

Northern Territory Anti-Discrimination Commission



ANNUAL REPORT

2010 - 2011

Our Ref: ADC2011/20

30 September 2011

Hon Delia Lawrie MLA
Minister for Justice and Attorney-General
Parliament House
DARWIN NT 0800

Dear Minister

In accordance with the requirements under section 16 of the *Anti-Discrimination Act*, I am pleased to present the Annual Report on the operations of the Northern Territory Anti-Discrimination Commission for the period 1 July 2010 to 30 June 2011.

Yours sincerely



EDDIE CUBILLO
Anti-Discrimination Commissioner

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From the Commissioner



Another year has come and gone with the people of the Northern Territory continuing to face challenges to basic human rights: we still witness racism; sexual harassment continues to be an issue for many women; sex discrimination and violence against women persists; and accessibility remains a challenge for people with a disability. Through education and training, complaints received and people telling us their stories about the discrimination they face, we have been able to focus on a number of these areas at both a systemic and individual level.

Our monitoring functions under *the Anti-Discrimination Act* ('the Act') have been important in identifying areas of concern. Working with others has assisted us to build awareness of human rights breaches and helped to prevent discrimination from occurring. It will continue to be a major focus in the coming years under my leadership.

Last year I wanted to travel throughout the Territory and hear people's concerns about their discrimination issues - what was working well, and what areas needed improving. I visited most major centres, as well as a number of remote communities.

One of my priorities was to listen to the views of people and organisations to help clarify the focus for potential work areas. What was immediately apparent was a need for enhanced education and training about people's rights under the Act and for organisations to be more responsive in ensuring that they adhere to the Act. I also heard a clear message that we should continue to respond as quickly as possible to complaints.

Business Plan

To help focus the Anti-Discrimination Commission (ADC) resources to address current and emerging discrimination issues, we developed a business plan. We see this as one of our most important tools because it is a practical and strategic focus for day-to-day operations. It outlines the ADC's structure and activities, and communicates important management priorities including how the organisation will mitigate risk and manage uncertainty.

Importantly, the business plan provides a focus for the creation of sustainable value. It reflects a process of uncovering and identifying what creates and drives value in our work.

Education

The ADC is committed to continue delivering its message across the Territory so that people are aware of their rights and what constitutes discriminatory practice and behaviour under the Act. However, the delivery of education programs outside of the

Darwin area is a costly exercise and we continue to search for the best ways of presenting information to regional and remote areas.

Our educational message must continue to be reinforced as the results achieved to date will not be maintained unless there is ongoing strengthening of this message.

An assessment of our internal and external strategies suggests that on our existing resources, it will be difficult to sustain the current level of education and training if we continue to deliver the programs in the same way.

For this reason, we are proposing to change the way we deliver education and training across the Territory. In the coming year this will mean that our Director of Education and Training will refocus on the strategic work of developing products such as the 'Train the Trainer' package. Last year we aimed to develop such a package, however, time restraints and lack of resources made it impossible because of the continuing demands for training and education. The business planning exercise has helped us to reprioritise and focus on building a more sustainable vision for this area. The 'Train the Trainer' package will enable delivery of training in a greater number of ways by a broader group of people, organisations and networks. This should help enhance our capacity for effective community engagement and increase capacity to educate a variety of sectors about their rights and obligations under the Act.

Our commitment to getting the message out and engaging with people about the protection of their rights and responsibilities under the Act is genuine. It will help build a better informed and tolerant Territory.

Complaints

The ADC's conciliation/complaint handling officers have worked hard to meet the increasing demand for their services. There was a significant increase in complaints in 2010-2011 straining the ADC's capacity to respond in a timely and effective way to meet legislative timelines.

Compounding the high volume of complaints received was a high number of matters being referred to hearing compared to previous years.

Additional resources on a temporary basis were provided for the complaint area at the commencement of 2011. Our statistics show a clear improvement in output during this period.

Over the next two years of my term, we will work to deliver a sustainable service where complaints are received and handled efficiently and in a timely manner. It is expected that these changes, combined with the increased ability to expand the delivery of education and training programs through the "Train the Trainer" packages, will hopefully enable us to reach those members of the community that we have previously been unable to service. Hopefully this will have a positive effect on the appreciation of rights under the Act, particularly in our regional and remote areas.

Strategic Engagement

As part of the ADC's brief for promoting equal opportunity and the principles of non-discrimination, we have vigorously lobbied the federal and Territory governments about the impact of the *Northern Territory National Emergency Response Act*. We have raised concerns about its practical and discriminatory impacts.

Another notable achievement this year was the strengthening of our relationship with the Australian Human Rights Commission, and their acceptance of the need to show a greater presence in the NT in relation to issues such as the Intervention.

Both Mr Mick Gooda, Social Justice Commissioner, and Mr Graeme Innes, Acting Race Commissioner and Disability Commissioner, visited the NT in the past 12 months. I travelled with them to Alice Springs and Yulara so that we could hear about local issues first hand. Both Commissioners will continue to work with me to closely monitor the issues affecting people living in the NT.

I want to thank the many organisations and individuals who have supported the work of the ADC in delivering its message. Without such collaboration we would struggle. For this reason, the ADC continues to develop and maintain professional networks within the community and with the various government and non-government sectors. One example is the partnership between Northern Territory Human Rights Education Committee and the ADC to provide a lecture series on Human Rights and other issues. Notable speakers have included Julian Burnside AO QC and The Hon. Catherine Branson, President of the Australian Human Rights Commission.

With such a small team the ADC works tirelessly to ensure that we have input into the development of new and amended pieces of legislation that may conflict with the Act. Again our networks play a huge part in assisting the ADC to deliver informed advice on various issues impacting on the community.

In the next 12 months my staff and I will continue to build on the work we have started during this reporting period. I hope during my term as Commissioner we can see great improvements to the lives of Territorians currently experiencing discrimination, and a greater tolerance and appreciation by the general community of the values that underpin the Act.



NPY Women's Council and friends at the Curtin Springs Roadhouse

Summary of Activities

Field Trips

Alice Springs & Yulara:

- Central Australian Women's Legal Service (CAWLS)
- Alice Springs Correctional Service visit
- Conciliations and Community Visitor Program activities
- Visit with Chief Minister Paul Henderson regarding Alice Springs riots
- Accompanied Mr Mick Gooda (Social Justice Commissioner) and Mr Graeme Innes, Acting Race Commissioner and Disability Commissioner from the Australian Human Rights Commission.
- Community Visitor training.

Katherine:

- Met with the Lord Mayor of Katherine, Ms Anne Shepherd, and Chief Executive Officer, Mr Geoff Brooks.

Sydney:

- Australian Human Rights Commission – Launch of Rights of Indigenous People
- National Indigenous Excellence Centre
- Met with President Stepan Kerkyasharian (NSW Anti-Discrimination Board), staff and Indigenous Outreach Team
- Australian Council of Human Rights Agencies (ACHRA) Conference.

Adelaide:

- Met with A/Commissioner Anne Burgess (SA Equal Opportunity Commission).

Canberra:

- Mr Peter Arnudo, Federal Government's Indigenous Legal Aid and Policy Reform Program.

Speaking Engagements

Adelaide:

- Flinders Faculty of Law – Guest Speaker (paper published).

Darwin:

- Equal Pay Lunchtime Seminar – Office of Women's Policy
- Community Visitors afternoon tea to meet the new Principal Visitor Mr Commissioner Cubillo.

Katherine:

- Diplomacy Training Program & Fred Hollows Foundation, Indigenous Peoples, Human Rights Training for Community Advocates
- Red Cross -Team Leader, Personal Helpers & Mentors Program.

Invitations and Other Engagements

- Ethical Intelligence Presentation by Dr Simon Longstaff
- 11th Vincent Lingiari Memorial Lecture – Charles Darwin University
- Annual Prisoner Art Exhibition 2010 – ‘Behind the Wire’ – Fannie Bay Gaol
- Farewell to Chief Justice Brian Martin
- Dinner with ASIC Commission Members
- NAAJA Directors Meeting
- NARU Public Seminar
- Indigenous Education Support Officers
- Rights on Show – Supreme Court
- Launch of AHRC ‘Rights of Indigenous People’ - Sydney
- National Indigenous Excellence Centre – Sydney
- Indonesian Consulate
- New Income Management System (Law Society)
- Menzies School of Health
- ACTU Indigenous Conference – Parliament House
- New Liquor Act provisions – Notices & exclusion orders of the Liquor Act
- Alice Springs Desert Leadership program CDU
- Indigenous Leadership (Corrections) Suspected offences against sections 62 and 165 of the Mental Health & Related Services Act
- International Women’s Day with Governor-General, Ms Quentin Bryce AC
- Meeting with Aboriginal Peak Organisations (NT) & UN High Commissioner Ms Navanethem Pillay - hosted by North Australian Aboriginal Justice Agency
- Batchelor Institute of Indigenous Tertiary Education 2011 Graduation Ceremony
- A Constitution for All Australians held at Parliament House with guest speakers Hon Jane Aagaard MLA, Mick Dodson, Ken Parrish and Marshall Perron.
- Immigration Detention Centre – Indonesian Consulate invitation.
- National Committee on Human Rights Education
- Visit from AHRC Sex Discrimination Commissioner Elizabeth Broderick

- Visit from Will Sanders – Registrar of Indigenous Corporation
- Visit from Michael Small, AHRC Senior Policy Officer regarding the federal Disability Discrimination Act
- Visit by Anthony Bevan – Centre for Aboriginal Economic Research
- Visit from Graham Innes, AHRC Disability Commissioner
- Meeting re Review of Disability Education Standards with Susan Thomson, Director, Disability & Mental Health Policy, Department of Education, Employment & Workplace Relations
- Expert Panel Indigenous Constitutional Recognition - Darwin visit by Ms Lauren Ganley & Senator Rachel Siewert – to discuss the panels role over the coming year
- NAIDOC 2010 march and rally
- Meeting with Ms Allison Land, Project Officer, Building Advisory Services to discuss Premises Standards
- Department of Families, Housing, Community Services & Indigenous visit to Darwin and met with invited guests regarding the Signage on Aboriginal Communities arising from the Intervention

ADC Hosted Events

- International Women’s Day Dinner
- International Human Rights Day Breakfast
- Public Lecture Series “Who’s Afraid of Human Rights?” co-hosted with Charles Darwin University, The NT Committee for Human Rights Education
 - President Catherine Branson QC (AHRC) co-hosted with the ADC, NT legal Aid Commission & Charles Darwin University
 - “The Intervention: 4 Years Too Long?” with Mr Rex Wild QC and Indigenous Panellists Mr John Leeman and Ms Barbara Shaw.

Functions of the Commissioner

The Commissioner has the following functions set out in section 13 of the Act:

- (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.

Public Education and Training



Surya Silva, Director of Public Education and Training

The role of public education and training in the Anti-Discrimination Commission (ADC) is set out in the *Objects and Functions of the Commissioner* in sections 3 and 13 respectively of the Anti-Discrimination Act ('the Act'). In the Annual Report, all activities of the Public Education and Training Program will be described against these criteria.

Section 3 Objects

- (a) to promote recognition and acceptance within the community of the principle of the right of equality of opportunity of persons regardless of an attribute; and
- (b) to eliminate discrimination against persons on the ground of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record or irrelevant criminal record in the area of work, accommodation or education or in the provision of goods, services and facilities, in the activities of clubs or in insurance and superannuation; and
- (c) to eliminate sexual harassment.

Section 13 Functions of Commissioner:

- (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.

The primary role for Public Education and Training is to promote equal opportunity in the Territory. This is achieved in a number of ways: training programs tailored for specific workplace needs; the ADC calendar/public programs; public awareness events where the ADC either hosts or co-hosts an educational event; and community events in which the ADC is invited to participate. It is a diverse mix of strategies to promote equal opportunity. We have found it to be a successful blend which reaches more Territorians and accordingly, this has been our approach over the past few years.

This section will address the focus that Public Education and Training took throughout 2010-2011.

Change in Direction of Public Education and Training

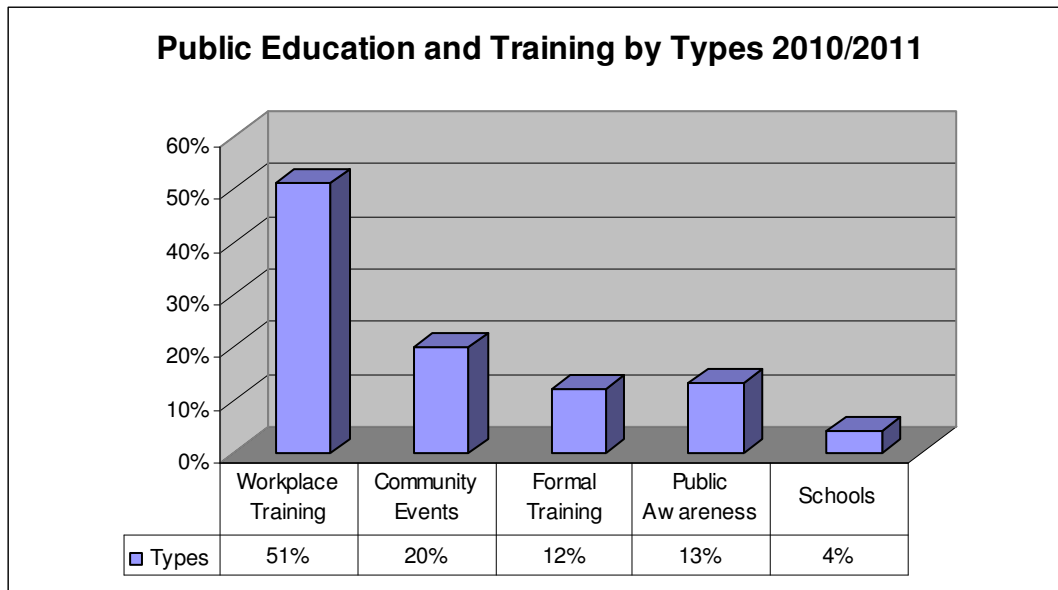
During the past two years it has become apparent that the Public Education and Training Program cannot be sustained at its current resource level. Adjustments are required, and Public Education and Training has been moving towards significant change to begin in 2011-2012.

In 2010-2011 we planned to spend 250 hours on education and training with 50 of these hours being allocated to public and community events. However, throughout the year the requests for more involvement with public and community events continually increased, resulting in 217 hours being spent on education and training, and 116 hours being spent on public and community events. Considerable hours are spent in planning and preparing for community events which are not reflected in this performance measure. In 2010-2011, a total 333 hours were spent on education and training, public and community events.

In 2011-2012 the new Performance Measures will be changed to prioritise the development of educational resources for the ADC. The new strategic direction will include allocating 100 hours to education and training, 100 hours to public and community events and 100 hours to the development of resources for a total 300 hours.

| Hours spent within the program | 2010/11 Estimated hours | 2010/11 Actual hours | 2011/12 Estimated hours |
|---|--|---------------------------------|--|
| Training hours | 250 | 217 | 100 |
| Public Awareness events | 25 | 45 | 100* |
| Community-based events | 25 | 71 | * |
| Development of resources New Performance Measure | | | 100 |
| Total | 300 | 333 | 300 |

* Public Awareness and Community-based events will be combined in the figure of 100 hours in 2011-12.



Formal/Calendar Training

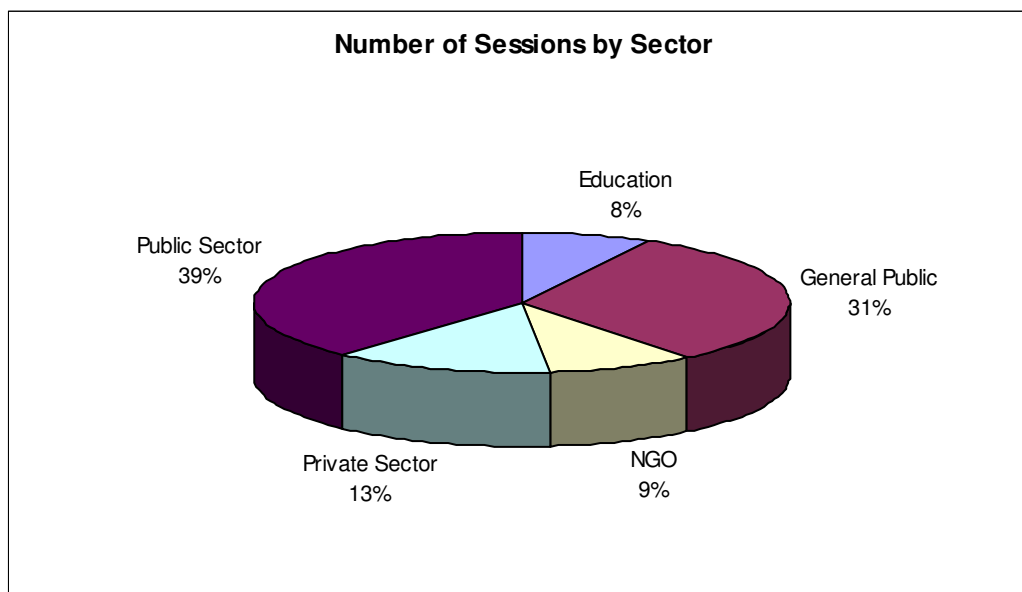
Our formal training is offered throughout the year and advertised through our bi-annual training calendar. We travel to major centres and offer training sessions on a variety of topics that include: Introduction to Anti-Discrimination, Harassment and Bullying; Skills Training for Contact Officers; Crossing the Line - Sexual Harassment in Today's Workplace; Recruitment and Retention of Staff; and Preventing Harassment and Bullying for Managers and Supervisors. Everyone is welcome to attend these sessions with bookings accepted via email, fax, in person or over the phone.

Workplace Training

The ADC offers training to individual organisations through our workplace training service. This training can be customised to meet the needs of a particular organisation or can be modelled on the formal training discussed above. During 2010-2011 we presented 89 training programs.

This year we worked with two large organisations within the Territory, offering workplace training to more than 200 staff in Darwin, Alice Springs, Katherine and Nhulunbuy with Tennant Creek to follow in 2011-2012. Whilst mandatory training is not always popular, this type of commitment allows the staff to work towards systemic change which can only be useful in the long view.

The public sector accounted for 39% of the training programs; with 31% being for the general public; 9% were focussed on non-government organisations and 13% in the private sector. The remaining 8% of programs were for education providers.

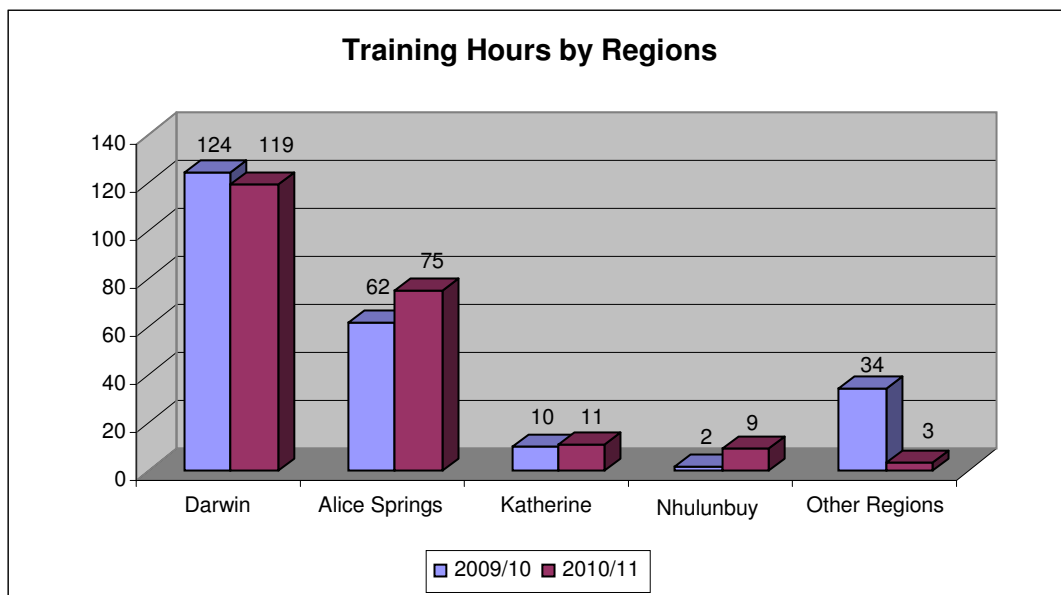


Harassment and bullying remain the key issues for many people attending the programs and attendees speak of their distress and frustration that so little is/ or can be done within their workplace to have the behaviour addressed. Programs on bullying are requested every week at the ADC and anecdotal evidence points to bullying behaviours increasing in the workplace. Information about making a complaint regarding harassment and/ or discrimination is provided to all people attending programs.

The ADC continues to offer support to managers through our Manager’s Support Line and this year many people contacted the ADC to seek assistance in dealing with their particular workplace issues. Bullying and harassment were the key features of these requests.

Our commitment to reaching as many Territorians as possible took us beyond the Berrimah Line again this year as we worked in Alice Springs, Katherine, Mary River and Nhulunbuy. Indeed approximately half of the 217 training hours were spent outside of Darwin with more than one third of those hours spent delivering programs in Alice Springs.

| Training Hours By Regions | 2009-10 | 2010-11 |
|----------------------------------|----------------|----------------|
| Darwin | 124 | 119 |
| Alice Springs | 62 | 75 |
| Katherine | 10 | 11 |
| Nhulunbuy | 0 | 9 |
| Tennant Creek | 2 | 0 |
| Other Regions | 34 | 3 |
| Total | 232 | 217 |



One of our 2010-2011 Performance Indicators to develop a statutory “Train the Trainer” program could not be met this financial year. It is held over as a Performance Indicator for 2011-2012. It’s anticipated that with the change in strategic direction as outlined above, more time will be available for the development of educational resources.

Issues in the Territory

Systemic Racism

We know that people living in the Territory are affected by discrimination. We know this because people discuss these matters with the Commissioner during his travels throughout the Territory, where he talks and listens to individuals and groups about what it is like to live in the Territory.

In my role as Director of Public Education and Training, I also discuss issues with people during my training sessions, as well as community events designed to promote the message about equality of opportunity. I hear from people who have experienced discrimination, as well as from the people whose attitudes are discriminatory.

Finally, the ADC receives complaints from people about unfair treatment.

The message we receive from all of these three sources is consistent. While there are many examples of genuinely non-discriminatory attitudes and practices, racism is a problem in the Territory. It is systemic because it infiltrates people’s words, actions and even workplace policies, even though they may be unaware this is the case. These attitudes filter down to the views of people on the street. There is a need for an improved awareness of the systemic discrimination and staff of the ADC continues to talk with, and educate people about having a fair go and what equality of opportunity means in a real sense.

Intervention

The Intervention in the Territory is responsible for sharpening negative attitudes about Aboriginal Territorians and underpins much of the systemic racism seen by ADC staff in the course of their duties. In 2010-11 individuals experiencing the federal Intervention told us that:

- being a basics card holder is shameful. Lining up in a supermarket and having to use a basics card while others are waiting is shameful. At a practical level, Aboriginal people are treated differently because they live in a 'prescribed community'.
- malicious and inaccurate rumours still circulate about the additional benefits Aboriginal people receive.
- there has been minimal consultation regarding the new intervention for people living in communities, and what consultation has happened has been culturally inappropriate.
- communities have not been told about their rights as they change. For example, they have not been fully informed or have only been partially advised that they can remove the prescribed area signs outside communities.
- they are poorly informed in regard to new or refurbished houses on communities.



The ADC continues to lobby and talk with the Federal Government about these concerns and the discriminatory impact of the intervention.

Identification Cards and Alcohol

In 2010/11 the Tangentyere Card and the Larrakia Card were removed from the list of acceptable identification cards that could be used to purchase alcohol under the Northern Territory Banned Drinker Register.

Both cards enabled Aboriginal people who were unable to obtain other identification (ie car licence, passport), to obtain identification.

This change had the potential to disproportionately impact on Aboriginal people, potentially precluding them from buying alcohol even though they were not on the banned drinker register. The ADC lobbied the Department of Justice ('DoJ') in relation to this issue. In response to our raising concerns, steps were taken by DoJ to find other ways to assist Aboriginal people obtain appropriate identification.

The ADC will continue to listen to these stories and engage with organisations to redress these very important issues.

Public Awareness Events

International Day of Persons with Disability is a United Nations declared day and celebrated on 3rd December each year to honour the ability of persons with a disability. Following our highly successful event last year in Alice Springs, this year we again chose to celebrate the day with people in Central Australia. Working with the Physical Disability Council and Ms Michele Castagna, we co-hosted a giant bake off morning tea with well known ABC announcer Rohan Barwick acting as judge and chief taster of all the baked goods.

Complaints from people with disabilities have remained high in this financial year and the ADC places an important emphasis on educating people about equality of opportunity and their rights under the Act. (Section 3 Objects of the Act; to promote recognition and acceptance within the community of the principle of the right of equality of opportunity of persons regardless of an attribute.)

Approximately 50 carers and people with disabilities attended the event. This provided the ADC with the opportunity to talk with them about actions and/or complaints they can take when faced with potentially unlawful discriminatory situations.



Michele Castagna
at the morning tea

International Human Rights Day is also a United Nations (UN) declared event held on 10th December and this event has become a fixture on the ADC calendar. The Human Rights Day message from the Secretary General of the UN, Mr Ban Ki-moon, was that human rights are the foundation of freedom, peace, development and justice. The ADC considers everyone has the human right to be free of discrimination and harassment, and that by working together we can create a more just world.

We view this event as an opportunity to promote an understanding and acceptance and public discussion of the purposes and principles of equal opportunity (s13(g) of the Act) and this year on 10 December, the ADC again co-hosted a breakfast with the United Nations Association of Australia, NT Branch.



The theme for this year was “Speak Up – Stop Discrimination”.

Dr Megan Davis, Director of the Indigenous Law Centre of UNSW and Senior Lecturer, Faculty of Law, gave an inspiring keynote address about Constitutional Law and Discrimination.

She invited those present to consider the benefits of Constitutional recognition for Aboriginal and Torres Strait

Islander persons and spoke about the discrimination issues within the current Constitution.

Dr Davis provided some background information about how the Constitution might be changed and encouraged all those in attendance to address some of the issues within their own communities.

In order to make all ADC events as accessible as possible, we employ an Auslan Interpreter to translate for those with hearing challenges.

International Women’s Day (IWD) 2010 was the 100 year anniversary of IWD and celebrations took place in many locations, locally and globally. In December 1977 the UN General Assembly adopted a resolution proclaiming a United Nations Day for Women’s Rights and International Peace, and since then women have been speaking up about their rights.

Women in the Territory however still continue to experience sexual harassment, sex discrimination and violence. Consequently the ADC maintains our commitment to providing public awareness events in order for women across a vast spectrum of Darwin society to have access to appropriate information in this context (s13(i) of the Act).

This year we formed a partnership with United Voice (formerly LHMU) and hosted a highly successful dinner for 300 people. This was achieved by gaining sponsorship from a number of other unions and organisations including the Industrial Relations Society; Australian Services Union (SA Branch); the Office of Women's Policy; Melaleuca Refugee Centre and the Australian Education Union. The event would not be possible without this type of sponsorship and support.

Sex Discrimination Commissioner Elizabeth Broderick, from the Australian Human Rights Commission, gave the keynote address. She summarised the gains and losses for women over the past 100 years highlighting the changes for women since the gender equity law came into place. She also spoke about the lack of pay equity for women with the gender gap in equal pay widening rather than reducing.

Domestic and family violence is the area she highlighted as being a major obstacle to achieving gender equality in Australia, with violence towards women still being widespread.

Ms Broderick spoke of the statistics of Indigenous women being 45 times more likely than non-Indigenous women, to experience domestic violence and women with disabilities being assaulted, raped and abused twice as often as women without disabilities.



Commissioner Broderick with Auslan interpreter Ms Elizabeth Temple interpreting at IWD event

The ADC also formed a partnership with the NT Working Women's Centre (NTWWC) to host a film, 'Made in Dagenham'. This film is about the beginning of the equal pay movement in England and is very applicable to the Territory and Australian women because as Commissioner Broderick told everyone at the dinner, the gender gap in pay has widened to 17%.



Commissioner Broderick with Minister for Women's Policy Minister McCarthy

We partnered with NTWWC in order to target a very different audience from the dinner. The strategy focussed on accessing as many women as possible through the IWD celebrations. There was an informal presentation prior to the film being shown about women in the workplace and some of the issues they face in 2011, with an opportunity for questions and for further information sharing (s13(h)). ADC was able to provide information and resources to those who attended about discrimination and harassment.

Community Based Events

In compliance with the Objects of the Act, “promote recognition and acceptance within the community of the principle of the right of equality of opportunity of persons regardless of an attribute” the public education message emphasises community involvement activities. With a growing number of people from different countries and cultures residing in the Territory, many of whom don't know about the ADC, discussing and promoting awareness of the Act and how it applies to them, is essential.

An information day for new refugees was organised by Melaleuca Refugee Centre and brought to our attention that whilst the ADC information pamphlet was available in many languages, it didn't include languages for the current arrival groups. Consequently, taking advice from the Translator Service and the Melaleuca Refugee Centre, the ADC general information pamphlet has now been translated into Swahili, Singhalese, Somali, Tatum, Arabic, French and Burmese, and made available to new refugees from those countries.

We also hosted information stands at the following events: NAIDOC Week, Garma, Disability Awareness Week Market, CDU Orientation Day and Homeless Connect. During these events information packages were provided to more than 2,000 people, many of whom didn't know of the existence of the ADC or their rights under the Act.

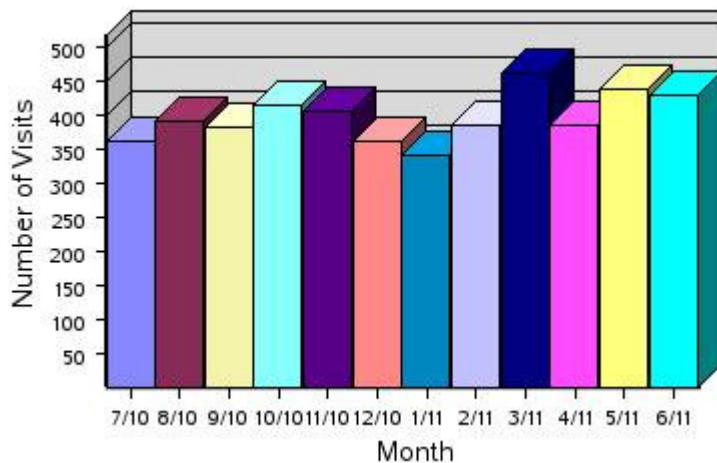
Training and Conciliated Complaints

As in previous years, much of the tailored training was conducted as a result of a conciliated outcome from complaints lodged. The link between the complaint process and education and training is critical. By providing each of these services the ADC is able to ensure training can be directed where it is most needed and effective. Respondents to complaints often welcome the opportunity to receive training to ensure they are better equipped to avoid complaints in the future. It is the ADC's experience that many acts of discrimination occur out of ignorance about legal obligations or because people fail to understand the impact of their behaviour on others. Training provides a very practical means of redressing these types of issues and has the potential to redress significant systemic issues in the Territory.

The ADC Website

As with all organisations these days, the ADC relies more and more on the internet to deliver our message about non-discrimination issues and equality of opportunity. For up-to-date information about our events, news about discrimination issues generally, hearings and more, please visit our website at: www.adc.nt.gov.au.

ADC Website Statistics 2010-11 Monthly Breakdown



CONCILIATION POLICY AND LAW



Traci Keys, Director Conciliation, Policy and Law

The Act provides for the Commissioner to carry out investigations and hearings into complaints and to endeavour to effect conciliation¹.

The complaint-handling process, from the enquiry phase through to the hearing stage, is set out in Appendix 2 of the Annual Report.

Early Conciliation Model Trial

Section 76 of the Act provides for the ADC to conciliate complaints following a finding that a complaint has prima facie evidence. This occurs after the investigation of the matter. In many cases, a conciliation conference may not be held for some months after the initial filing of a complaint.

During 2010-2011, in an attempt to best make use of its resources, the ADC sought to trial an early conciliation model. Early conciliation models are common in equivalent jurisdictions interstate.

The ADC wanted to see if providing an opportunity for parties to enter voluntary conciliation at an earlier stage would produce better outcomes for parties. It has been our experience that the earlier the parties are brought together, the better the prospects are that the matter will be resolved.

However, it is unclear after 12 months of trialling the model whether it has been successful.

Informal feedback from parties has included comments that parties welcomed the opportunity for an early resolution of a complaint, but others have indicated a preference that the ADC conduct its investigation and provide a view before they are prepared to negotiate.

Settlement statistics tell us that we have experienced a drop in the percentage of complaints settled. In 2009-2010 we settled 43% while in 2010-2011 we settled only 24%.

The ADC will need to reconsider in 2010-2011 whether to continue this model. We will continue to trial the model for the first 6 months of 2011-12 with a view to evaluating it in the second half of 2011-12 to decide whether to continue.

¹ Section 13 (1) (a)

Enquiries

The ADC provides an enquiry line for individuals considering making a formal complaint. They can contact the ADC by telephone, email, mail or in person to obtain information about the complaint process. Information is also available on our website.

In most cases these enquiries will be handled by a conciliator/complaint officer. Information provided is confidential.

Most enquires are by phone but the ADC continues to receive many enquiries in person. In 2010-2011 68.9% enquiries came from the Darwin/Palmerston region, 21.3% from outside this region and 9.8% from undisclosed locations.

A notable trend in the enquiries received was a high presence of enquiries relating to bullying and harassment in the workforce.

Modes of Enquiry 2006-2007 to 2010-2011

| Mode of Enquiry | 2007-2008 (%) | 2008-2009 (%) | 2009-2010 (%) | 2010-2011 (%) |
|-----------------|---------------|---------------|---------------|---------------|
| Telephone | 86.1% | 88.3% | 87.1% | 84.4% |
| In person | 8.5% | 8.3% | 11.2% | 11.8% |
| Email | 4.5% | 2.9% | 1.6% | 3.8% |
| Mail | 0.9% | 0.5% | 0% | 0% |

A Manager's Support line is also available for organisations that require information on how to comply with the Act in the course of their business. This can be accessed by telephone, email, mail or in person.

Complaints Received

The ADC continues to see an increase in complaints. In 2010-2011 we received 244 written complaints of unfair conduct against Respondents², with 534 allegations of prohibited conduct. This is an increase of 31% from 2009-2010 in which 186 written complaints against respondents were received.

Attributes and Other Prohibited Conduct

In 2010-2011 we saw an increase of complaints in relation to almost every attribute under the Act. Complaints of discrimination on the basis of race remain our highest reason for complaints increasing from 69 to 102 and making up 19.1% of complaints received. This was followed by sex (58), impairment (44), failure to accommodate a special need (44)³ and sexual harassment (41).

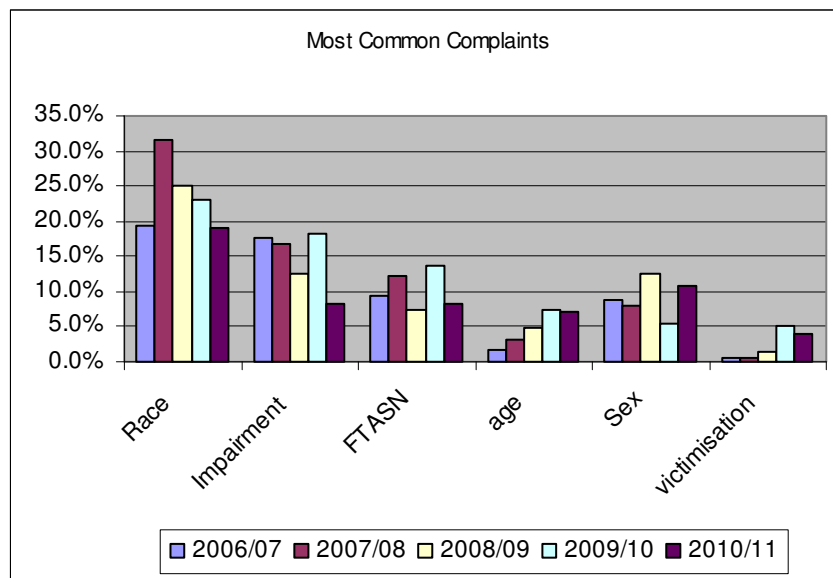
² Total complaint numbers are measured by Respondent.

³ Most complaints received in this area related to impairment.

This year saw a return of a high number of complaints in the area of sex and sexual harassment, following a drop in this area of complaints in 2009-2010.

Discrimination complaints in the area of age continue to grow with it now being one of our highest grounds for complaint.⁴ Anecdotally most of these complaints appear to be about older age rather than younger age. Other notable trends in 2010-2011 were a significant increase in complaints relating to seeking unnecessary information. In the previous reporting period we investigated seven complaints however in 2010-2011 there were 38 complaints. It is unclear why there is such an increase in this ground of complaint.

Also of note are increases in complaints relating to marital status⁵, irrelevant criminal record⁶ and pregnancy⁷. A continuing trend from the last reporting period is an increasing number of complaints in the area of victimisation.



The complaints received for this period demonstrated a diversity of issues being brought before the ADC. This may reflect a growing awareness in the community about what type of issues can be complained about.

Areas of Complaint

The Act requires that discrimination must occur in an area of activity. Areas of activity include work; education; accommodation; goods, services and facilities; clubs; and insurance and superannuation.

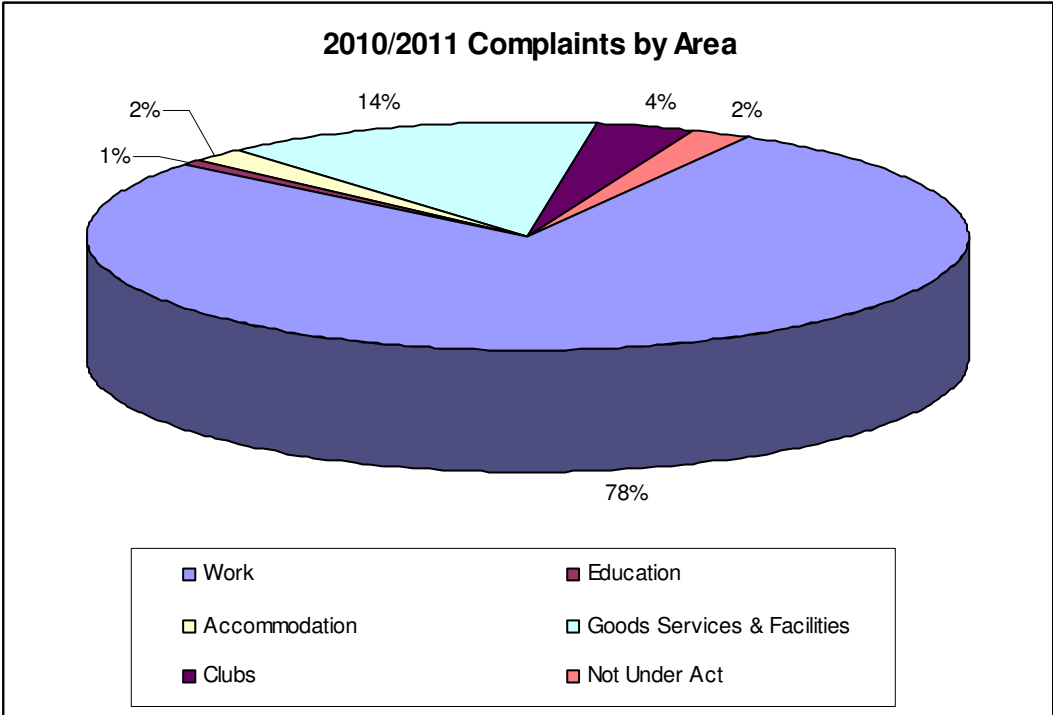
⁴ 37 complaints relating to age discrimination in 2010-2011 compared to 22 in 2009-2010 and 11 in 2008-2009.

⁵ 20 complaints relating to marital status in 2010-2011, compared to 5 complaints in 2009-2010.

⁶ 10 complaints relating to irrelevant criminal record in 2010-2011 compared to 3 complaints in 2009-2010.

⁷ 8 complaints relating to pregnancy in 2010-2011 compared to 1 complaint in 2009-2010.

In 2010-2011 complaints were made in each of the areas as follows:



Work remains the most significant area of complaint⁸. This year has seen a continued growth of complaints in this area with 414 complaints (77.5%) compared to 148 complaints (49.3%) last year.

Last year we saw a growth in complaints in the area of goods, services and facilities however this growth has not continued this year with a drop from 35% (105) to 13.9% (74).

Complaints by Area 2008-2009 to 2010-2011

| Area of Activity | 2008/09 | % | 2009/10 | % | 2010/11 | % |
|------------------------------|---------|-------|---------|-------|---------|-------|
| Education | 10 | 4.3% | 6 | 2.0% | 4 | 0.7% |
| Work | 140 | 60.6% | 148 | 49.3% | 414 | 77.5% |
| Accommodation | 17 | 7.4% | 11 | 3.7% | 11 | 2.1% |
| Goods, Services & Facilities | 55 | 23.8% | 105 | 35% | 74 | 13.9% |
| Clubs | 1 | 0.4% | 18 | 6% | 19 | 3.6% |
| Insurance and Superannuation | 0 | 0% | 1 | 0.3% | 1 | 0.1% |
| Not under Act | 8 | 3.5% | 11 | 3.7% | 11 | 2.1% |

⁸ Areas are measured according to grounds of complaint (e.g. race) rather than respondents.

Complaints by Grounds and Areas 2010-2011

| PROHIBITED CONDUCT – DISCRIMINATION ATTRIBUTES | Education | Work | Accommodation | Goods Services and Facilities | Clubs | Insurance and Superannuation | Not Under Act | Total |
|--|-----------|------------|---------------|----------------------------------|-----------|---------------------------------|---------------|------------|
| Age | - | 27 | 1 | 4 | 2 | 1 | 2 | 37 |
| Association with a Person | - | 12 | - | 2 | 2 | - | - | 16 |
| Breach of the Act | - | 2 | - | - | - | - | - | 2 |
| Breastfeeding | - | 1 | - | - | - | - | - | 1 |
| Impairment | 2 | 34 | - | 7 | 1 | - | - | 44 |
| Irrelevant Criminal Record | - | 8 | - | 2 | - | - | - | 10 |
| Irrelevant Medical Record | - | 25 | - | 1 | - | - | - | 26 |
| Marital Status | - | 11 | - | 8 | - | - | 1 | 20 |
| Parenthood | - | 13 | - | - | - | - | - | 13 |
| Political Opinion/Affiliation/Activity | - | 5 | - | - | 2 | - | - | 7 |
| Pregnancy | - | 8 | - | - | - | - | - | 8 |
| Race | - | 69 | 4 | 21 | 4 | - | 4 | 102 |
| Religious Belief/Affiliation/Activity | - | 3 | - | 1 | - | - | - | 4 |
| Sex | - | 45 | 3 | 7 | 2 | - | 1 | 58 |
| Sexuality | - | 6 | - | - | - | - | 2 | 8 |
| Trade Union Affiliation/Activity | - | 7 | 1 | - | - | - | - | 8 |
| Not Under Act | - | 10 | - | - | 1 | - | - | 11 |
| Total | 2 | 286 | 9 | 53 | 14 | 1 | 10 | 375 |
| OTHER PROHIBITED CONDUCT | | | | | | | | |
| Aiding Contravention of Act | - | 6 | - | 2 | - | - | - | 8 |
| Discriminatory Advertising | - | - | - | 5 | 2 | - | - | 7 |
| Failure to Accommodate a Special Need | 2 | 38 | 1 | 2 | 1 | - | - | 44 |
| Sexual Harassment | - | 40 | 1 | - | - | - | - | 41 |
| Seeking Unnecessary Information | - | 32 | - | 5 | - | - | 1 | 38 |
| Victimisation | - | 12 | - | 7 | 2 | - | - | 21 |
| Total | 2 | 128 | 2 | 21 | 5 | - | 1 | 159 |
| TOTAL COMPLAINTS FOR 2010-2011 | | | | | | | | 534 |

Identity of Complainant and Respondent

Complainant Profile by Sex

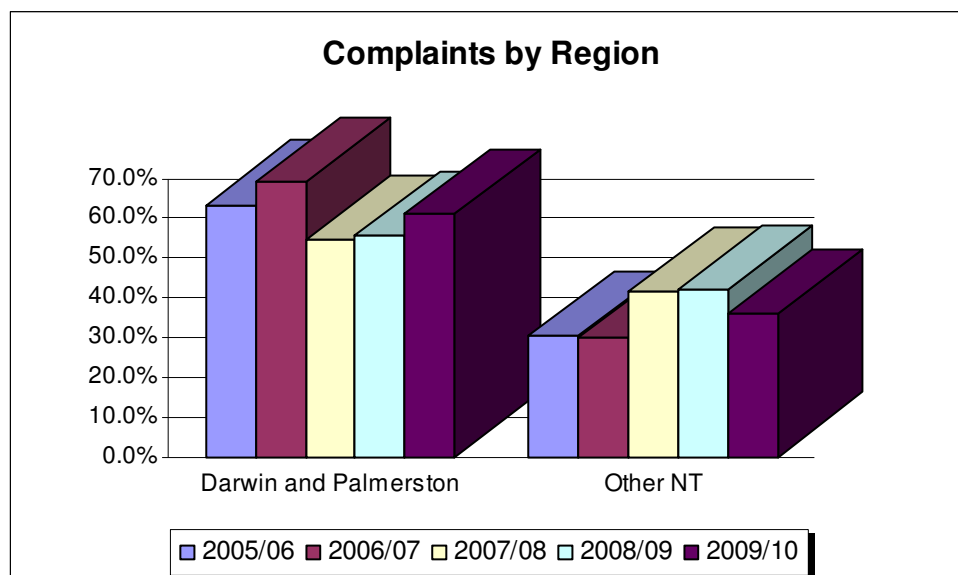
| Complainant Profile | Number of Complaints | % |
|---------------------|----------------------|-------|
| Female | 111 | 45.5% |
| Male | 133 | 54.5% |

In 2010-2011 more men than women lodged complaints with the ADC. This is consistent with statistics from the previous year.

Complaint Profile by Region

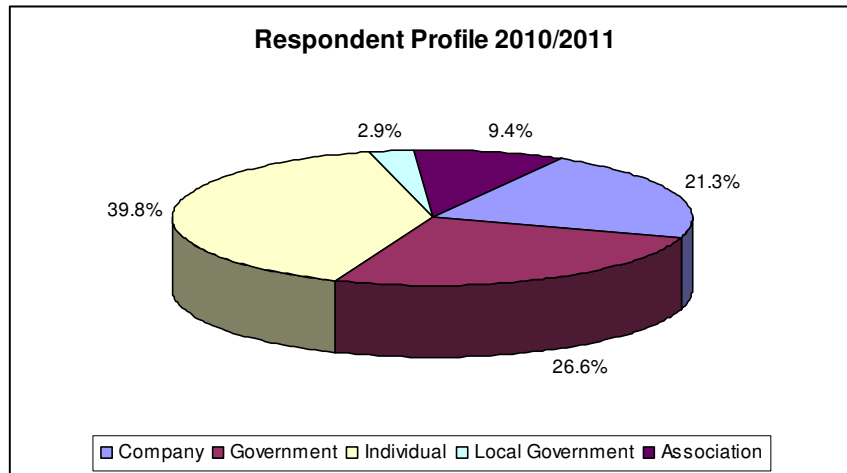
In 2010-2011 57.4 % of complaints received were from the Darwin/Palmerston region. However a significant number came from elsewhere in the Northern Territory (39.3%), while 3.3% came from interstate.

Of the complaints from outside the Darwin/Palmerston region, 16.4% (40) came from Alice Springs, slightly higher than the previous year (34). There continues to be a growing number of complaints from Alice Springs and it is expected that this trend will continue.



Respondent Profile

This year we saw a decrease in complaints against companies (21.3% compared to 37% last year) and government respondents (26.6 % compared to 37% last year). The complaints against these respondents however remain high. An emerging trend this year was the high number of complaints against individuals making up 39.8% of the complaints compared to the previous year (8.6%). This may reflect a growing awareness that individuals as well as entities can be named in a complaint. It may also indicate an increase in complaints being made against multiple individuals.



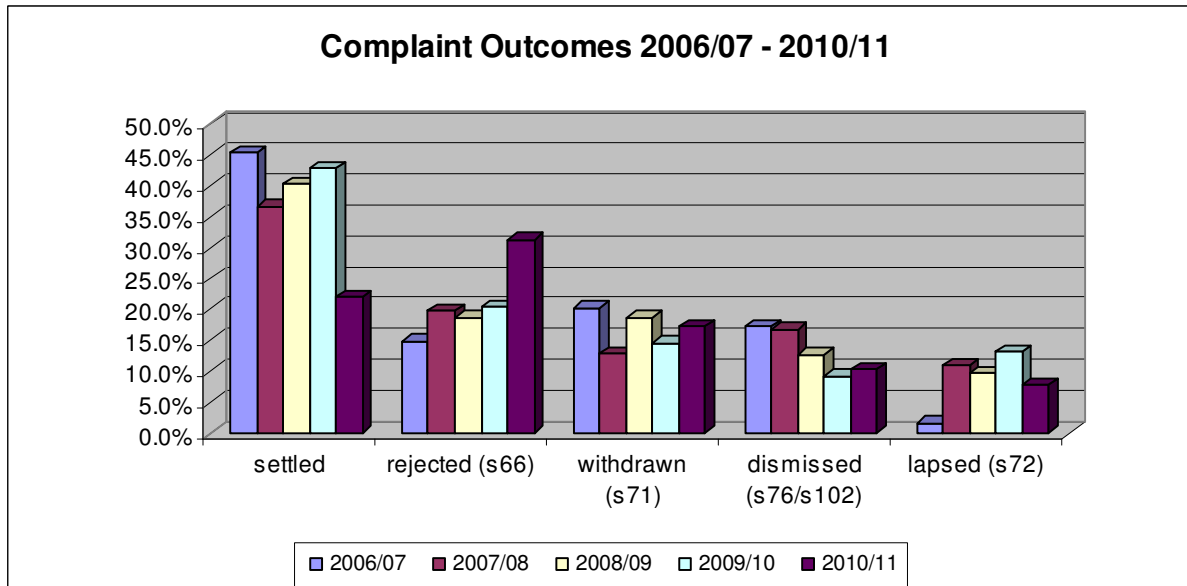
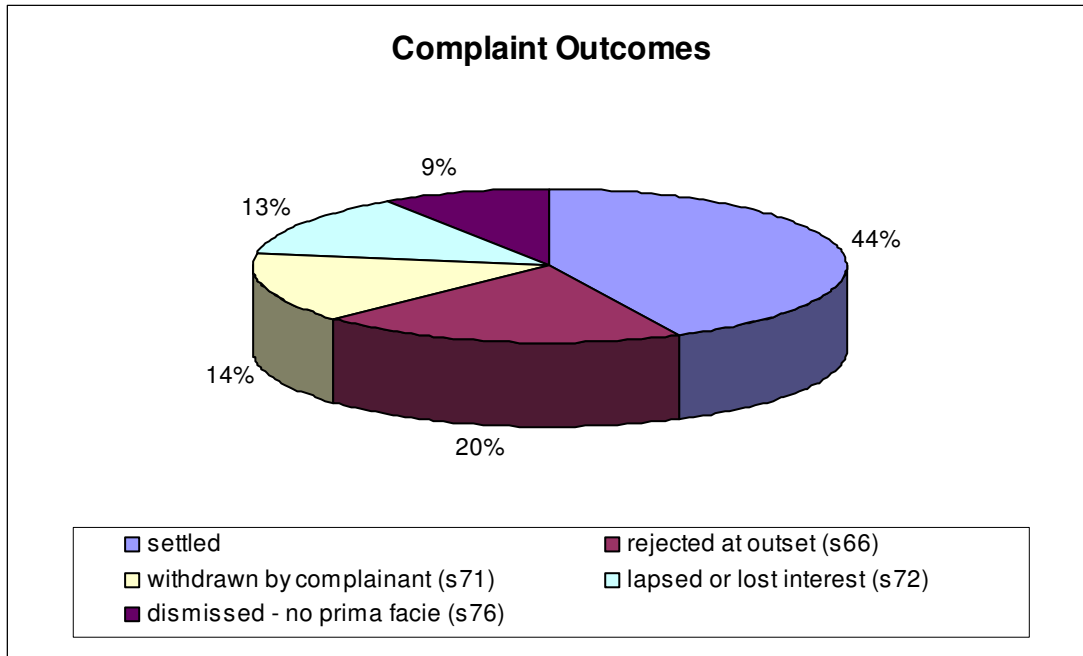
| Respondent Profile | 2009/2010 | | 2010/2011 | |
|--------------------|------------|-------|------------|-------|
| | no | % | no | % |
| Company | 69 | 37.1% | 52 | 21.3% |
| Government | 70 | 37.6% | 65 | 26.6% |
| Individual | 16 | 8.6% | 97 | 39.8% |
| Community | 3 | 1.6% | | * |
| Club | 5 | 2.7% | | * |
| Local Government | 8 | 4.3% | 7 | 2.9% |
| Association | 12 | 6.5% | 23 | 9.4% |
| unknown | 3 | 1.6% | 0 | 0 |
| TOTAL | 186 | | 246 | |

* Measure no longer used incorporated into association.

* Measure no longer used incorporated into association.

Complaint Outcomes:

236 complaints were finalised in 2010-2011, an increase of 73 complaints compared to 2009-2010.



Rejected (s66): The ADC is required to accept or reject a complaint within 60 days of receipt if it is: frivolous or vexatious; trivial; misconceived or lacking in substance; or fails to disclose any prohibited conduct⁹. In 2010-2011, 76 complaints were rejected under section 66; most on the basis that they failed to disclose prohibited conduct.

⁹ Section 67 of the Act.

Dismissed (s76): If a complaint is accepted it is then investigated with a view to considering if there is sufficient prima facie evidence to substantiate the complaint. If there is insufficient prima facie evidence following an investigation, it will be dismissed under section 76 of the Act. Last year 25 complaints were dismissed for this reason.

Discontinued (s102): If a matter is referred to hearing, prior to the hearing an application can be made for the matter to be discontinued because it is frivolous or vexatious; trivial; misconceived or lacking in substance; or fails to disclose any prohibited conduct. Last year three matters were discontinued under section 102.

Settled: The ADC conducts voluntary and compulsory conciliations¹⁰ to assist parties resolve their complaints. A conciliation can take whatever form is necessary to assist the parties achieve resolution with their issues.

If a matter is settled, the terms of the settlement are usually recorded in a settlement agreement. Examples of conciliated settlements can be found at Appendix 3.

In 2010-2011, 52 complaints were settled.

Lapsed (s72): Sometimes when a complaint is lodged, the complainant loses interest in continuing with it. Under section 72, the ADC is able to lapse a complaint following notification to the complainant. The complainant is required to advise the ADC within 60 days of the date of the notice, if they wish to continue with their complaint. In 2010-2011, 19 complaints were lapsed.

Withdrawn (s71): A complainant may apply to the ADC at any time to withdraw their complaint. The ADC must be satisfied that the application is made voluntarily before agreeing to withdraw the complaint. In 2010-2011, 45 complaints were withdrawn by the complainant.

Determined at Hearing: A complaint may be referred to hearing in the following situations:

- prima facie evidence has been found following an investigation and the matter has been referred to hearing under section 76(1)(b)(ii).
- the matter has failed to resolve following a compulsory conciliation under section 76.
- a party referred it to hearing under section 84 as the ADC had not completed investigation of the complaint with the statutory period.

In 2010-2011 the ADC had 22 matters at various different stages of hearing compared to 13 matters in 2009-2010. No hearings were conducted during this period. Within the reporting period, 13 were matters carried over from 2009-2010 and nine were new matters referred in 2010-2011. Of the 22 matters, 13 were closed in 2010-2011.

¹⁰ Section 76.

The number of matters being referred to hearing continues to grow. While few matters actually go to hearing, considerable resources are required to case manage matters leading up to the actual hearing of the matter.

An unexpected consequence of the early conciliation model is that matters are now being referred under section 76(b)(ii) to hearing rather than to conciliation. This is because it is apparent to the ADC at the time of making a prima facie decision that there is no willingness between parties to pursue further conciliation of a matter.

Appeals (s106): Final decisions of the Commissioner may be appealed to the Local Court by either party on a question of fact, law or both. An appeal against a decision of the Commissioner is a rehearing on the material received by the ADC. No appeals were lodged against decisions of the ADC in 2010-2011.

Judicial Review

A decision of the Commissioner can be the subject of judicial review in the Supreme Court. Judicial review was sought of one decision in 2010-2011 being the matter of *Hofer v ADC* [2011] NTSC 20.

The respondent to a complaint sought review of a decision of the Commissioner to accept a complaint of sexual harassment out of time. The respondent argued that:

1. it was beyond the Commissioner's power to accept a matter outside the time frame of 60 days stated in section 66 of the Act; and/or
2. that the Commissioner's decision to accept the complaint was invalid because he failed to consider if the complaint was vexatious.

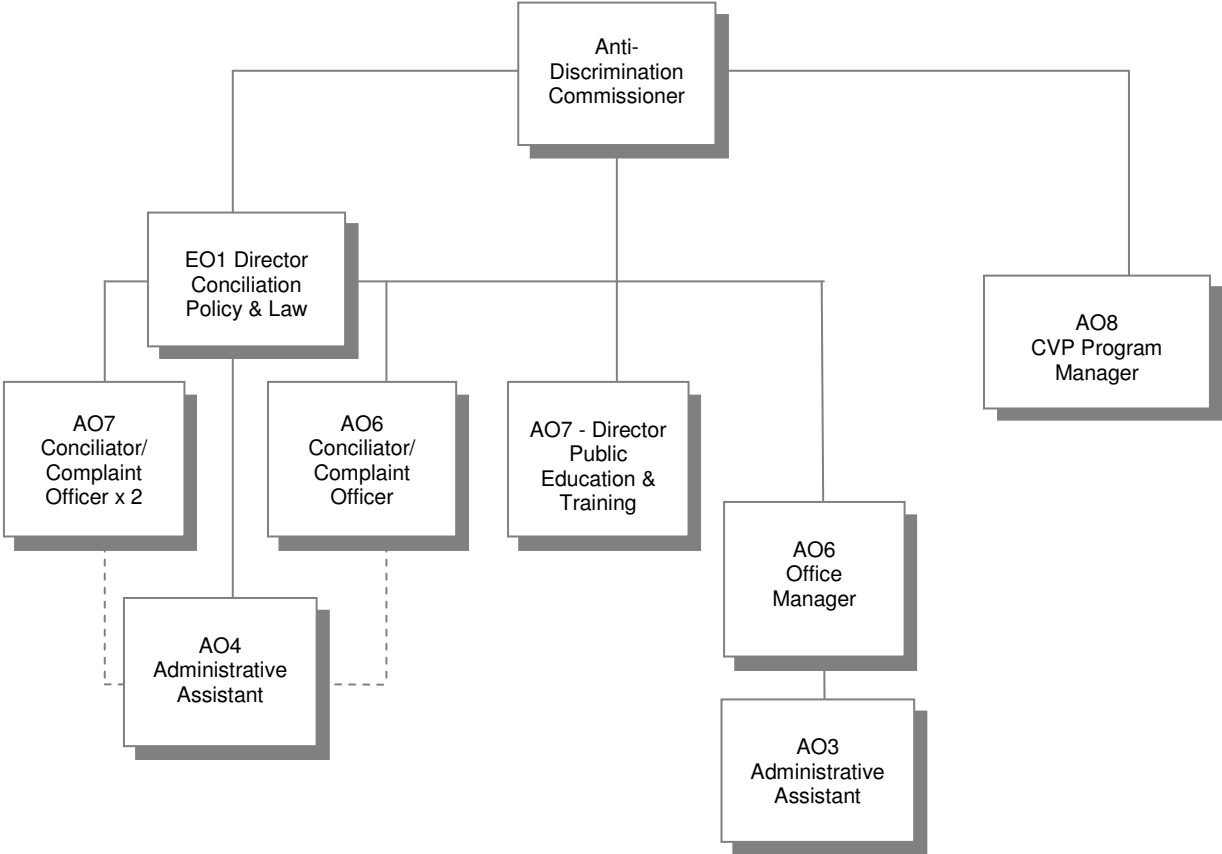
His Honour Barr J found that the Commissioner had not acted outside his powers in accepting a complaint outside the 60 days stipulated in section 66, that this was a compliance date to encourage expeditious handling of the complaint. He further found that the Commissioner's decision was not invalid. He said it was implicit that the Commissioner had concluded that the complaint was not vexatious.

Policy

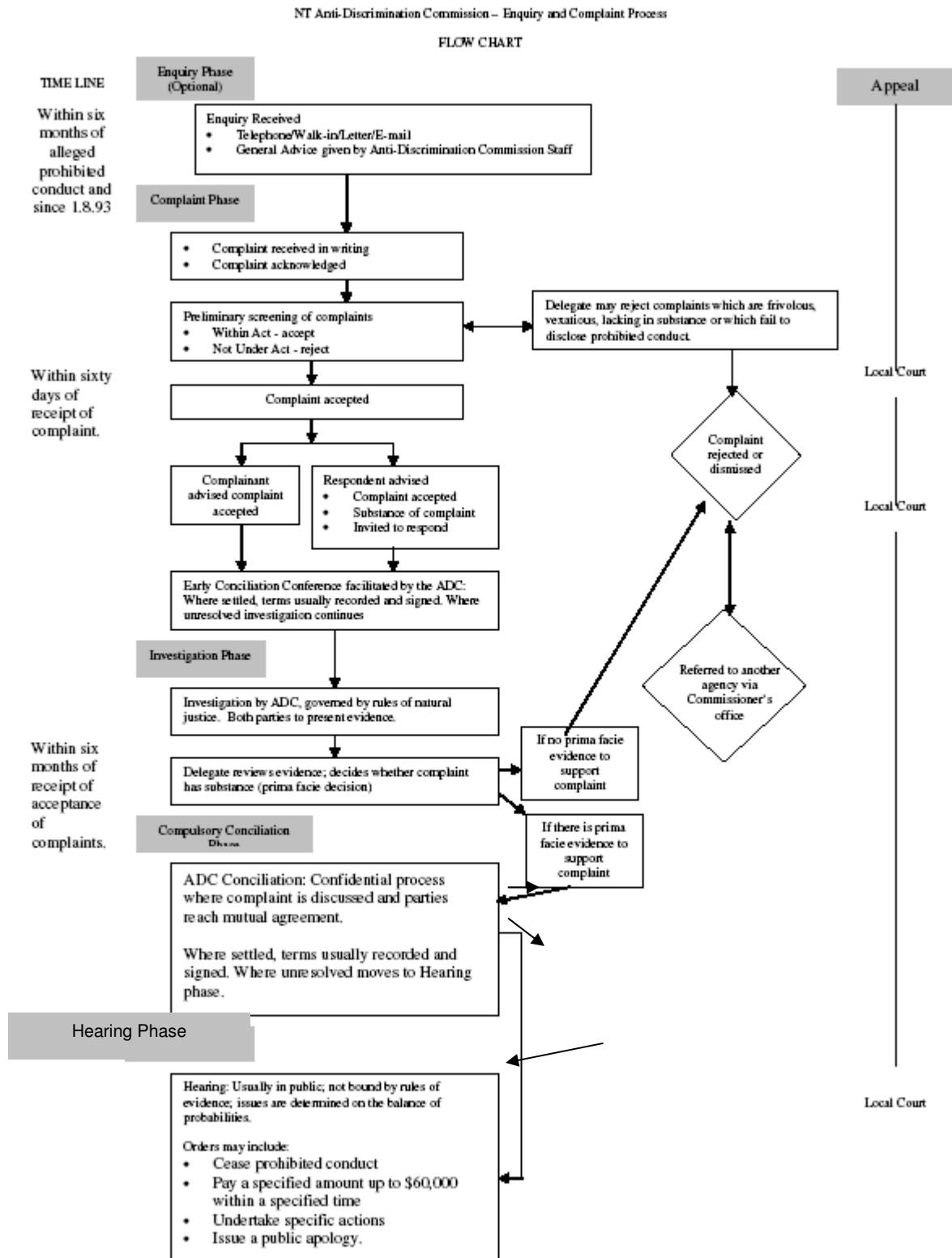
In 2010-2011 ADC provided policy advice in response to new or amending legislation to examine and report to the Attorney-General any inconsistencies with our Act. Advice was also provided to Cabinet and government agencies in relation to Cabinet Submissions relevant to our jurisdiction.

The ADC also continues to engage with stakeholders and make submissions in regard to important discrimination policy developments and issues, whether locally or nationally. In this reporting period these issues included the Federal intervention, reform of the Australian Constitution and race issues in Alice Springs.

Appendix 1: Organisational Structure as at 30 June 2011



Appendix 2: Complaint Processes



Appendix 3: Examples of Conciliated Complaints

These examples have been de-identified to protect the identities of the parties.

Discrimination on the basis of parenthood and failure to accommodate a special need because of parenthood

The Complainant is a single mother of a school-aged boy who is intellectually disabled. She is a shift worker who is employed by a non-government organisation caring for adults with dementia. Her shifts enable her to work hours that coincide with her son's school times.

She was approached at work one day and asked if she could reduce her hours. She did not respond to the request. When the new roster was issued, her hours, while not reduced, had been changed. The new hours prevented her from collecting her son from school. She spoke to her supervisor but her supervisor ignored her and refused to change the shifts. She overheard a conversation between a manager and another staff member saying that they had made too many accommodations for her and it was about time she fitted in with what they needed.

The Complainant took stress leave and during that period the organisation dismissed her.

A complaint was lodged with the Anti-Discrimination Commission and a conciliation was conducted. The employer, in response to the complaint agreed to: (i) provide an apology to the complainant, (ii) undertake anti-discrimination training, (iii) introduce new policies relevant to discrimination and bullying, and (iv) pay her appropriate compensation.

Sexual harassment in goods services and facilities

The complainant is a young adult who had just commenced her first job and was looking to buy a car so she could get to and from work. At the recommendation of a family friend she went to the Respondent's used-car yard. The Respondent was an older man who was married with children. The Complainant knew his children, so she trusted him.

He showed her a few cars in the yard. She found one that she was interested in and he suggested they take it for a test drive. When they got in the car he started pointing out the different features in the car. He then placed one hand on her leg and moved it up towards her thigh, and cupped his other hand over her breast. Leaning over her, he asked if she wanted a kiss. She pushed him away, got out of the car and ran out of the car yard.

The Complainant felt distressed and humiliated by the behaviour and lodged a complaint with the Anti-Discrimination Commission. A conciliation was conducted and the Respondent agreed to pay the complainant compensation in the amount of \$10,000.

Impairment in goods services and facilities

As a result of a motor vehicle accident, the Complainant is a paraplegic and requires a wheelchair. She moved to Darwin recently from Western Australia.

She is a keen darts player and had played competitively in Western Australia. Her darts are an important part of her life and has been the one thing that kept her spirits up since her accident.

When she arrived in Darwin, one of the first things she did was sign up to be a member of the local darts club. She attended the club to play a round of darts and everything was fine until she decided to use the toilet. She asked where the toilets were and was directed towards the back of the club where she discovered that there was no access toilet.

She asked the manager and he advised that she would have to use the ladies toilet because they could not afford to have separate facilities for her. She advised that the door was too narrow and he said "bad luck". She ended up having to call a taxi and go home.

She lodged a complaint with the Anti-Discrimination Commission. A conciliation was conducted and the club agreed to build an access toilet and apologised to the Complainant for their treatment of her.

Race and goods services and facilities

An Aboriginal mother and her boys went shopping in an electronic store. They were looking for a birthday present for a family member. The boys were young teenagers.

The mother wandered off into a separate aisle and told her boys to wait for her while she found what she was after. A few minutes later she heard a man shouting in the adjacent aisle. She looked up and saw one of the retail staff yelling at her boys to get out of the store. He was saying they were thieves and trouble makers and not welcome in the shop.

She approached the man and said the boys were with her and they were doing nothing wrong, just waiting for her. In response to her comments he threw all of them out of the shop.

The mother complained to the Anti-Discrimination Commission. The store apologised to the mother and each of the boys and provided each of the boys with a free laptop for their schooling.

Appendix 4: ADC Publications and Posters

Factsheets

- Anti-Discrimination General Information
- Are You Treated Unfairly Because You Are Aboriginal
- Complaints Procedure
- Criminal History Factsheet
- Eliminating Sexual Harassment – Guidelines for Employers
- Guide to Conciliation Conferences
- Guidelines for Preventing Sexual Harassment
- People With An Impairment (Disability)
- Sexual Harassment
- The Role of the Contact Officer
- Unfair Dismissal.

The following factsheets in language are currently being reviewed and updated into the current refugee and migrant groups languages.

- Tagalog
- Indonesian
- Swahili
- Arabic
- Singhalese
- Vietnamese
- Mandarin
- Somali
- French
- Japanese
- Portuguese
- Thai
- Tatum
- Burmese
- Talking tapes/Large type for the visually impaired

Posters

- Anti-Discrimination Commission Poster
- Fair Go – This is what it's really about!
- Know Your Rights, Know Your Responsibilities – Central Australia
- Know Your Rights, Know Your Responsibilities – Top End
- Sexual Harassment – Nobody has to put up with it!
- Welcome to My Country.