-03 Budget
Quantity		Number of Complaints investigated	150	158
Quality		Number of successful appeals against rejection to Local Court	0	0
Timeliness		% Under statutory limit (6 months)	99	99

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	2001 –02 Actual	2002-03 Budget
Quantity		Number of Complaints conciliated	47	50
Quality		% of matters settled by conciliation	94%	95%
Timeliness		Average time from reference to conclusion	3 months	2 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	2001 –02 Actual	2002-03 Budget
Quantity		Number of Complaints Heard	19	20
Quality		Number of successful appeals against decision to Local Court	0	0
Timeliness		Average time from reference to conclusion.	15 months	6 months

Indicative Complaints

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

Race

The Complainant was a recent immigrant who found work in Darwin. He alleged that he was subjected to racial harassment and abuse from other employees and that they made false complaints against him which led to his employer terminating his employment in order to "keep harmony in the workplace."

A conciliation conference was quickly convened and the result was that the Complainant was immediately re-employed and was given a written apology from the Respondents. The Respondents also paid the complainant for \$1,200 to compensate for the hurt and distress suffered.

The Complainant attempted to enter a pub and betting shop on Melbourne Cup day. The manager refused to serve him saying that he was drunk and dirty and unsuitably dressed. The Complainant was in fact a non-drinker and witnesses confirmed that he was not dirty or dressed inappropriately. The Complainant alleged that the real reason for the assumption about being drunk was because of his Aboriginal race.

At a conciliation conference the manager made a very sincere apology to the Complainant for not having taken the time to speak with him to ascertain if he had been drinking and for perhaps having made assumptions that he was a person who would have been drunk or dirty. He assured the Complainant that he would not do the same in the future. The Respondent also invited the Complainant and his family as guests for dinner at the hotel on the Saturday immediately following the conciliation conference.

The parties were very happy with the outcome of the conciliation conference and for having the opportunity to meet face-to-face to clear the problem.

Special measures

The Complainants alleged that a women's assistance organisation discriminated against them as men by not offering, and denying access to, the same services as women. The complaint was rejected on the basis that section 57 of the Act permits discrimination in a program, plan or arrangement that is designed to promote equality of opportunity for disadvantaged groups. As the assistance provided by the organisation was intended to assist women who have been identified as a group who have not achieved equality of opportunity, the conduct was not discriminatory within the meaning of the Act as it was a special measure.

Religious activity

The Complainants were a couple employed for a "trial" period of employment in a business run by a religious body. All parties agreed that their work performance was satisfactory. However, the contract was not extended and the reason given by the employer was "concerns" over the Complainants actively promoting their own religion, which was different to that of the religious body employing them. The Respondent felt that it was within its rights to terminate the employment since it had been a term of the initial employment contract that the Complainants were not to spread their religion. The Respondent also argued that it was exempted from the provisions of the act pursuant to section 51 regarding exemptions for religious bodies.

At a conciliation conference the Respondent agreed to the following terms of settlement:

- To pay the sum of \$20,000 to the Complainants
- To provide a written apology to the Complainants for any hurt, humiliation, anguish or distress cause through the actions of the Respondent
- To conduct, with the assistance and advice of the ADC, a review of their Human Resource Management policy and practices with a view to remedying any unlawful discriminatory practices.

The parties were very happy with the conciliation process and the timeframe for handling of the complaint (accepted in early April 2002 and resolved at a conciliation conference in May 2002). Both the Complainants and Respondent advised that the conciliation had been a positive experience.

Sex

The Complainant alleged that she had been unsuccessful in obtaining employment because of her sex. She relied on the fact that she had been told by the person interviewing her for the position, that the supervisor "preferred a man for the job as it involves heavy lifting."

An early meeting between the parties was arranged at which the Respondent produced evidence showing that the position had in fact been given to another woman, and that there was no basis for the Complainant's allegations that the reason for her not getting the job was because of her sex. However, the Respondent acknowledged that it was possible that the interviewer had made the statement thereby resulting in upset to the Complainant and causing her to believe that she had been the victim of sex discrimination. The Respondent apologised and provided the Complainant with \$150 in gift certificates as a token of goodwill for having caused her distress.

Impairment

The complainant applied for a position and was rejected on the basis that he had a physical impairment which meant he did not meet the employer's "Medical Standards" which were set out in a written list.

Investigation revealed that the Complainant had not been disqualified due to medical reasons, but instead because of failure to meet the initial recruitment standards pertaining to academic skills and maturity. However, as the Complainant hoped to be accepted in these areas in the future, the issue of the discriminatory medical standards remained.

A settlement was reached on the basis that his application would remain on file and be accepted in the next intake. At that time, if the complainant then satisfied the other prerequisites he would not automatically be disqualified because of his physical disability. Instead "serious and genuine consideration" will be given to reasonable adjustment which might be possible to accommodate his special needs, taking into account the inherent requirements of the job.

The ADC was subsequently informed by the Respondent that it had conducted separate physical testing of the Complainant and been satisfied that, notwithstanding his impairment, he was able to meet the job requirements. At the next intake to meet the standard in the other areas which had been of concern, he was accepted.

Impairment

The Complainant is a wheelchair-bound man who complained after a walkway in his neighbourhood was closed thereby requiring him to use another walkway which made it virtually impossible for him to access the shopping centre. The Complainant alleged that this action was a failure to make reasonable accommodation for his special needs, as required under the Anti Discrimination Act 1992.

The respondent agreed to an early conciliation conference at which it became apparent that the Complainant's problem could be solved by providing him with a key to give him use of a walkway which was actually more convenient to him than the one that had been recently closed. The Respondent also agreed to make alterations to the gates on each end of the walkway and the access area to ensure that the Complainant would have no difficulty in accessing the walkway.

The complaint was resolved within three weeks of it being received by the ADC. However, the Complainant subsequently reported that the outcome caused him some problems due to others in the neighbourhood feeling he had received "preferential treatment". This may have been as a result of these persons not being aware that anti-discrimination laws specifically provide for special treatment of persons with disabilities where such preference is done as a reasonable accommodation of a special need arising from an impairment.

Guide Dogs – Section 21

The Complainant, who was accompanied by a hearing dog, attempted to rent accommodation in the dormitory of a hostel. The person at the desk was unsure whether he could rent space in a shared dorm to someone with an assistance dog. He checked with a person in charge and was told that for "health reasons" the Complainant could not stay in the dorm with his dog and would have to take single room accommodation, the price triple the amount of the dormitory.

The complaint was accepted and after receiving formal notice of the complaint, the Respondents were given the opportunity to resolve it at an early conciliation stage. Upon being advised of the sections of the ADA regarding assistance dogs, as well as relevant health legislation (which specifically exempts assistance dogs thereby permitting them in all public areas of establishments) the Respondent was open to resolving the matter and a settlement was reached on the following basis:

- An apology was offered to the Complainant
- the respondent agreed to ensure that all staff were made aware of the law regarding assistance dogs so that a similar situation would not arise in the future
- the Complainant was given six nights free accommodation at the hostel to be used in October and/or December during school holidays.

The complaint was resolved in less than a month and both parties were pleased with the conciliation process and the amicable outcome of the complaint.

Enquiries
Categories of Prohibited Conduct
 1 July 2001 - 30 June 2002

PROHIBITED CONDUCT	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
Discrimination	23	28	24	24	22	20	17	24	17	17	19	10	245
Sexual Harassment			1				2		1	1			5
Victimisation									1	1			2
Failure to Accommodate a Special Need							2		2	1			5
Discriminatory Advertising				1			1		1				3
Seeking Unnecessary Information							2		1		2		5
Aiding Contravention of Act													
NOT UNDER ACT													
Referred to other Agencies	9	10	8	14	6	4	5	8	10	13	10	11	108
Information Given/ Posted	16	10	20	26	30	8	13	9	6	15	14	9	176
Appointment													
GENERAL INFO.													
Referred to other Agencies			3					1	2	1	3	2	12
Information Given/ Posted	8		8	9	8	4	23	13	5	11	14	5	108
Appointment		1										1	2
MODE OF ENQUIRY													
Telephone	56	38	59	67	59	31	62	51	30	56	38	33	580
Personal	1	11	4	7	6	4	3	3	12	3	10	6	70
Email			1					1		1	2		5
Mail						1							1

Enquiries (Prohibited Conduct)

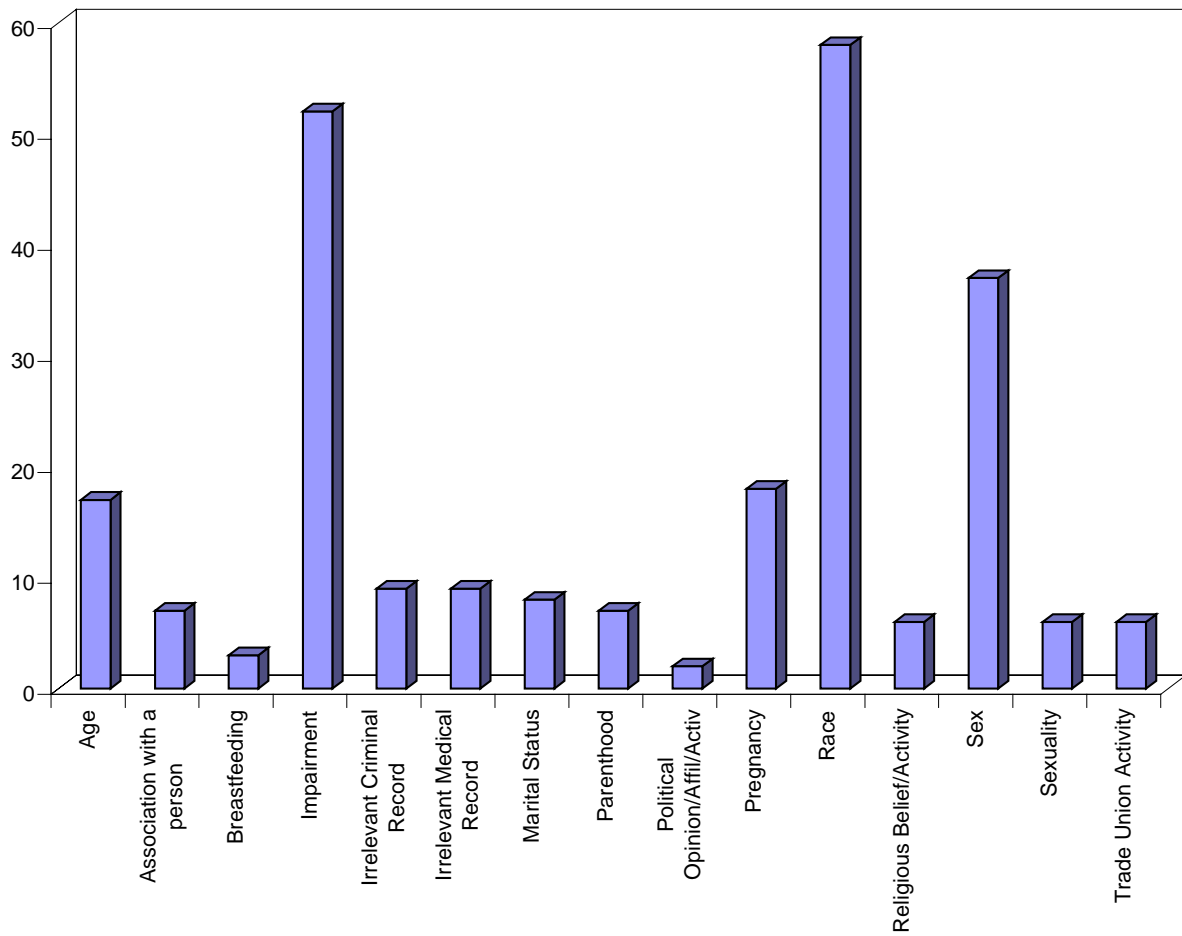
Areas of Activities

1 July 2001 - 30 June 2002

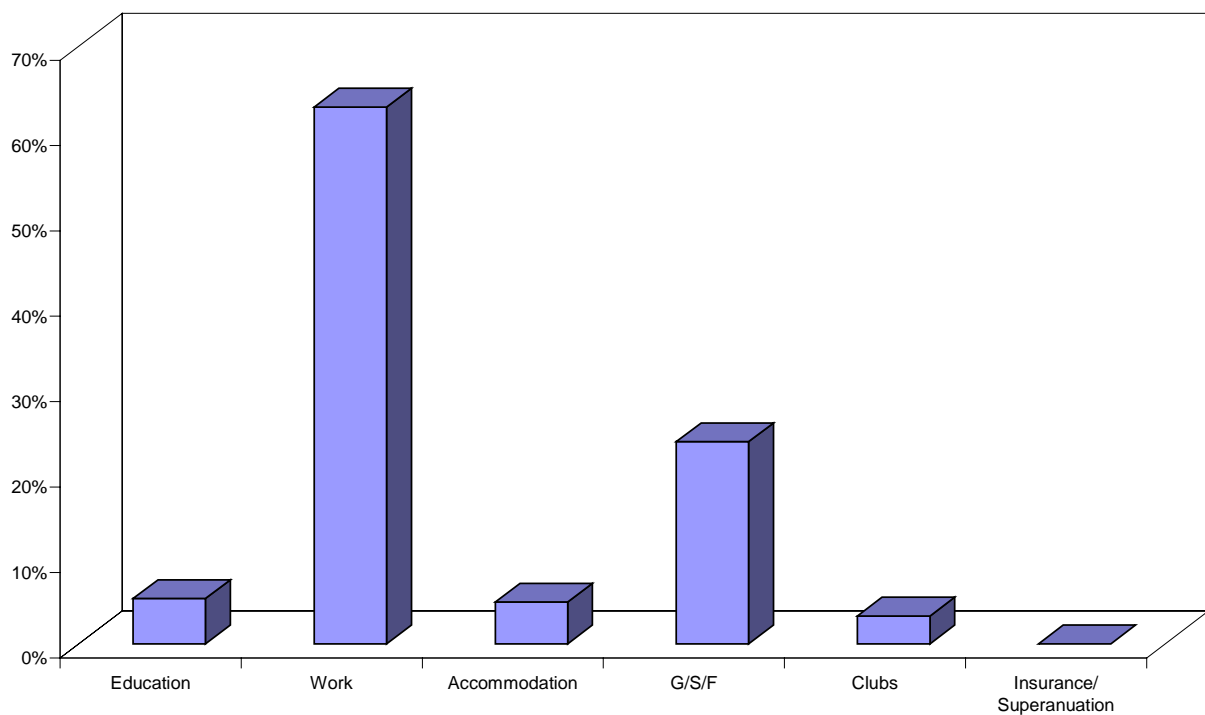
PROHIBITED CONDUCT - DISCRIMINATION Grounds/Attributes	Education	Work	Accommodation	Goods/ Service/ Facilities	Clubs	Insurance/ Superannuation	Total
Age		12		4	1		17
Association with a person	0	7					7
Breastfeeding	0	3					3
Impairment	5	30	1	16			52
Irrelevant Criminal Record	1	4	1	3			9
Irrelevant Medical Record		5		4			9
Marital Status		6	1	1			8
Parenthood		4	1	2			7
Political Opinion/Activity		1	1				2
Pregnancy	1	15	1	1			18
Race	1	27	6	21	3		58
Religious Belief/Activity		5		1			6
Sex	5	26		3	3		37
Sexuality		3		2	1		6
Trade Union Activity		6					6
Total	13	154	12	58	8	0	245

OTHER PROHIBITED CONDUCT Grounds	Education	Work	Accommodation	Goods/ Service/ Facilities	Clubs	Insurance/ Superannuation	Total
Aiding Contravention of the Act							0
Discriminatory Advertising		2		1			3
Failure to Accommodate Special Need	3	3					6
Sexual Harassment		5					5
Seeking Unnecessary Information		5					5
Victimisation		2					2
Total	3	17	0	1	0	0	21
TOTAL ENQUIRIES	16	171	12	59	8	0	266

Breakdown of Discrimination Enquiries Transactions



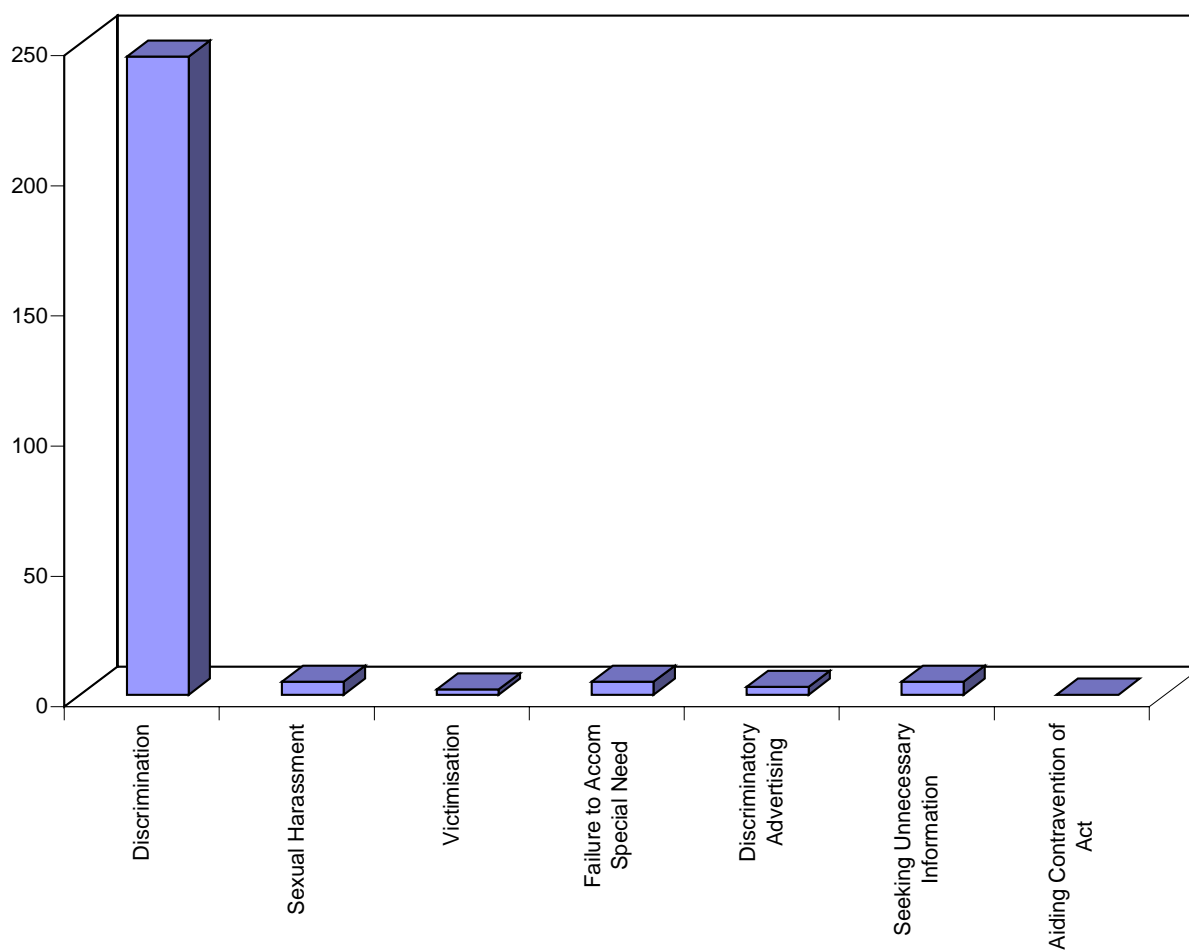
By Areas By Percentage



Enquiries Transactions - 1 July 2001 - 30 June 2002

Category of Prohibited Conduct	
Discrimination	245
Sexual Harassment	5
Victimisation	2
Failure to Accommodate a Special Need	5
Discriminatory Advertising	3
Seeking Unnecessary Information	5
Aiding Contravention of Act	
Total	265
Note: does not include enquiries "not under Act".	

By Prohibited Conduct



Comparison of Enquiries Received by Month and Year

	96/97	97/98	98/99	99/00	00/01	01/02
July	82	78	81	71	60	57
August	79	99	64	82	85	49
September	82	123	120	65	62	64
October	66	91	97	77	56	74
November	51	72	115	74	59	65
December	53	55	49	60	51	36
January	65	72	59	57	32	65
February	77	101	89	77	52	55
March	54	80	101	81	49	42
April	75	76	81	75	46	60
May	76	89	81	106	62	60
June	72	77	73	90	56	39
Total	832	1013	1010	915	670	666

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
1 July 2000 - 30 June 2001	670
1 July 2001 - 30 June 2002	666

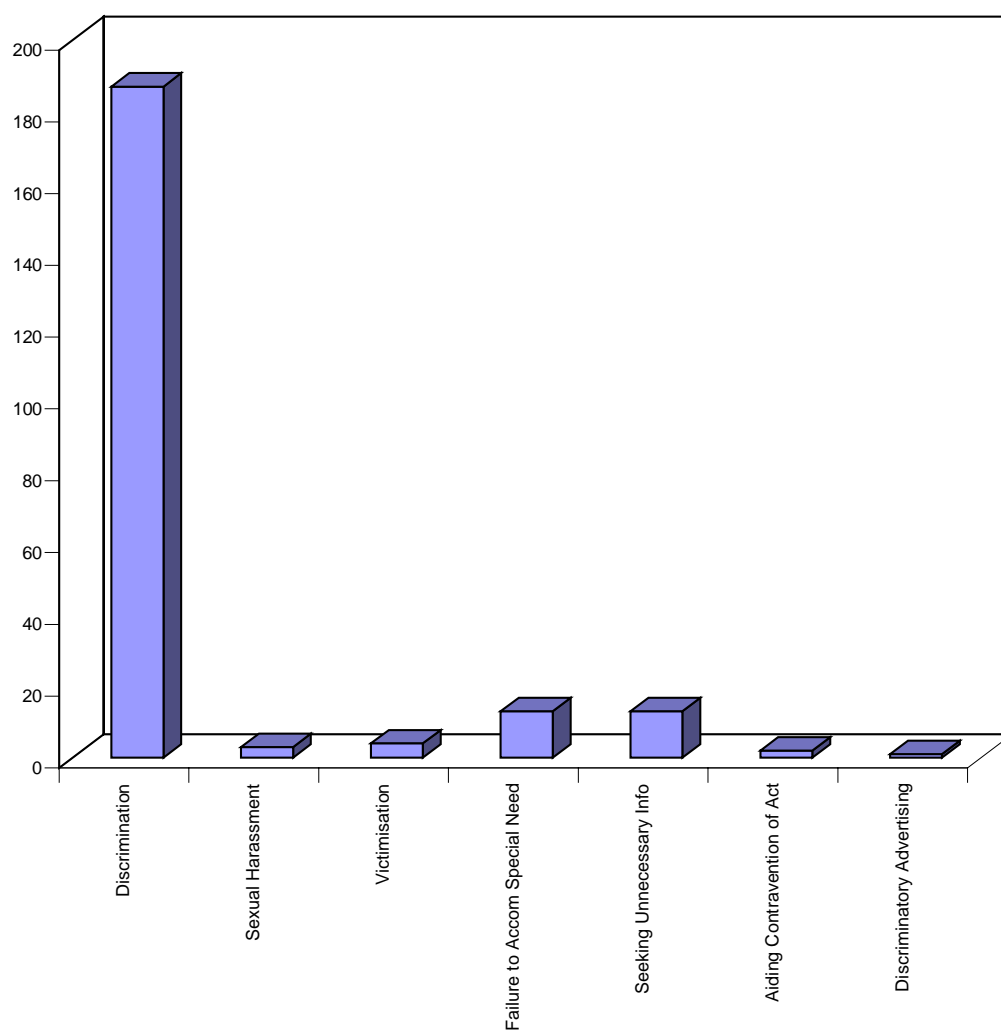
These figures relate to the particular year, they are not cumulative.

Formal Grounds/Complaints 1 July 2001 – 30 June 2002

Categories of Prohibited Conduct

Discrimination	187
Sexual Harassment	3
Victimisation	4
Failure to Accommodation Special Need	13
Seeking Unnecessary Info	13
Aiding Contravention of Act	2
Discriminatory Advertising	1
Total	223

By Prohibited Conduct



**COMPLAINTS
(AREAS OF ACTIVITIES)
1 July 2001 – 30 June 2002**

PROHIBITED CONDUCT – DISCRIMINATION Grounds/Attributes	Education	Work	Accommodation	Goods/ Service/ Facilities	Clubs	Insurance/ Superannuation	Not Under Act	Total
Age	1	9		1				11
Association with a person who has, or is believed to have, an attribute referred to		2		10	3			15
Breastfeeding				1				1
Trade Union Activity		6						6
Impairment	1	13	1	18				33
Irrelevant Criminal Record		2						2
Irrelevant Medical Record		3		1				4
Marital Status	1	11	3	1				16
Parenthood		3		6				9
Political Opinion, Affiliation/Activity				2				2
Pregnancy		2						2
Race	1	10	4	30				45
Religious Belief/Activity		2						2
Sex	4	8		12	4		1	29
Sexuality		2		3				5
Not Under Act		2		2			1	5
Total	8	75	8	87	7	0	2	187

OTHER PROHIBITED CONDUCT Grounds	Education	Work	Accommodation	Goods/ Service/ Facilities	Clubs	Insurance/ Superannuation	Not Under Act	Total
Aiding Contravention of Act				2				2
Discriminatory Advertising				1				1
Failure to Accommodate a Special Need		4	1	8				13
Sexual Harassment		3						3
Seeking Unnecessary Info		3	1	9				13
Victimisation		1		3				4
Total	0	11	2	23	0	0	0	36

TOTAL COMPLAINTS FOR 2000/2001

223

FORMAL GROUNDS/COMPLAINTS ON HAND

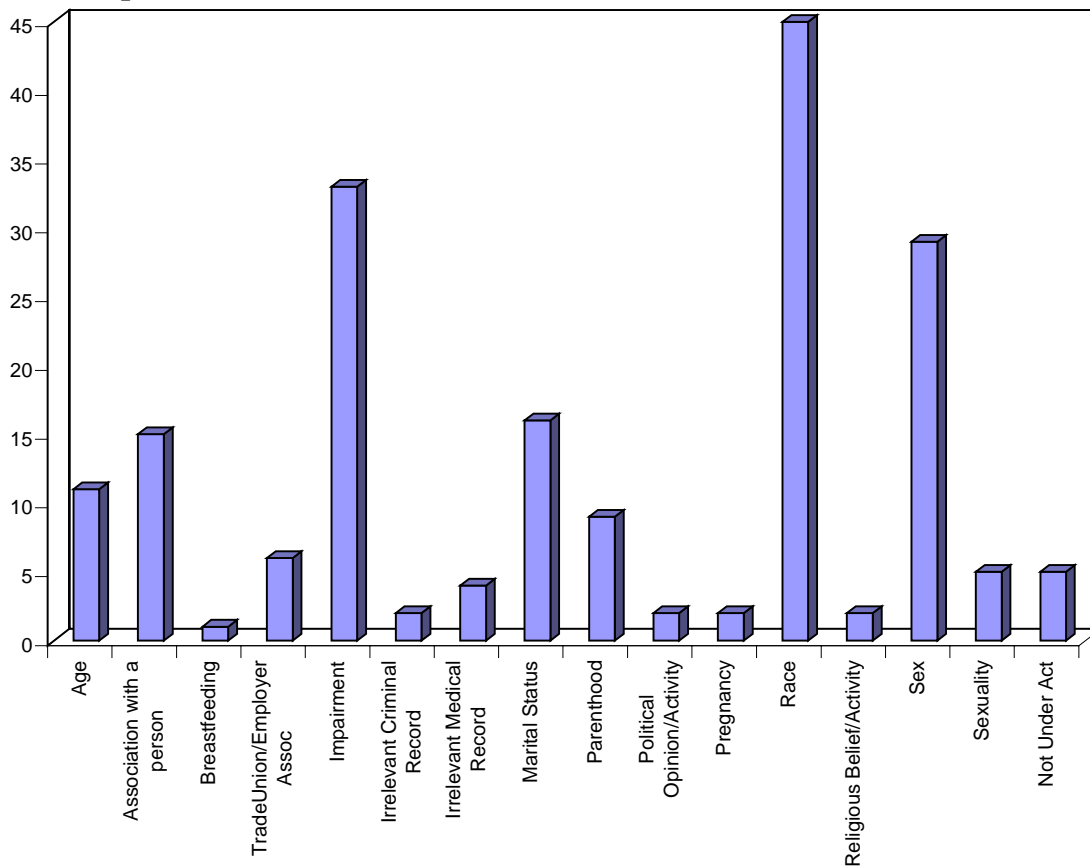
	OPENED					CLOSED				
	97/98	98/99	99/00	00/01	01/02	97/98	98/99	99/00	00/01	01/02
July	15	39	46	8	16	9	26	29	49	15
August	19	19	32	8	9	26	30	31	12	24
September	21	18	32	13	15	19	30	26	16	21
October	17	25	18	9	8	17	11	7	21	18
November	13	52	19	15	22	23	10	16	19	17
December	24	31	14	6	11	12	28	17	18	9
January	20	15	16	20	13	12	21	29	13	9
February	35	23	8	22	13	9	18	25	15	5
March	22	85	30	12	6	25	23	36	26	13
April	30	49	15	7	10	15	52	23	8	9
May	27	23	24	12	13	19	29	34	12	19
June	24	68	25	28	14	29	39	16	7	8
Total	267	447	279	160	150	215	317	289	216	167

Outcomes of Formal Complaints Files

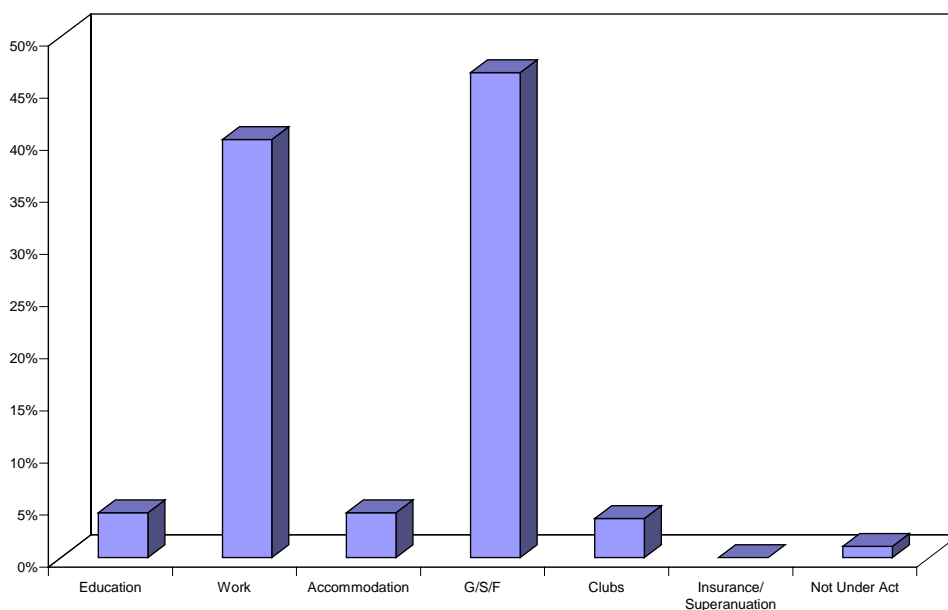
Discontinued by Commissioner (s102)	8
Dismissed - No prima facie found (s76)	20
Lapsed or Lost Interest (s72)	5
Referred to Hearing	7
Rejected at Outset (s66-69)	53
Settled	43
Withdrawn by Complainant (s71)	31
Total	167

Areas of Activities
1 July 2001 – 30 June 2002

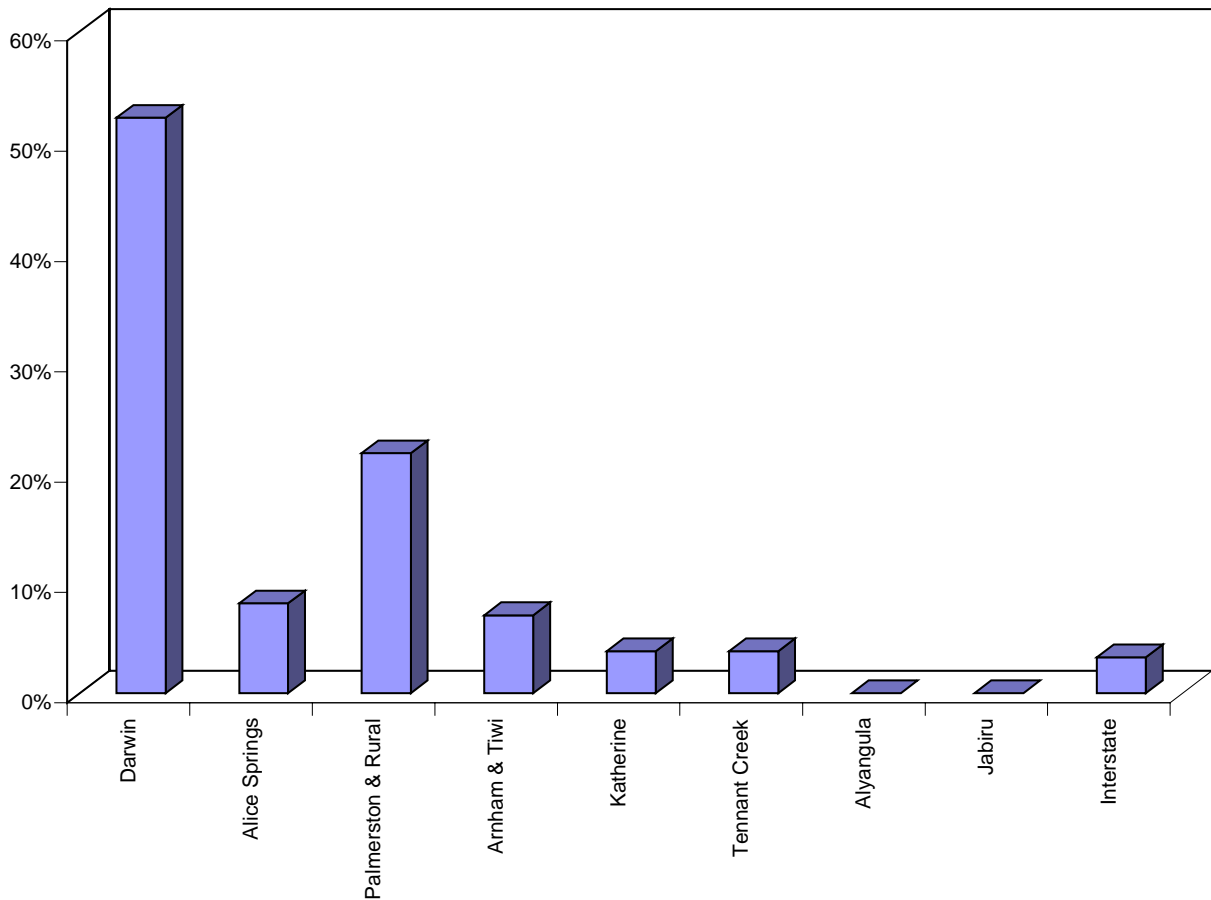
Formal Complaints: Breakdown of Discrimination



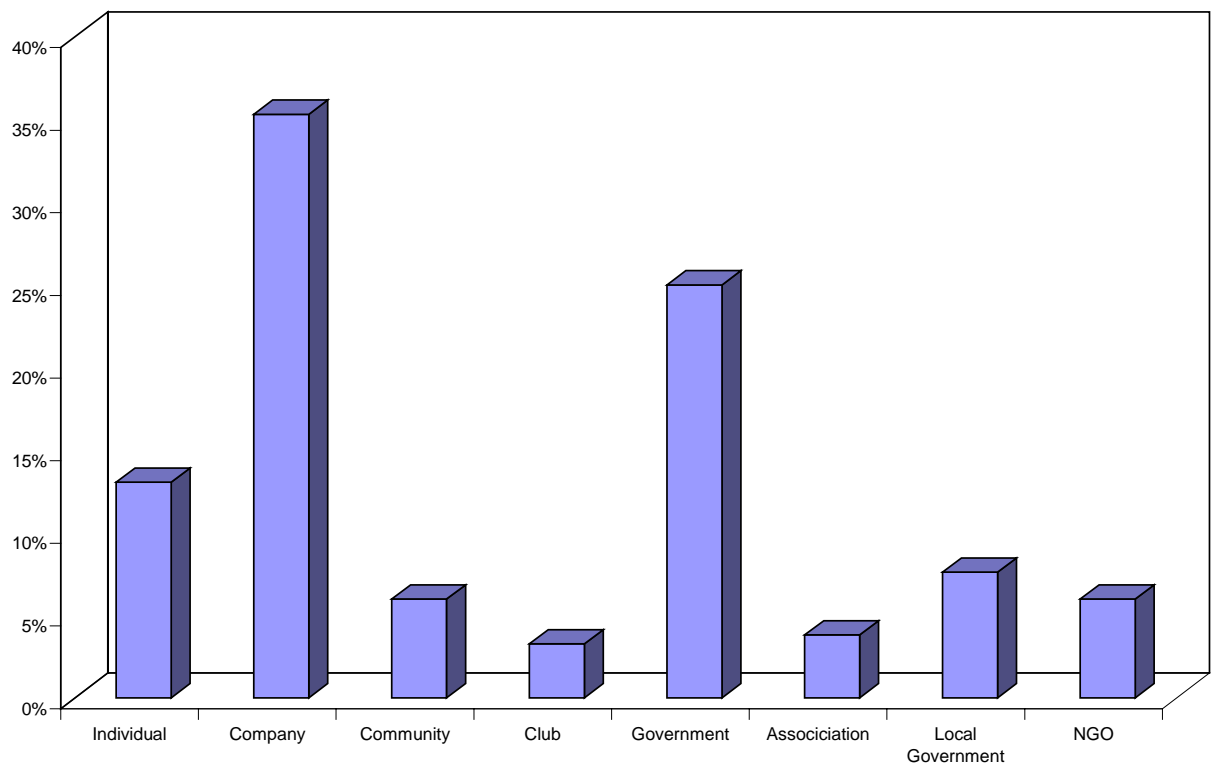
By Area By Percentage



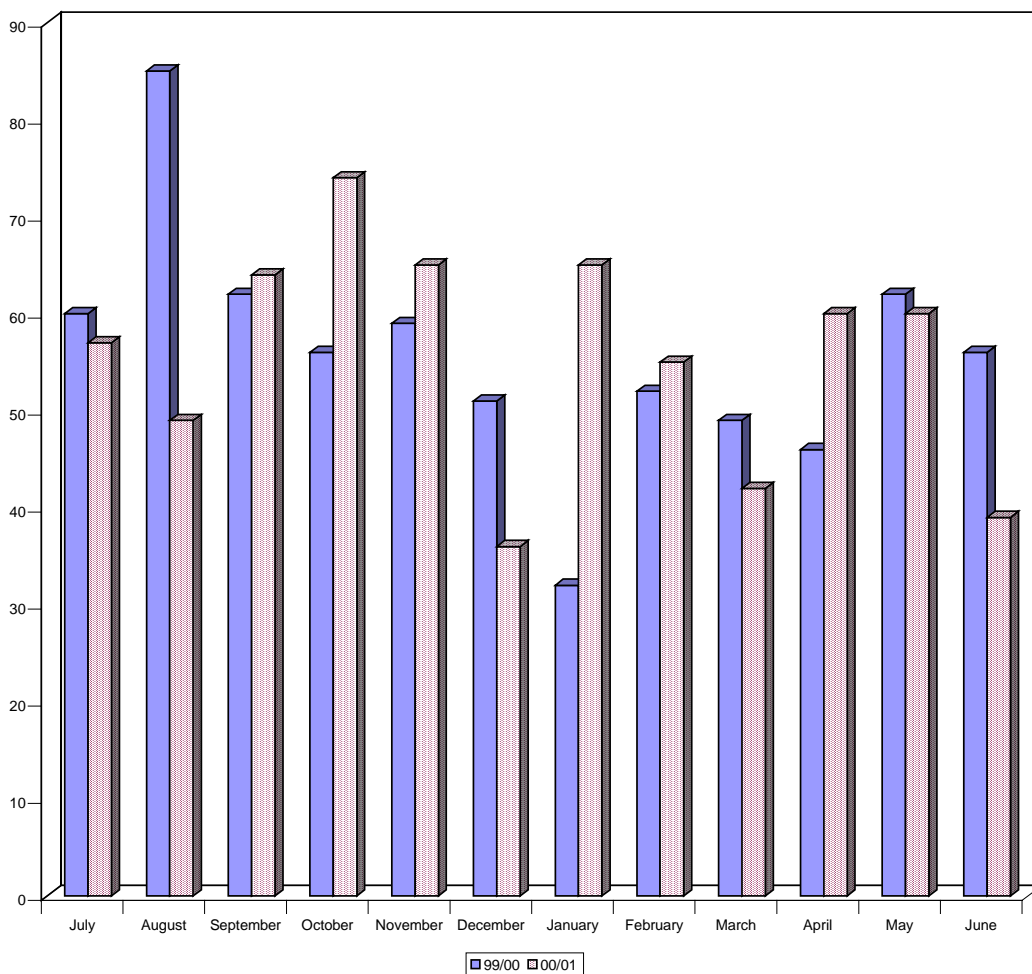
By Percentage By Region



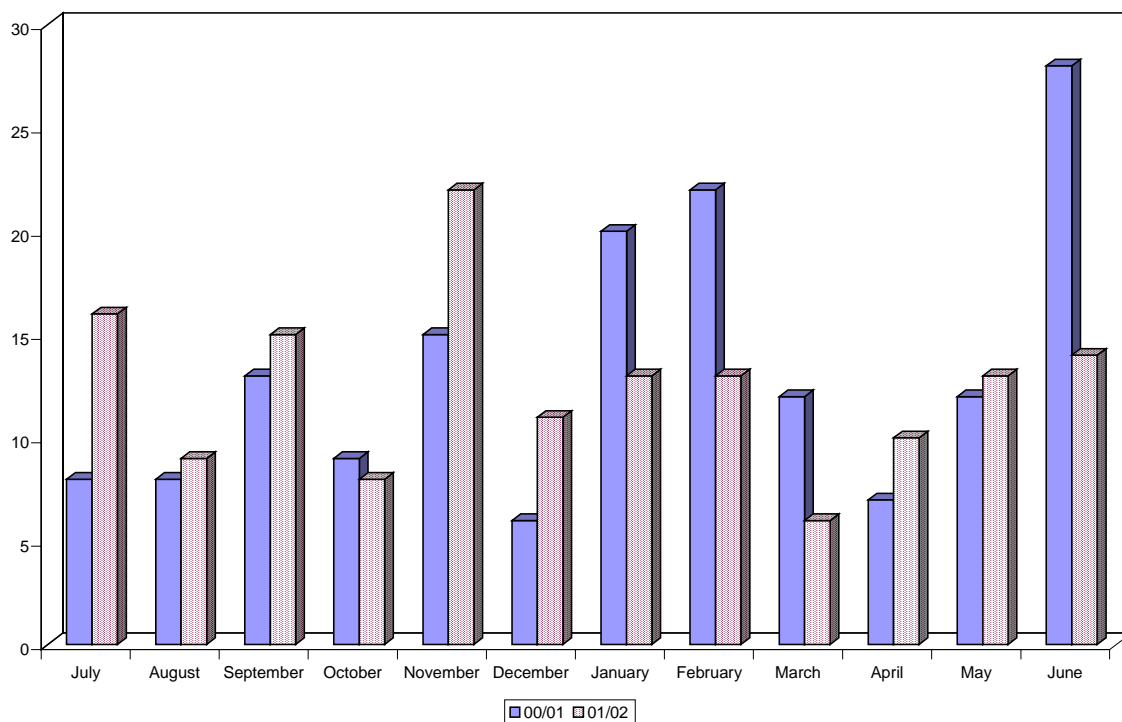
Respondents' Profile By Percentage



Comparative – Enquiries Received



Comparative – Complaints Received



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 2001/2002, the Commission's public education and training strategies included:

- Formal training programs
- Workplace training
- Awareness raising sessions and talks
- Community involvement and public events
- Launch of the Helpline for Managers and Supervisors

As a preventative strategy the Commission launched a "*Helpline for Managers and Supervisors*". The Helpline provides confidential and free advice on all aspects of discrimination and harassment. Managers and Supervisors are now able to ring the Helpline

as they are confronted with issues in their workplace. The Commission launched the *Helpline* in Tennant Creek in October Business 2001 and is pleased with its success.

Information and training is updated on the website on a regular basis and can be visited at www.adc.nt.gov.au

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.

Performance measures	Unit of Measure	2001-02 Budget	2002-03 Estimate
Quantity	Number of “student-hours” of training provided	1095	1100
Quality	% of positive feedback from participants	90	95
Timeliness	As per public training program	Produced twice yearly	

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. Participants on courses have included senior executives of large government agencies and private enterprise, year 7 students, interpreters and Aborigines from remote communities, owners and managers of private sector business and 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.

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.

Performance measures	Unit of Measure	2001-02 Budget	2002-03 Estimate
Quantity	Number of “student-hours” of training provided	2180	2500
Quality	% of positive feedback from participants	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.

Performance measures		Unit of Measure	2001-02 Budget	2002-03 Estimate
Quantity		Number of "student-hours" of training provided	650	1000
Quality		% of positive feedback from participants	95	95
Timeliness		Response time	2	2

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.

Performance measures		Unit of Measure	2001-02 Budget	2002-03 Estimate
Quantity		Number of hours of public awareness work	1210	1580
Quality		Number of individuals contacted	2500	2750
Timeliness		Weeks from desired date of engagement by client to attendance by official	2	2

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

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.

Public events include:

- Women's Health Day for NESB
- Humans Rights Week
- National Youth week activities
- Refugee Week
- Law Week
- NAIDOC
- Harmony Week – Tennant Creek and Alice Springs

AREA OF TRAINING	MONTHS											
	July	August	September	October	November	December	January	February	March	April	May	June
Formal	5	2	7	3	2			1	3	0	2	2
Workplace	3	1	8	6	3	3		5	5	0	4	6
Awareness	5	6	1	5	2	1		4	7	6	7	2
Education	3	2			1	2		3	5	1	7	1
Cancellation			5		1	2		1	4		1	3
Total Training Sessions	16	11	16	14	8	6	0	13	20	7	20	11

Area of Training	MONTHS											
	July	August	September	October	November	December	January	February	March	April	May	June
Government		2	6	4	1	2		2	4	0	7	4
Private Sector			2	3	1	2		3	1	0		
Aboriginal	3	2		1	1			2	2		2	
NESB		1				1		1	1		1	
Disability	4	4	2	3	1			2	1	1	3	3
Youth/Aged			1	1				2	5	3	5	
Women	2	1								1		1
Total	9	10	11	12	4	5	0	12	14	5	18	8

	July	August	September	October	November	December	January	February	March	April	May	June
Darwin	2	7	9	10	9	1		6	4	4	14	9
Palmerston	1	1	2	3		2		3		2	1	4
Batchelor		4	1	1	1			1	1		1	
Katherine		1				1						
Tennant Creek	1	2	1			2						
Alice Springs		1		1	1				8		1	
Arnhem								2				
Total	4	12	13	15	11	6		12	13	6	17	13

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.

Vicarious liability

Section 105 of the Act came into force on 24 April 2002. This amendment to the Act clarifies the situation in regard to the vicarious liability. The section makes it clear that persons may be held to be vicariously liable for the actions of their employees or agents.

The section does not apply if there have been reasonable steps taken by the person to prevent a worker or agents from doing actions that might otherwise be considered to be prohibited conduct under the Act.

When considering what reasonable steps have been taken, the Commissioner may take into account such things as whether or not the person has:

- ◆ provided anti-discrimination training;
- ◆ developed and implemented an equal employment opportunity management plan;
- ◆ published an anti discrimination policy.

The financial circumstances of the person, and the number of workers and agents that person has are also to be considered.

Should the Commissioner find, after hearing a complaint, that the alleged prohibited conduct is substantiated and that a person is vicariously liable for that conduct, the Commissioner is to consider the extent of steps taken by that person to prevent the prohibited conduct; and take those steps into consideration in determining the proportion of the amount to be paid to the complainant by the person.

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

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's 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**.
- Development of pro-active workplace training strategies to reflect the number of workplace complaints.

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
- Vietnamese
- Indonesian
- Thai
- "talking tapes" are also available

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