

Northern Territory Anti-Discrimination Commission



**Annual Report
2013 - 2014**

Anti-Discrimination Commission

Postal Address

LMB 22 GPO

Darwin NT 0801

Office Address

7th Floor

9-11 Cavenagh Street

Darwin NT 0801

General Enquiries

(08) 8999 1444

Freecall

1800 813 846

Facsimile

(08) 8981 3812

Website

www.adc.nt.gov.au

Email

antidiscrimination@nt.gov.au



<https://www.facebook.com/pages/Northern-Territory-Anti-Discrimination-Commission/1455365511362695>



https://twitter.com/ADC_Commission

24 September 2014

The Hon John Elferink MLA
Attorney-General and Minister for Justice
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 2013 to 30 June 2014.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Sally Sievers".

SALLY SIEVERS
Anti-Discrimination Commissioner

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FROM THE COMMISSIONER



It has been a privilege to be in the role of Anti-Discrimination Commissioner this year and to work closely with a team of dedicated staff at the Anti-Discrimination Commission (ADC).

This year saw the celebration of ADC's 20 year anniversary. It was a time to acknowledge the great work of the four previous Commissioners and all of the staff who have contributed to the significant body of work of the ADC. Over the last 20 years the ADC has produced resources and has reached into the Northern Territory community to promote equality of opportunity and to encourage non-discriminatory practices. There are extracts from my speech and photos of the anniversary in this report.

I also acknowledged during the evening the sustained contribution from staff that have worked at the ADC from its inception or very close to it. Karyn Jessop was one of these people who filled many roles in her 20 years with the ADC, including executive assistant and Complaints officer, with an exceptional record of resolving matters informally or very soon after complaints were raised with the office. Karyn commenced extended leave leading into her retirement in July 2013.

Somsong Albert has also been an integral part of the office since she commenced with the ADC. Somsong played a very large part in organising the Anniversary celebrations and has been essential in the smooth and calm running of the office over the last 20 years. She has, in her quiet way, enabled the ADC staff to resolve disputes, run education and training courses, organise events and generally get on with the job.

This year I have continued to build relationships, with the aim of working in partnership with other groups in the Northern Territory community, to address the priority areas of need. I have partnered with legal providers North Australian Aboriginal Justice Agency (NAAJA), Central Australian Aboriginal Legal Aid Services (CAALAS) and Northern Territory Legal Aid Commission (NTLAC), to provide a lesson plan and resources to be taken into remote communities. With the assistance of the NTLAC we have been able to send a trainer to Tennant Creek to run training and also to conduct a two hour community forum.

We prepared resources to raise awareness and assist three Northern Territory communities to understand the Commonwealth's proposal to amend the *Racial Discrimination Act*, which would have substantially reduced the protection against racial vilification for the NT community.

With assistance from the Multicultural Council of the Northern Territory (MCNT) we hosted a community forum to gather views from the community about the proposed amendments and prepared with MCNT a submission to the Commonwealth setting out these views. The views gathered from the Northern Territory community demonstrated the real need for racial vilification protection in the Northern Territory.

A similar presentation was given to the full council of the Northern Land Council (NLC) and the materials were provided to other agencies to use to inform and increase community engagement. Legislative condemnation of racial vilification is an essential part of the legal framework to guide and shape the society we want for ourselves and our children. It is a tool that can be used to promote and enhance racial tolerance in our community.

In addition to the 20 year Anniversary, the Commission was involved in numerous community events either hosting, co-hosting, presenting or providing assistance via the contribution of Commission staff. The ADC organised events for International Day of People with Disability, and co-hosted International Women's Day breakfast with NT Women Lawyers'. As Commissioner, I also spoke at the UN International Women's Day Walk and Community Morning Tea in the Great Hall at Parliament House and at a film evening run by the NT Working Women's Centre.

The Commission was also involved in events during Disability Awareness Week in September and Mental Health Awareness Week in October 2013.

A big project that the ADC undertook this year was to begin to update the old website by making it more relevant, informative and engaging. The Commission wanted to create an easy access area for people to further their knowledge of the ADC. The website now includes resources relevant to the ADC, an online complaint form and links to other resources, including Play by Rules.

My role as Commissioner also includes appointment as the Principle Community Visitor for the Community Visitor Program (CVP). This year the CVP has grown in size and increased the scope of the areas which it monitors. This has required a substantial amount of my time. The CVP, on a daily basis, advocates for some of the most vulnerable people in our community, those who live with a mental illness, disability, or abuse alcohol and are detained in Northern Territory facilities. The CVP are able to pursue objectives consistent with *Anti-Discrimination Act* on a day to day basis. The CVP will prepare a separate Annual Report to outline the very busy year the program has had.

It is with great pleasure that I present the 2013-14 annual report to the Northern Territory Parliament which will showcase the hard work and endeavour, from the dedicated Anti-Discrimination Commission team.

THE OFFICE OF THE ANTI-DISCRIMINATION COMMISSIONER



Alison Worsnop - 'Women working the land' (Rights on Show 2013)

THE OFFICE OF THE ANTI-DISCRIMINATION COMMISSIONER

WHO ARE WE

The Anti-Discrimination Commissioner is appointed under section 6 of the *Anti-Discrimination Act* (“Act”) to perform the functions set out in section 13 – see Appendix 2.

Our office is a small one. The current structure can be seen in Figure 1.

Broadly there are four areas within the Anti-Discrimination Commission (ADC):

- Complaints;
- Public education and training;
- Community engagement; and
- The Community Visitor Program.

The Community Visitor Program is the subject of a separate annual report.

COMPLAINTS

The Act provides a formal mechanism for members of the community to lodge formal complaints regarding discrimination they believe they have experienced. This is a free and confidential process. There are three stages to the process being:

1. A preliminary assessment stage where a decision is made whether to accept or reject a complaint for further investigation.
2. Investigation.
3. Compulsory conciliation/hearing.

Voluntary conciliation is available at any stage of the process.

An enquiry line is also available for the general community and the business community to contact the ADC, and get information on our complaint process or about obligations under the Act. This is a free and confidential service.

PUBLIC EDUCATION AND TRAINING

Public education and training is a function of the Commissioner under section 13 of the Act. The ADC provides public education and training through:

- Formal public training;
- Participating in community events;
- Holding public functions; and
- Community engagement.

ANTI-DISCRIMINATION COMMISSION ORGANISATIONAL CHART

STRUCTURE AS AT 30 JUNE 2014

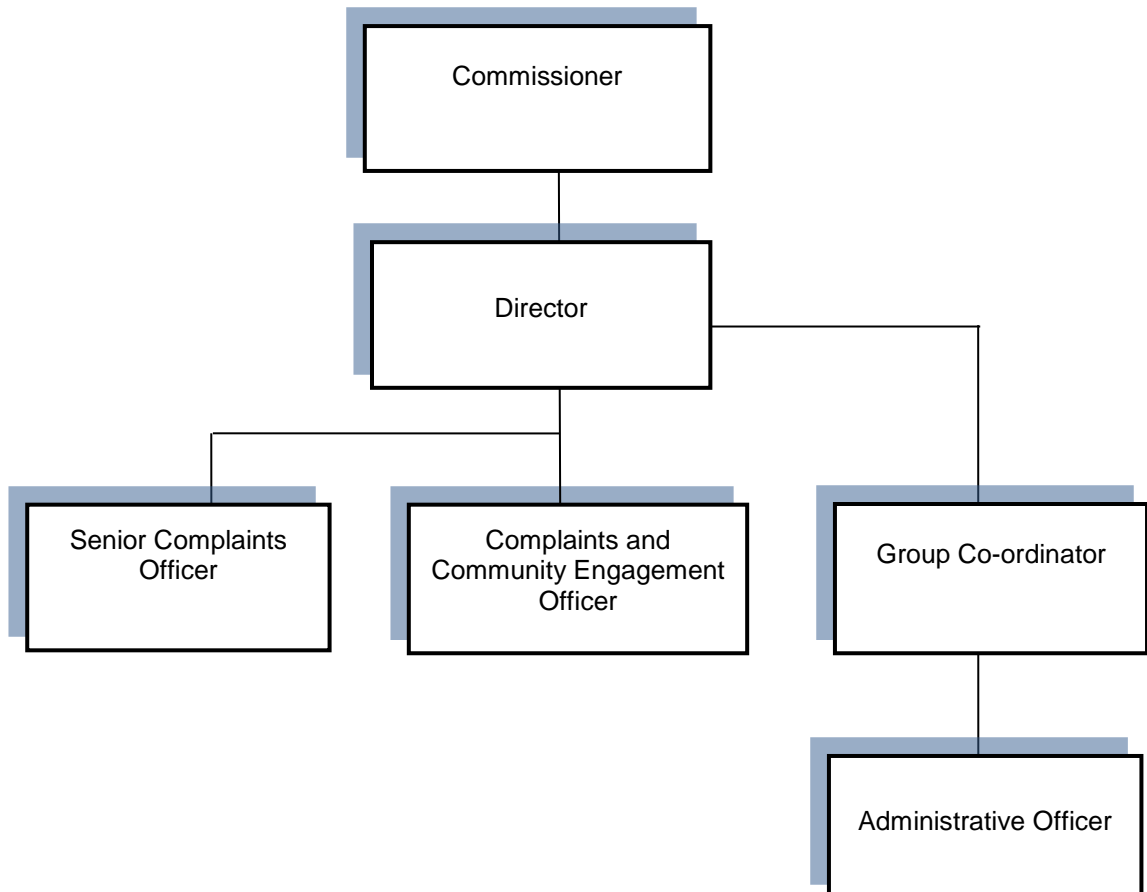


Figure 1

EMERGING ISSUES



David Nicholls – Songs for Supper (Rights on Show 2013)

SEXUAL HARASSMENT

In 2013-14 the Anti-Discrimination Commission saw a 93% increase in sexual harassment complaints. A majority of these complaints were from females, a few were received from males. All complaints irrespective of the gender of the complainant were against alleged male harassers.

A significant majority (86%) of these complaints were based on sexual harassment in the workplace, with a majority being against companies (60%). A majority of cases were women (60%) being harassed by men who held supervisory, or more senior positions in the workplace¹. In 76% of cases the Complainant had either left the workplace or left during the complaint process because of the sexual harassment.

The nature of the conduct alleged, varied from what could constitute criminal conduct (sexual assault & indecent assault) to inappropriate comments and behaviour. Common to most of these complaints, however characterised, was the impact on complainants including relationship breakdown, economic hardships from job loss, impacts on mental health and loss of confidence.

A positive for the ADC is that a majority of these matters settled and settled early, avoiding the need to argue out the issues in public.

The ADC is aware from formal complaints, enquiries received and from engaging with the community, that sexual harassment in the Northern Territory is prevalent. An increase in complaints is not necessarily a reflection of an increase in activity in this area. It is at best an increase in the reporting of it. It is known that 1 in 4 women in Australia experience sexual harassment in the workplace, and that most harassment goes unreported².

In 2014-15, the ADC will watch with interest the impact of the National awareness raising strategy 'Know Where the Line Is'. This is a strategy developed by the Australian Human Rights Commission (AHRC), the Australian Council of Trade Unions and the Australian Chamber of Commerce and Industry. The strategy aims to raise the awareness of sexual harassment in the workplace, and provide tools to assist employers, managers and colleagues to support employees in the workplace who maybe experiencing sexual harassment. The material can be located on the Anti-Discrimination Commission website (www.adc.nt.gov.au) or knowtheline.humanrights.gov.au.

In 2014-15, sexual harassment will be a priority area for community engagement and promotion of the AHRC's resources.

¹ In 2013-14 47% of all sexual harassment complaints were about alleged harassment by a superior. In regard to complaints from females this was 74%.

² Australian Human Rights Commission (AHRC) Working without fear: Results of the Sexual Harassment National Telephone Survey (2012)

RESOLUTION

In the last 18 months the ADC has really pushed its early resolution options for formal complaints. Providing parties with an early opportunity to get together to discuss ways to resolve their dispute. This has been a successful model enabling quicker and better resolutions for complaints.

Looking for options to resolve a dispute is the focus at all stages of our process, including at the enquiry stage, before a complaint is lodged.

The underlying philosophy is that resolution at the earliest and lowest level is always best. This approach:

- Can retain relationships between the disputing parties;
- Save time and money;
- Reduce stress for parties;
- Minimise further litigation; and
- Enable practical and tailored solutions that address the heart of the issues being complained about.

In 2013-14 the ADC saw a change in approach to early conciliation, particularly from Respondents. An increasing awareness by Respondents, that early conciliations were voluntary, meant that some Respondents either didn't attend or would attend but did not take settlement seriously. Some refused to settle wanting to wait until an investigation was conducted.

This approach in most cases is counterproductive to resolving a dispute. It encourages an adversarial and litigious approach, with preoccupation being with what factually did or did not happen. Many alleged acts of discrimination occur with no witnesses. A determination of the facts in most cases will come down to whose version of events are believed following a hearing. While it is inevitable that some matters will go to hearing and cannot be settled, this should only be true for a minority of cases. The cost, time and stress for parties, do not warrant this approach to every issue.

When a Respondent elects to deal with a complaint in this way, they miss out on the opportunities that the complaints process provides; an opportunity to improve their business. When someone complains it is usually an indication that something is not working as well as it could; even if discrimination has not occurred. Genuine attempts at resolution are an opportunity to get to the bottom of what this is and find creative solutions.

Urgent reforms are being sought after for the *Anti-Discrimination Act* to enable the ADC to make attendance at early conciliation compulsory. The reforms will also enable the ADC to have clear powers to say no to legal representation. The purpose of this last reform is in line with our philosophy that resolution should happen at the

lowest possible level and at the earliest opportunity. In some cases legal representation encourages a litigious approach and does not assist with resolution.

There has been delays in these reforms being progressed, it is anticipated that they will be introduced in 2014-15.

RACE VILIFICATION

Race vilification continues to be an issue in the Northern Territory. While some matters can be handled by the ADC as race discrimination complaints, restrictions in the Act regarding what “areas” of public life covers, limits our ability to respond to these very important complaints. This is a source of great dissatisfaction for members of the public who expect and anticipate that their issue can be handled locally.

Vilification often occurs online or outside formal relationships such as employer/employee; student/teacher. Comments or actions are often between strangers and are impromptu. Comments can be highly offensive and emotionally charged. Complainants often report feeling scared and unsafe in their community.

The absence of legislation in the Northern Territory means that affected individuals must lodge a complaint with the Australian Human Rights Commission in Sydney. If their matter is not resolved, then they need to continue proceedings with the Federal Magistrates Court.

Many complainants who contact the ADC are not legally represented and will need to represent themselves through this process. While the AHRC process is a valid process and the preferred process for some matters, for others it is too remote and the prospect of a hearing in the Federal Court is daunting. Some complainants want to be able to speak face to face to a person, with this type of complaint it is particularly important that the complainants feel trust for the process they have engaged. They also often require local solutions for local issues.

In 2013-14, three matters were referred to the AHRC; one of these was a race vilification complaint. In addition to these numbers, there were some Complainants who opted to come to the ADC and run their matter as a race discrimination complaint. As identified above, this option is not available to everyone.

There are also a number of enquiries we receive in which a referral to the AHRC is given at this point; no data is kept on these numbers. We also receive calls and emails from concerned members of the community about acts of vilification that they have witnessed. We follow up on these to the extent we can without a complaint.

PERFORMANCE



Louisa Cowie – Quinoa: Daughter of the earth with her lovers' rain and sun.
(Rights on Show 2013)

COMPLAINTS

ENQUIRIES

Enquiries are contacts from the general public or business community asking for information about the *Anti-Discrimination Act* or about the ADC complaint process.

General enquiries are mostly about workplace issues, though they can be about other matters. People ring to get information about their rights and obligations; to find out what we do and if they can complain to us. Common enquiries received in 2013-14 included allegations of bullying and harassment in the workplace, sexual harassment, and race and impairment discrimination.

Our enquiry process enables the general public to get information to help them decide how to respond to the discrimination they have experienced. There are several outcomes that may result from a call to the ADC, some include:

- A formal complaint may get lodged;
- If a clear practical solution is obvious from the enquirers issue, the ADC may take action to see if the matter can be redressed without the lodging of a formal complaint;
- A referral may be made to a more appropriate forum;
- A referral may be made to another provider who can provide support for a complaint to the ADC and/ or provide any other advice or support that might be required;
- The enquirer may be armed with information so they can resolve their own issue;
- Information may be taken that can be used by the ADC in other forums (e.g. to inform policy advice or prioritising ADC resources).

Professional enquiries are from businesses and relate to issues they are experiencing in the workplace. Contact is often to obtain information about how to advertise particular jobs, or how to resolve concerns that a staff member may have raised regarding conduct of another employee. We are able to provide the manager with practical information about how to respond, including practical options, information they should record and how to prepare to defend an issue in the workplace if a complaint is lodged.

This service is free and can be accessed over the phone, by email or by attending the office in person.

In 2013-14 a majority of enquiries were received over the phone. During this year there was a change in the number of people attending the office in person compared to the number contacting us by email. Whilst the percentage of both is low in

comparison to phone calls, it is noticeable that the number of enquiries at our front counter has dropped, while the number of email enquiries has increased.

MODE OF ENQUIRY

Mode of Enquiry	2013-2014 (%)	2012-2013 (%)	2011-2012 (%) ³
Telephone	89%	87.2%	85%
In person	2%	8.7%	8%
Email	9%	4.1%	5%

Figure 2

The majority of enquiries at 60% related to work issues. General enquiries from the community made up 92% of the enquiries received, with the balance of (8%) being professional enquiries.

COMPLAINTS RECEIVED

In 2013-14 formal written complaints were received against 253 respondents (Figure 3). These were new complaints received during this period. This is a 56.17% increase from 2012-13, returning to similar high numbers from 2011-12.

Appendix 3 sets out the current complaint process.

FORMAL WRITTEN COMPLAINTS RECEIVED

2013-14	2012-13	2011-12	2010-11
253	162	202	244

Figure 3

FINALISATION OF FILES

In 2013-14, 192 files were finalised (Figure 4). While the number of files finalised this year is lower than 2012-13 it remains high relative to the number of new complaints coming in.

COMPLAINTS FINALISED

2013-14	2012-13	2011-12	2010-11
192	212	250	236

Figure 4

³ In 2011-12 2% of enquiries received no record was made regarding the mode of contact.

REASONS FOR FINALISATION

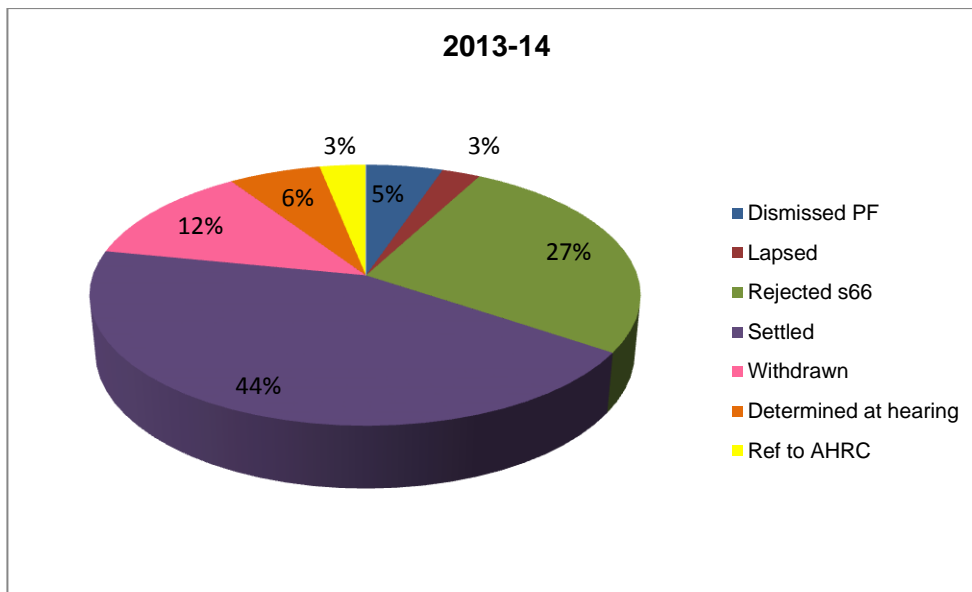


Figure 5

COMPARATIVE DATA

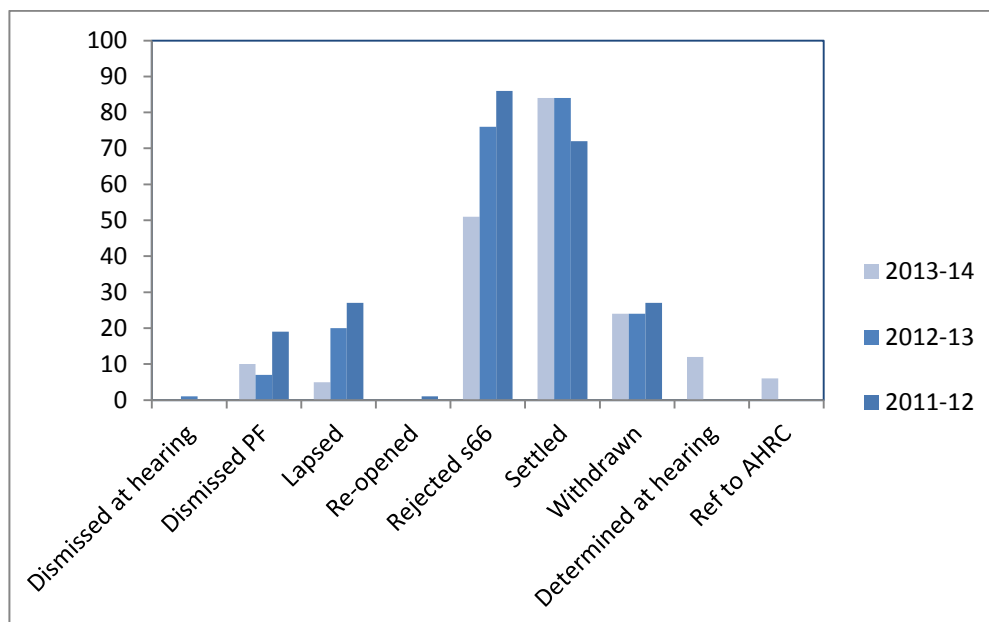


Figure 6

Following is a breakdown of the ways in which a matter may be finalised and the number of complaints concluded in each way for 2013-14.

REJECTED UNDER SECTION 66

In 2013-14, 51 matters were rejected under section 66 of the Act, 32% less than 2012-13 at (76). A decision to reject a complaint happens after an initial assessment of the complainant's story. The assessment is to determine if the conduct they say happened could be conduct prohibited by the *Anti-Discrimination Act*. It is not a requirement at this stage that a person be able to demonstrate that they can prove what they say happened.

The ADC appreciates that it is a major decision for any person to lodge a complaint. The decision to reject a complaint is not made lightly. If a complaint is likely to be rejected we endeavour to do this quickly so the person can explore other avenues. The Act requires we make a decision in 60 days; we endeavour to do it within 10 days after receiving the complaint. Where we can, we facilitate the referral of the complaint to another body, or provide the person with information to assist them to resolve their issue.

A drop in the matters being rejected coupled with an increase in new complaints received during the year also indicates an increase in the number of complaints being accepted for investigation. Comparative data is not maintained on the number of matters accepted. It should be noted however that all complaints not rejected are not necessarily accepted; some will be withdrawn or lapse before they can be accepted, and some will also be settled prior to acceptance. These would however, only represent a small proportion of the balance of matters.

DISMISSED AT PRIMA FACIE STAGE

If a formal complaint is accepted for investigation, following the investigation it may be dismissed for lack of prima facie evidence under section 76 of the Act. The investigation is not a formal investigation in which the ADC seeks out evidence of the parties claims. It is an opportunity for the Complainant to flesh out their allegation including setting out how they will prove their case. It is also an opportunity for the Respondent (the party being complained about) to give their account of events.

At the end of this process, the delegate of the Commission has to weigh up the information provided by both sides and determine if there is sufficient evidence and merit in the matter proceeding to hearing. If the delegate decides there is not, the matter will be dismissed under section 76.

In 2013-14, 10 matters were dismissed following an investigation, compared to 7 matters in 2012-13, representing a slight increase. The low numbers reflect that many matters are settled before this decision is made.

LAPSED

In 2013-14, 5 matters were lapsed; this is a 75% decrease from 2012-13 (20 matters were lapsed). A matter is lapsed when a complainant loses interest in the complaint process. The decision to lapse a matter only occurs where the ADC after having made a number of failed attempts to contact the Complainant, issues a notice to the party warning them that their matter will lapse if contact is not made within 60 days. All endeavours are made by the delegate to contact the party before this option is used. If a party contacts the ADC during the 2 month period, the complaint remains on foot. If no contact is made the complaint lapses and cannot be re-opened. The low number of lapses is a good indication that the ADC has remained engaged with Complainants through the complaint process.

WITHDRAWN

In 2013-14, 24 complaints were withdrawn. This is the same amount of complaints withdrawn in 2012-13.

Only a Complainant can withdraw a complaint. A Complainant is free to do this for any reason as long as they do so voluntarily. While some Complainants may withdraw because they are dissatisfied with the process or feel they will not get the outcome they are seeking, many withdraw because the process has enabled them to receive the information they required.

The ADC from time to time receives an issue from members of the public who want to understand more about it. Why was I sacked, why can I not get this concession, why are there no toilets in this facility? They may have attempted to get information themselves and had no success. The complaint process provides a vehicle by which people can get the information they need. This may happen through conciliation, through informal contact or from formal responses. It is not uncommon for a Complainant to ring and say I have all I need and I do not need to proceed any further.

While it is unfortunate that people may not get the information they seek by just asking. The ADC process is of value for some members of the public, as we may be able to go further up the hierarchy of an organisation, than a member of the public can, to get the information they are seeking. When we receive these types of complaints we endeavour to get the information as quickly and as informally as possible.

SETTLED

In 2013-14, 84 matters were settled. This is the same amount of complaints settled in 2012-13. Settlements remain the most common way of matters being finalised. Matters are resolved through conciliation or informal resolution.

The benefits of settlement are:

- Quicker;
- Cheaper;
- Solutions can be tailored to the issues and parties;
- Opportunity to mend relationships; and
- Confidential.

DETERMINED AT HEARING

In 2013-14, 4 hearings were determined.⁴ This is more than 2012-13 in which 1 matter was determined. Details of the hearing are discussed later in this report.

REFERRED TO AHRC

In 2013-14, 3 complaints were referred to the Australian Human Rights Commission (AHRC). There were no matters referred to AHRC in 2012-13.

The most common reason for referral to the AHRC is that the Respondent is a federal body, or the conduct alleged amounts to race vilification and is not covered by the Act's race discrimination provisions.

TIME FRAMES

In 2013-14 81% of complaints were finalised within an eight month period compared to 72% in 2012-13. Eight months is the statutory period provided by the Act, made up of 60 days to elect whether to accept a matter for investigation and six months from this date to finalise an investigation. We continue to find ways to improve on our timeframes.

In regard to complaints that are not yet resolved:

- 47 remain within the 8 month statutory reporting period
- 7 are within 12 months
- 7 exceed 12 months.

⁴ The four hearings represent complaints against 11 Respondents. One of these hearings was two separate complaints that were related and where thereby heard together.

APPEALS

In 2013-14 one appeal was finalised being the matter of *Kennedy v ADC*⁵ which was before the Court of Appeal.

Mr Kennedy lodged a complaint with the ADC on 9 August 2012. His complaint was against a local physiotherapy clinic from which he had been receiving services. He complained of discrimination on the basis of age and impairment in the area of goods, services and facilities. Mr Kennedy was charged by the Clinic for the preparation of a report for legal proceedings, which he says he was unaware attracted a fee. Following a dispute with the Clinic over payment he was asked to never return to the clinic again.

On 13 September 2012 the delegate rejected Mr Kennedy's complaint on the basis that it failed to disclose prohibited conduct and that it was misconceived, as the conduct complained of, did not fall under the Act and did not relate to his age or impairment.

Mr Kennedy appealed this decision to the Local Court. On 17 December 2012 the Magistrate, Her Honour Morris SM, giving reasons ex tempore, affirmed the decision of the delegate. Mr Kennedy appealed this decision to the Supreme Court on the basis that the Magistrate had denied him procedural fairness, as she had not given him a right to reply. Her Honour Kelly J agreed that there had been a lack of procedural fairness applied and that Mr Kennedy should have been given a right to reply. Kelly J also noted the decision of Barr J *Northern Territory of Australia v Anti-Discrimination Commissioner, Smyth and Ors* [2013] NTSC 5; that there is no right to an appeal to the Local Court from a decision of the Commissioner under section 66. She went on to conclude that irrespective of this decision there was no demonstrated error in the delegate's decision and that the appeal was doomed to fail.

Mr Kennedy appealed Her Honour's decision to the Court of Appeal. The appeal was narrowed down to two main grounds:

1. The decision of the delegate was in error; and
2. Her Honour was wrong to apply the decision of *Smyth* (supra).

The appeal was heard and determined on 2 September 2014. The Court dismissed the appeal. They found that the "delegate correctly determined that the complaint of the appellant did not satisfy the criteria for acceptance. The complaint was misconceived and failed to disclose any prohibited conduct."⁶ The Court opted to not consider the correctness of applying the decision of *Smyth* (Supra), on the basis that it was not necessary to do so. They noted that as a matter of comity, Her Honour was bound to apply the decision unless she considered it plainly wrong, which they stated she did not do. They expressed the view that Mr Kennedy's submissions did not relevantly address this appeal point, and felt that it was preferable that if there be

⁵ [2013] NTCA 08

⁶ P 6.

any challenge to this decision, that it occurs where both parties were able to give considered arguments.

The Commissioner was also a party to an appeal lodged in the Supreme Court under the *Information Act* being the matter of *Kowcun v Information Commissioner & Anti-Discrimination Commissioner*⁷.

Ms Kowcun made five Freedom of Information applications and three internal review applications to the ADC, seeking information from a conciliation in which a complaint she had lodged had been settled. Ms Kowcun was unhappy with a term in the Settlement Agreement that permitted the Respondent, to be able to issue in the future, behaviour permitting a banning notice under the *Gaming Control Act 1993*. A notice was issued, and Ms Kowcun sought to retrieve information to establish that the conciliator at the ADC had acted against her interest in permitting this clause.

Ultimately the ADC refused to release information prepared during a conciliation on the basis that it was a Tribunal for the purposes of section 5(5)(b) *Information Act*. Ms Kowcun lodged a complaint with the Information Commissioner which was accepted on 23 May 2012. On 2 January 2013 the Information Commissioner made a preliminary decision dismissing the complaint on the basis that the ADC was a tribunal for the purposes of the *Information Act*, and was therefore not required to provide the material requested.

Ms Kowcun appealed this decision to the Supreme Court. The matter was heard by Her Honour Kelly J on 24 May 2014, with a decision being handed down in writing on 13 September 2013.

Her honour found that the decision of the Information Commissioner was correct and that the ADC was a tribunal for the purpose of the *Information Act*. She found that this included the conciliation process, on the basis that “it would be artificial to separate the activities involved in conciliation from those involved in the rest of the decision making process in Part 6.”⁸ The appeal was therefore dismissed.

⁷ [2013] NTSC 57

⁸ P22.

APPEAL NUMBERS AND OUTCOMES

YEAR	Number	OUTCOMES
2010/11	Nil.	N/A
2011/12	4	1 struck out, 3 continued into next year
2012/13	2	2 dismissed ⁹ , 2 discontinued, 1 struck out ¹⁰
2013/14	Nil	1 dismissed ¹¹

Figure 7

⁹ One matter at time of report on further appeal.

¹⁰These outcomes include the three appeals lodged in 2011-12 that were not completed in that year. Of the two matters lodged in 2012-13, one was dismissed, the other was struck out.

¹¹This is Kennedy which was dismissed by court of appeal filed in 2012-13 not decided in that year – was dismissed at all three levels.

HEARINGS

In 2013-14 6 matters¹² were referred to hearing (Figure 8).

NEW MATTERS REFERRED TO HEARING

2013-14	2012-13	2011-12	2010-11
6	7	11	9

Figure 8

TOTAL NUMBER OF HEARINGS CASE MANAGED

2013-14	2012-12	2011-12	2010-11
10 ¹³	22	20	22

Figure 9

OUTCOMES

Following are summaries of the matters determined in 2013-14. Copies of these decisions can be located on the Anti-Discrimination Commission website at www.adc.nt.gov.au.

Kakakios v Department of Justice (Corrections) & Ors

Mr Kakakios ('the Complainant') alleged harassment by work colleagues Mr Packham and Mr Drake ('the Respondents'), in his work place on the basis of his sexuality. The Complainant and Respondents were Prison Officers employed by the Department of Correctional Services.

After considering all of the evidence, the Commissioner made a finding of fact on two matters. Firstly, that one of the Respondents had used the term 'play the gay card' in reference to the Complainant; and Secondly, that the Respondents had reported to a Supervisor that the Complainant had displayed inappropriate sexualised behaviour towards a prisoner.

It was a matter for the Commissioner to determine whether the conduct of the Respondents amounted to harassment for the purpose of the NT *Anti-Discrimination Act*. The Commissioner adopted the interpretation of harassment to mean 'troubled repeatedly by the other'.

The Commissioner determined that the use of this term 'play the gay card' did not amount to harassment. In her reasons she said the use of the term was a limited occurrence, not said in the presence of the Complainant or his work colleagues as a

¹² A matter is often against more than one Respondent and represents more than one complaint. At hearing generally a complaint made by one person against several respondents is listed for one hearing. In this data the 6 hearings represent the equivalent of complaints against 10 Respondents.

¹³ 10 matters equates to complaints against 24 respondents.

group. Further, the Commissioner found no evidence that the use of the term influenced the way the Complainant was managed or dealt with by his superiors.

In relation to the allegations made to a Supervisor by the Respondents, the Commissioner considered that this could amount to harassment if the Respondents were deliberately spreading false rumours and that they were doing so on the basis of his sexuality. The Commissioner found that the Respondents in relaying this information to the Supervisor believed them to be true, and was therefore not harassment. The Commissioner also found that the motivation for reporting the incident was on the basis that the conduct was inappropriate, not because of the Complainant's sexuality.

The Commissioner found that the complaint could not be substantiated and it was dismissed.

Berov v Aircraft Logistics & Anor

Mr Berov ('the Complainant') was employed by Aircraft Logistics ('the Respondent') as a Licenced Aircraft Maintenance Engineer. During 2009, it started to become apparent to the Complainant that he was not being offered training opportunities by his employer and further, when he sought his own training; the licence resulting from that training was not recognised by the Respondent.

It was the Complainant's view that the Respondent was discriminating against him on the basis of his age, that is, he believed they were not prepared to invest in his training and development, because he was close to retirement age. The Respondent confirmed that the Complainant was not offered further training but that it was because he was having performance issues not because of his age. Unfortunately, the Respondent did not raise performance issues with the Complainant at the time he was seeking training and recognition of his licence.

The Complainant was unable to provide any direct evidence or specific incidents which would assist the Commissioner in drawing the inference that the Respondent had treated him less favourably on the basis of his age. The Commissioner said, "whilst it is clear that Mr Berov was not given the training he requested and the training he paid for was not utilised I am not able to find a link to the attribute of age which is required to prove prohibited conduct under the Act."

Rahman & Islam v Gass

Mr Rahman and Ms Islam ('the Complainants') employed Mr Gass ('the Respondent') to build a swimming pool at their residence in Rosebery. A dispute arose around the terms and payment of the contract and ultimately the contract was terminated by the parties.

The Complainants lodged a complaint with the Anti-Discrimination Commission because they believed that the contract for their swimming pool was negotiated, administered and terminated differently to others on the basis of their race.

One of the greatest issues for the Complainant was that the Respondent's wife, who was not a party to the complaint, emailed the Complainant notifying them that the contract was terminated and included the words 'that's not the way we do things in Australia'. The Respondent had instructed his wife, as his Agent, to terminate the contract but he did not direct her to add the statement she used.

The Commissioner found that the words used would amount to different treatment on the basis of race in the area of services. The question remained whether the Respondent could be held vicariously liable for the words of his Agent. The Commissioner found that the Agent had acted outside of the instructions of the Respondent, and he could therefore not be held vicariously liable. As the Respondent's wife was not a party to the proceedings the complaint was dismissed.

Vollebregt v Reidy Investments Pty Ltd t/as Desert Palms Resort

Mr Vollebregt ('the Complainant') worked as the manager of the Desert Palms Resort. He injured his back at work in July 2008, and exacerbated that injury again in February 2009. The Complainant had back surgery in August 2009, and returned to his home at the Desert Palms Resort to recover.

After a period of time it became apparent that the Complainant could no longer perform his pre-injury role at the resort. Subsequently the Complainant found that he was being excluded from the change in management process which he felt undermined his value as an employee and status as a manager. The Complainant's employment was ultimately terminated by the employer. He lodged a complaint with the Anti-Discrimination Commission on the basis of Impairment at work, and that his employer had failed to accommodate his special needs.

The Commissioner's delegate found that the Respondent had allowed the Complainant to work full time hours, and normal duties against medical advice. It was therefore substantiated that the Respondent had treated the Complainant less favourably in relation to his work on the basis of his impairment, and that they had failed to accommodate his special need.

The Commissioner's delegate ordered that the Respondent pay \$7,500 for embarrassment and humiliation to the Complainant.

MANNER OF REFFERAL

A complaint may be referred to hearing at three stages (Figure 10):

1. Section 83(c) direct referral, no investigation required.
2. Section 76 (1)(ii) if the Commissioner believes it cannot be resolved by conciliation.
3. Section 84(1) if the ADC fails to complete an investigation within six months of accepting a complaint a party may request a matter be referred to hearing.

In 2013-14 all matters were referred to hearing under section 76, no matters were referred under section 84 or 83. This is a good outcome as it indicates that statutory time frames were met for these matters, and that they were referred to hearing based on merit.

Three of these hearings have been carried over into 2014-15.

MANNER OF REFERRAL

YEAR	S 76	S84	TOTAL
2010-11	5	4	9
2011-12	11	0	11
2012-13	5	2	7
2013-14	6	0	6

Figure 10

PUBLIC EDUCATION TRAINING & COMMUNITY ENGAGEMENT

The ADC seeks to educate the broader community about its processes, rights and obligations under the Act. and about discrimination issues that impact on Northern Territorians. This is done through:

- A free complaints enquiries line¹⁴;
- Public education and training;
- Information sessions;
- Information stalls;
- Networking;
- Public events;
- Presentations;
- Resources developed to inform the community
- Social Media, website, Facebook & Twitter.

Where direct contact with the public occurs this is also an opportunity for the ADC to listen to the broader community about any concerns they have. This information will often inform how we prioritise our work and what information is needed by the broader community.

PUBLIC EDUCATION & TRAINING

In 2013-14 the ADC commenced a working relationship with the Western Australian Equal Opportunity Commission (WAEOC), to provide training for the ADC in the Northern Territory. This was a significant departure from previous years in which we

¹⁴ Discussed at pg 16

have provided our own training. The WAEOC brings a wealth of experience, skill and knowledge about discrimination and training.

While providing the service in this way is still new for the ADC, early indications are positive. WAEOC provides a set public discrimination program and tailored training upon request.

The public program offered is as follows.

Anti-Discrimination, Harassment and Bullying

This training looks at the basics of the *Anti-Discrimination Act*, and its impact on the workplace. It covers:

- The roles and functions of the Anti-Discrimination Commission;
- Rights and responsibilities under the Act;
- The difference between bullying and harassment; and
- What is acceptable behaviour in the workplace.

Preventing Discrimination; Harassment and Bullying for Managers and Supervisors

This training covers some material from the introduction course with a greater focus on issues relevant to managers. This includes:

- Vicarious liability;
- The role and responsibilities of managers in developing and monitoring a positive workplace culture;
- Taking action against unacceptable behaviour.

Contact Officer Role

This training looks at the role and functions of a contact officer, and provides staff with the knowledge and resources to be a first point of contact for staff that has a discrimination grievance.

This is full day training. Attendees are required to have done either the basic course or the management course.

Train the Trainer

This training is for organisations who want to provide their own in-house training about discrimination in the workplace. Participants are provided with a manual to assist with their future training. The focus of this program is to train trainers in how to deliver discrimination training.

This is full day training. Attendees are required to have done one of the other courses and have training experience or qualifications.

Each program is offered in Darwin and Alice Springs, twice a year, and once a year in Nhulunbuy, Katherine and Tennant Creek.

In 2013-14 WAEOC conducted 35 hours of training for the public program.

Tailored Training

Tailored Training is also available upon request from an organisation. Material can be developed and presented that is tailored to the needs of the particular organisation. This is a popular form of training, as organisations are often seeking training in response to particular issues. Some organisations once they experience the benefit of this training elect to offer it on a recurrent basis, being yearly or every two years. Operating this way enables businesses and their staff to stay up to date with current rights and obligations in the workplace, and minimise the risk of a formal complaint being made against them.

In 2013-14 WAEOC conducted 35 hours of tailored training. They provided a total 70 hours of training and information sessions in 2013-14.

INFORMATION SESSIONS

To complement the public education program, the ADC also offers free information sessions for organisations. These sessions are not provided by trainers, they are conducted by complaint staff or the Director. Complaint staff members have a wealth of experience in dealing with parties in dispute, knowledge of the Act and the ADC complaint process. They attend organisations to discuss:

- who we are;
- what we do;
- how to prevent being complained about;
- best practice in responding to a complaint.

The ADC may also attend to speak in relation to particular issues that maybe concerning an organisation. We generally speak with the organisation prior to attending to ensure that our topics will meet the needs of the organisation.

In 2013-14 the ADC conducted 13 hours of information sessions to various organisations. The sessions are a useful, cost free way of organisations understanding rights and obligations under the Act and to be provided with an opportunity to ask questions.

INFORMATION STALLS

Information stalls give the public an opportunity to collect our information material, and come and ask us questions about the service we provide. Low staffing resources in 2013-14 have made it difficult to prioritise this form of information sharing.

In 2013-14 we ran information stalls for:

- Disability Awareness Week – Happiness and Wellbeing Market;
- International Women’s Day March; and
- International Women’s Day Central Australian Women’s Legal Service film night¹⁵



COMMUNITY ENGAGEMENT

In 2013-14 the Commissioner, Ms Sally Sievers has focused on building relationships with the public service, non-government organisations including legal service providers, and with her federal counterparts at the Australian Human Rights Commission. In 2013-14, the Northern Territory saw visits from the Federal Disability Commissioner on two occasions, the Sex Discrimination Commissioner and the Human Rights Commissioner. The Commissioner also introduced a Workshop titled: Information on the new protections under the *Sex Discrimination Act*, presented by Australian Human Rights Commission (AHRC) in November 2013.

The Anti-Discrimination Commissioner has actively engaged with the Commissioner of Public Employment, and met regularly with various Northern Territory government agencies and councils. She has met regularly with community legal providers, North Australian Aboriginal Justice Agency (NAAJA), Darwin Community Legal Service (DCLS), Northern Territory Working Women’s Centre (NTWWC) and Northern Territory Legal Aid Commission (NTLAC) in the Top End, and visited Alice Springs and Katherine where she has met with other community groups including Mental Health Association of Central Australia (MHACA), Alice Springs Women’s Shelter and Kalano Community Association Inc.

The Commissioner has also attended forums in regard to the launch of the NDIS in the Territory, including meetings with NDS staff and staff managing the Barkly site.

This level of engagement has enabled improved understanding by these groups of the work of the Anti-Discrimination Commission, and has enabled a level of collaboration in responding to issues that arise in the Northern Territory.

¹⁵ Attendance at this information stall was only made possible by the assistance of the Central Australian Women’s Legal Service staff who kindly agreed to receive and place ADC material at this event.

POLICY WORK

In 2013-14, the ADC contributed to the following policy work:

- Return to Work project
- Corrections Bill
- Education reforms
- Access to Disability Justice
- Reforms to the *Anti-Discrimination Act*
- Development of the Northern Territory Civil and Administrative Tribunal
- Submissions to the NT governments strategy to reduce Domestic and Family Violence

In 2013-14, the Commissioner and ADC staff were invited to visit the new correctional precinct. This was an opportunity to see the new physical space, and ask questions about the needs of future prisoners, particularly regarding access.

The Commission has also prepared submissions on Commonwealth issues including, Aviation forum - two wheelchair policy, the draft legislation *Freedom of Speech (Repeal of s18C) Bill* with Australian Council of Human Rights Agencies (ACHRA) and also Multicultural Council of the Northern Territory Inc.

PRESENTATIONS/MEDIA

In 2013-14 the Commissioner's presentations included:

- Anti-Discrimination Act 20 Year Anniversary
- Mental Health Week - Darwin Premiere of *Insatiable Moon*
- International Women's Day - Darwin City Council (DCC)/United Nations event & Northern Territory Working Women's Centre (NTWWC) film *Girl Rising*
- Community Forum – on the proposed amendments to the Racial Discrimination Act 1975 (RDA) – in conjunction with Multicultural Council of the Northern Territory.
- Presentation to the full Northern Land Council (NLC) on the proposed amendments to the Racial Discrimination Act 1975 (RDA)



International Women's Day Breakfast



International Disability Day

PUBLIC EVENTS

In 2013-14 three public events were held by the ADC.

The first was the International Day of Disability in which we held a film afternoon and showed a series of films prepared by the AHRC. This was an informal afternoon in which participants were able to elect which films they wanted to view.

On 8 March 2014 the ADC in conjunction with the Northern Territory Women's Lawyers Association (NTWLA) conducted a breakfast for International Women's Day at the Novotel. The title of the morning was 'You May Ask Yourself How Did I Get Here'. The event was co-hosted by the Commissioner, Ms Sally Sievers and Ms Brenda Monaghan the Chair of the NTWLA.



Three guest speakers spoke to the topic being:

- Helen Summers, Optometrist and Telstra NT Business Women of the Year
- Emma Cameron, Local Indigenous marathon runner, Rob De Castella Indigenous Marathon Project
- Sandra Markman, Raconteur and Parliamentary Counsel



The morning was well attended and the speeches well received. Helen Summers spoke of the challenges she had faced being one of the few female optometrists. Emma Cameron provided an inspiring account of her journey in becoming a marathon runner and Sandra Markman gave an often humorous account of her working life as a lawyer and drafter.

TIME TO CELEBRATE – ADC 20 YEARS ANNIVERSARY

On 1 August 2013, it was the 20 year Anniversary of the *Anti-Discrimination Act*. To celebrate this we held a joint function with the Federal Disability Discrimination Commissioner Graeme Innes, to also celebrate 20 years of *Disability Discrimination Act* (DDA).



An evening function was held in the Supreme Court with speakers and the launch of the

Federal Disability Commission's 20 Years 20 Stories; featuring great stories of people utilising the DDA.

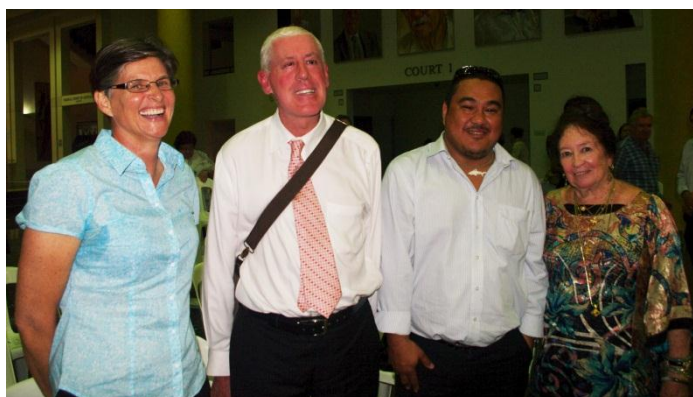


<https://www.humanrights.gov.au/twentystories/videos.html>

The event was emceed by Charlie King, followed by speeches from both Commissioners, and viewing of a selection of films from the 20 Stories. Performances were also enjoyed from One Mob and The Gray Panthers.



Extracts from Commissioner Sievers Speech - acknowledging the work of former Commissioners, projects and events by the Commission.



COMMISSIONERS:

DAWN LAWRIE – 1 August 1993 – July 1998

The First Commissioner to set up the office, all those years ago as *Anti-Discrimination Act* commenced on 1 August 1993.

Achievements include – Public Inquiry into the Provision of an Interpreter Service in Aboriginal Languages by the Northern Territory Government. The key recommendation was the establishment of an Aboriginal Interpreter Service.

The interpreter service is a vital service, one subsequent Commissioner's have continued to advocate for, to ensure it was established and funded. Part of my goal is to continue to press upon anyone who will listen, the crucial role of the service into other areas such as health.

TOM STODULKA – August 1998 – October 2002



Achievements include – active role in encouraging Government to rethink its approach to mandatory sentencing; particularly the impact of mandatory sentencing on juveniles, including aboriginal juveniles which were modified by Government's reforms.

In 2001 the launch of the ADC's first website in April 2001 and the auspice of the Community Visitor Program. The program at this time provided an independent mechanism for redress of the concerns of clients of Mental Health Services in the Territory both at an individual and systemic level. It also provided an important role in monitoring and inspecting facilities.

TONY FITZGERALD – November 2002 – February 2009

Achievements included – An office in Alice Springs co-located with the Ombudsman in March 2003.

In 2003 he established the ADC newsletter; copies of which are still on our website and scattered about today.

In July 2007 he advocated to all who would listen to his opposition to what was known as the Commonwealth Intervention into Northern Territory remote communities, which in fearless Tony style he referred to as the Invasion.



EDDIE CUBILLO – August 2010 – September 2012



Achievements included vigorously lobbying the Federal and Territory governments about the impact of the *Northern Territory National Emergency Response Act*, raising concerns about its practical and discriminatory impacts.

Eddie appeared before the Senate Standing Committee on Community Affairs - Stronger Futures in the Northern Territory Bill 2011 and related Bills in February 2012.

He was also very vocal on the naming and shaming laws and the levels of indigenous incarceration in Northern Territory prisons.

He was also invited to and attended the United Nations Permanent Forum on Indigenous Issues in New York

RESOURCES – SOCIAL MEDIA

WEBSITE

In 2013-14 the ADC developed a new website. The ADC worked with Mojo Collective to simplify the language to ensure its accessibility. Clearer pathways have also been developed so users can navigate their way easily around information. A formal launch of the website will occur in 2014.

Northern Territory Anti-Discrimination Commission

Home About Discrimination Complaints Education and training Resources Contacts

What is the Anti-Discrimination Commission?

The Northern Territory Anti-Discrimination Commission promotes equal opportunity for all Territorians. Established in 1993, we aim to eliminate discrimination from happening by raising awareness about individual's rights and responsibilities under the Northern Territory [Anti-Discrimination Act](#).

The Anti-Discrimination Commission has three main roles: Public education and training, handling complaints and community engagement.

[More about the Anti-Discrimination Commission](#)

Complaints

If you have been unlawfully discriminated against, you can lodge a complaint under the Northern Territory *Anti-Discrimination Act*. But it's important to know your rights and responsibilities before making a complaint.

[More about making a complaint](#)

Do you know where the line is?

HOW WAS YOUR WEEKEND? DID YOU GET ANY?
WHAT TIME DO YOU GET OFF? CAN I WATCH?
HOW ARE YOU TODAY SEXY?
SHE'S GREAT WITH HER HANDS IF YOU KNOW WHAT I MEAN
Sexual harassment. *Know where the line is.*
SEE. TALK. SUPPORT. [knowtheline.com.au](#)

<http://www.adc.nt.gov.au/>

SOCIAL MEDIA

In addition to the new website, ADC also developed a twitter account and a Facebook page. The Facebook page is updated regularly to contain interesting, and relevant information. It can be accessed via <https://www.facebook.com/pages/Northern-Territory-Anti-Discrimination-Commission/1455365511362695>



By actively participating in social media we hope to increase the awareness of the role of the ADC, and highlight resources available to increase equality of opportunity, and to educate and promote non-discriminatory practices. It is a vehicle to promote and share information and relevant local events.

https://twitter.com/ADC_Commission

OTHER RESOURCES

Work also commenced in 2013-14 on developing braille business cards, and redesigning our conciliation brochure into an easy read format. These projects are expected to be completed in 2014-15, and will be discussed in that report.



TRENDS



David Nicholls – Super Food = Super Mood (Rights on Show 2013)

COMPLAINTS

WHO IS COMPLAINING?

GENDER

Traditionally complaints have been received equally from men and women, with men sometimes being slightly higher. In 2012-13 we saw a change in this trend with a noticeably higher number of women lodging formal complaints. This trend has not continued in 2013-14 with 51% male, 48% female and 0.5% identifying as gender X (Figure 11).

GENDER OF COMPLAINANT

Year	Male	Female	X
2013-14 ¹⁶	128	121	2
2012-13	120	162	0
2011-12	101	101	0
2010-11	133	111	0

Figure 11

REGION

Darwin remains the most frequent location of people making complaints to the ADC, with 175 or 69.2% of complaints being made by people residing in Darwin. In 2013-14 72 or 28.5% of complaints came from other regions in the Northern Territory, these were from around the Northern Territory and including Alice Springs (36; 14.3%), remote communities (18; 7.1%) and rural NT (18; 7.1%) (Figure 12).

Only three complainants lived outside the Northern Territory. Complaints from outside the Northern Territory are generally people who lived in the NT at the time of the prohibited conduct, and have moved prior to lodging an application, any people who experienced discrimination when they visited the Northern Territory, or people who live interstate and have had a dealing with the Northern Territory (this maybe an online transaction, applying for a job etc).

REGION

Year	Darwin	Other NT	Interstate	Total
2013-14	175	72	3	253 ¹⁷
2012-13	157	87	20	272 ¹⁸
2011-12	137	64	1	202
2010-11	140	96	8	244

Figure 12

¹⁶ The gender on 2 complaints was unknown.

¹⁷ Three matters were unknown.

¹⁸ Five matters were unknown.

WHO ARE PEOPLE COMPLAINING ABOUT?

In 2013-14 a majority of complaints were received against individuals (38.3%; 97 complaints) followed by companies (32%; 81 complaints) and Government (20%; 51). A majority of complaints against individuals are in the context of a company or government. In terms of entities, the greater number of complaints was against companies. Historically the number of complaints against companies and government bodies has been pretty even. This year saw a continuing trend from 2012-13 that complaints against companies are now exceeding those against Government – see Figure 13.

COMPARATIVE DATA

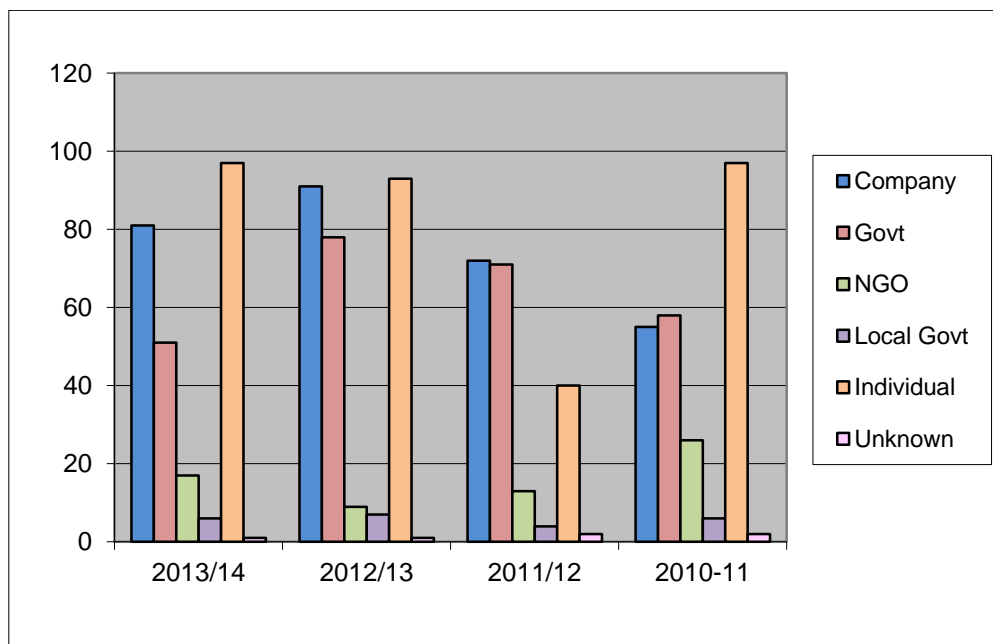


Figure 13

RESPONDENT PROFILE

Year	Company	Govt	NGO	Local Govt	Individual	Unknown	Total
2013-14	81	51	17	6	97	1	253
2012-13	91	78	9	7	93	1	279
2011-12	72	71	13	4	40	2	202
2010-11	55	58	26	6	97	2	244

Figure 14

WHAT ARE PEOPLE COMPLAINING ABOUT?

ATTRIBUTES

A list of the attributes in the Act is located in Appendix 5.

The table at Figure 15 sets out the attributes about which complaints were received in 2013-14. While race remains the highest attribute complained about it has significantly dropped in comparison to previous years. In 2013-14, 71 complaints were received about race compared to 101 in 2012-13. This should be viewed in the context that more complaints were received in 2013-14 (253) than 2012-13 (162).

This highest attributes complained of in 2013-14 where:

- Race (42% decline)
- Impairment (15% decline)
- Failure to accommodate a special need (17% decline)
- Sex (46% increase)
- Sexual harassment (93% increase)
- Seeking unnecessary information (23% increase)
- Age (2% increase)
- Sexuality (88% increase)

The below table demonstrates that while there have been increases and decreases in each attribute the ordering has remained unchanged.

2013/14		2012/13	
1. Race	79	Race	101
2. Impairment	66	Impairment	76
3. Failure to accommodate a special need	64	Failure to accommodate a special need	75
4. Sex	63	Sex	43
5. Sexual harassment	58	Sexual harassment	30
6. Seeking unnecessary information	47	Seeking unnecessary information	38
7. Age	35	Age	34
8. Sexuality	32	Sexuality	17

Figure 15

Of note in 2013-14 is the increase in sexual harassment complaints. In 2012-13 the ADC received 30 complaints of sexual harassment; in 2013-14 this had increased to 58, representing a 93% increase in complaints in this area. Also increasing was complaints in relation to sex and sexuality. While there was a small decline in impairment complaints, the gap between impairment and race complaints is closing. In other discrimination jurisdictions around Australia, impairment has become the

highest ground for complaint. Current patterns suggest that a similar trend could occur in the Northern Territory.

While the number of race complaints has lowered it is not believed that this reflects an actual lowering of race discrimination in the Northern Territory. The ADC notes that there are barriers to lodging race based discrimination complaints, amongst them is the need for some level of literacy in English to engage in the process, remoteness and the lack of race vilification laws in the NT. The ADC also has restricted resources and is limited by its lack of travel budget. In regard to access to the complaint process if language or literacy barriers exist, the ADC will always arrange an interpreter so a person can engage with our entire process. If literacy is an issue we would attempt to find an external support to assist through the process.

ATTRIBUTES IDENTIFIED IN FORMAL COMPLAINTS MADE WITH THE ADC

Attribute	2013-14	2012-13	2011-12	2010-11
Age	35	34	48* ¹⁹	37
Aiding the contravention of the Act	17	20	16*	8
Association with a person	22	29	33*	16
Discrimination Advertising	5	7	1	7
Failure to accommodate a special need	63	75	44*	44
Impairment	62	76	10	44
Irrelevant criminal record	4	3	32	10
Irrelevant medical record	14	17	15	26
Marital status	12	8	18*	20
Parenthood	8	17	5	13
Political Beliefs/Opinions	7	11	0	7
Pregnancy	7	11	6	8
Race	71	101	69	102
Religious beliefs/activity	11	19	6	4
Seeking unnecessary information	47	38	47	38
Sex	63	43	16	58
Sexual harassment	58	30	16	41
Sexuality	32	17	4	8
Trade union activity	13	11	5	8
Victimisation	16	25	16	21

Figure 16

¹⁹ It is noted that in 2011/12 multiple complaints received from one complainant against 16 respondents were received alleging multiple allegations of discrimination against a range of attributes. While it would be inappropriate to remove this data completely from the records, it is likely that it has some impact on trends in complaints. Attributes impacted are asterisked.

AREAS OF COMPLAINT

An area of complaint is where alleged discrimination occurred, for example at work. The Act is limited to discrimination in the following public areas of life:

- Work;
- Education;
- Goods, services and facilities;
- Superannuation and insurance;
- Accommodation; and
- Clubs.

AREAS

In 2013-14 (see Figure 17) work remained the most common area of complaint; this is consistent with previous years. Complaints also remain high in regard to goods, service and facility, continuing the spike from 2012-13. Most of these complaints relate to service providers.

Of note is the increase in accommodation complaints from 10 in 2012-13 to 56 in 2013-14. This is a significant increase when compared to previous years. This will need to be monitored and reported on in next year's Annual Report to see if further work needs to be done in relation to this area.

Area	2013-14	2012-13	2011-12	2010-11
Accommodation	56	10	14	11
Clubs	2	3	1	19
Education	19	34	22	4
Goods Services and Facilities	118	198	86	74
Insurance and Superannuation	1	Nil.	4	1
Not under Act	Nil.	13	1	11
Work	375	334	217	414

Figure 17

AREAS AND ATTRIBUTES

Set out in Figure 18²⁰ are the attributes and areas combined that were the subject of formal complaints in 2013-14.

The attribute most complained for each area was as follows:

- Education – impairment (4)²¹;
- Work – race (52)²²;
- Accommodation – sex (8);
- Goods, services and facilities - race (17)²³;

Clubs and Insurance and Superannuation each had too low a number complaints to complete this type of analysis.

It is consistent with our discussions, enquiries and formal complaints though, to indicate that race and impairment discrimination are the biggest issues in the service provider setting and race and sexual harassment are the biggest issues to be managed in the workplace.

²⁰ When a person lodges a complaint it is often about more than one attribute and sometimes more than one area. This is why this data cannot be correlated directly with the number of complaints handled during this period.

²¹ It is note that 4 complaints were also received regarding failure to accommodate a special need, each of these complaints were about a special need relating to an impairment.

²² Worth noting is that sexual harassment (49 complaints) was just behind race.

²³ ADC also received 17 complaints of failure to accommodate a special need, most of these related to impairment.

ATTRIBUTES AND AREAS COMPLAINED ABOUT

Prohibited Conduct - Attribute	Education	Work	Accommodation	Goods Services and Facilities	Clubs	Insurance and Superannuation	Not Under Act	Total
Age	2	23	6	3	0	1	0	35
Impairment	4	40	5	15	0	0	0	64
Irrelevant Criminal Record	0	2	0	0	1	0	0	3
Irrelevant Medical Record	0	9	2	3	0	0	0	14
Marital Status	0	5	3	4	0	0	0	12
Parenthood	1	6	1	0	0	0	0	8
Political Beliefs / Opinions	0	0	1	5	0	0	0	6
Pregnancy	0	7	0	0	0	0	0	7
Race	3	52	7	17	0	0	0	79
Religious Belief / Affiliation / Activity	0	5	1	5	0	0	0	11
Sex	0	40	8	14	0	0	1	63
Sexuality	0	16	3	12	0	0	0	31
Trade Union Affiliation / Activity	0	13	0	0	0	0	0	13
Prohibited Conduct - Other								
Aiding Contravention of Act	0	16	0	1	0	0	0	17
Association with a Person	3	11	2	5	1	0	0	22
Discriminatory Advertising	0	3	0	2	0	0	0	5
Failure to Accommodate Special Need	4	36	5	17	0	0	0	62
Sexual Harassment	0	49	6	2	0	0	0	57
Seeking Unnecessary Information	2	28	5	12	0	0	0	47
Victimisation	0	14	1	1	0	0	0	16
TOTAL	19	375	56	118	2	1	1	572

Figure 18

HEARINGS

In 2013-14 the ADC case managed 10 matters. The predominant attribute for the hearings was race with 4 of the hearings involving race as a basis for alleged discrimination. Two matters related to impairment and two related to sexuality. Religion, parenthood and victimisation are other attributes present in individual cases.²⁴

Of the 10 matters case managed during this period, only three will continue into 2014-15, the balance having been finalised as follows:

- Four matters were determined (see Performance section for outcomes).
- Two matters settled.
- One matter was withdrawn.

²⁴ These attributes were only present in one hearing.

APPENDICES



Casy House (Rights on Show 2013)

KEY DELIVERABLES 2013-14

Key deliverables	Current Year		Targets	Previous Years	
	2013-14 Estimate	2013- 14 Actual	2014-15 Estimate	2012-13 Actual	2011-12 Actual
Public awareness / community-based events, development of educational resources and training (hours)	80	91	80	176	623
Complaints (includes complaints carried over)	200	253	200	279	N/A
Complaints conciliated	50%	60%	40%	78%	N/A
Complaints closed within 8 months of receipt	50%	81%	40%	72%	N/A

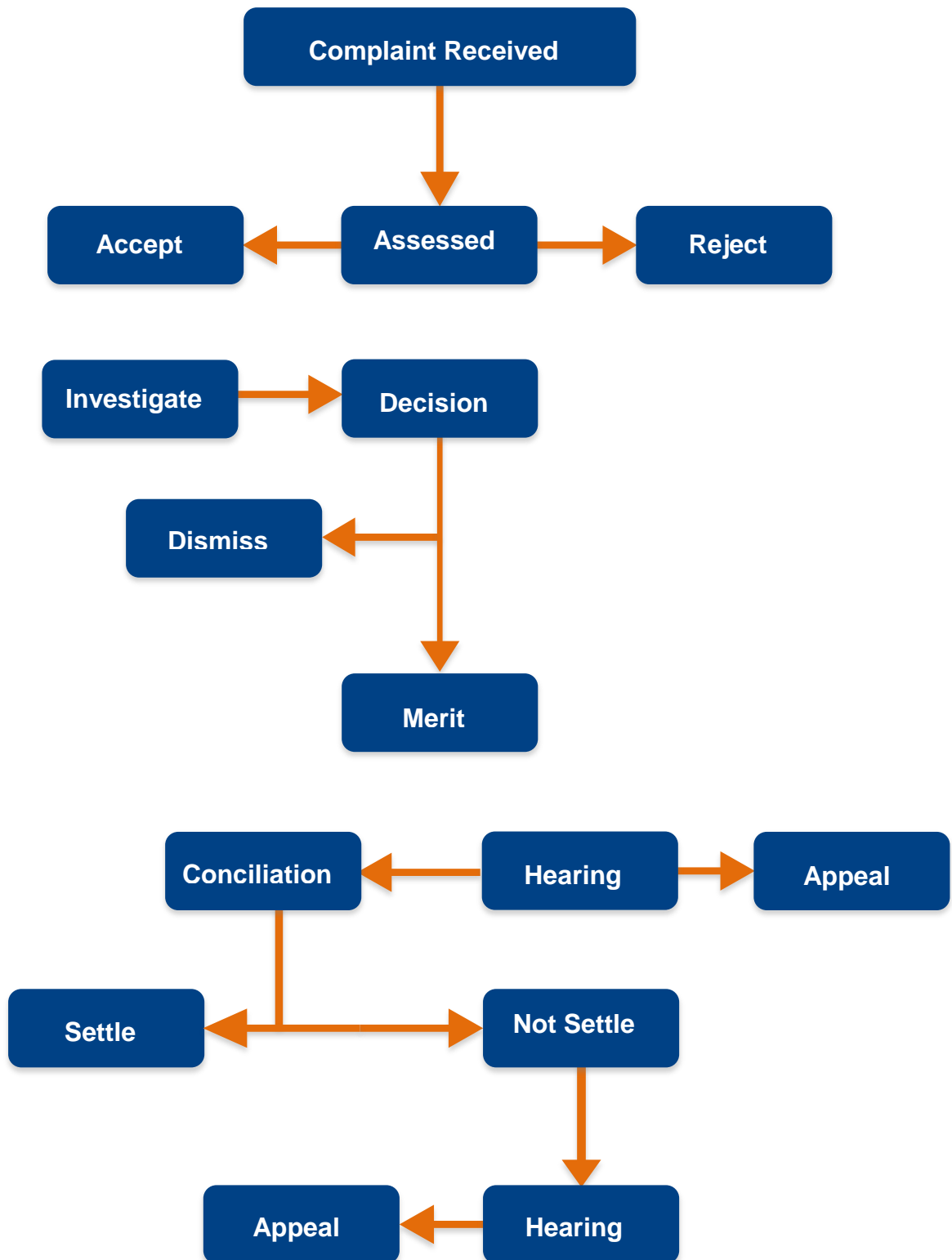
FUNCTIONS OF THE COMMISSIONER

The Anti-Discrimination Commissioner is appointed by the Administrator under section 6 of the Anti-Discrimination Act. The functions of the Commissioner are set out in section 13 of the Act.

- To carry out investigations and hearings into complaints and endeavour to effect conciliation;
- To examine Acts and regulations and proposed Acts and regulations of the Northern 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;
- To institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination and the effects of discrimination;
- 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;
- To research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in this 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 this Act, and, when required by the Minister, to report the results of the examination to the Minister;
- To promote in the Northern Territory an understanding and acceptance, and public discussion, of the purposes and principles of equal opportunity;
- To promote an understanding and acceptance of, and compliance with, this Act;
- To promote the recognition and acceptance of non-discriminatory attitudes, acts and practices;
- To promote within the public sector the development of equal opportunity management programs;
- To prepare and publish guidelines and codes of practice to assist persons to comply with this Act;
- To provide advice and assistance to persons relating to this Act as the Commissioner thinks fit;
- To advise the Minister generally on the operation of this Act;
- 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;

- Such functions as are conferred on the Commissioner by or under this or any other Act; and
- Such other functions as the Minister determines.

ADC Complaint Process



CASE SUMMARIES²⁵**Sexual Harassment and Victimization at work**

A woman was sexually harassed at work by a colleague, who had grabbed her bottom in a suggestive way as a 'joke'; she reacted by yelling and swearing at him. She took the matter to her management who investigated and ultimately disciplined her colleague. The woman found that she was also being 'disciplined' because of her 'yelling and swearing' and ultimately she was fired from her job.

The woman was not happy because the man who assaulted her got disciplined, and she got fired. She therefore brought the matter to the Anti-Discrimination Commission ('ADC'). The matter was conciliated and the company paid \$8,500 compensation to the woman.

Impairment in Goods, Services and Facilities

An elderly woman was making haste to the public toilets whilst shopping due to an incontinence problem. She arrived at the toilets to find that they were locked. There was no sign suggesting where a key might be sought, and she began to panic given her urgency. She ultimately was able to source a key at a nearby shop and make it to the toilet on time; however she found the experience very distressing. She made a complaint to the ADC on the basis of impairment in the area of goods, services and facilities.

The ADC were able to informally resolve the matter by having the Shopping Centre Management arrange for at least one of the public toilets to be unlocked at all times during the Centre's opening hours for such emergencies.

Race in Goods, Services and Facilities

A customer entered her local store to purchase some eggs. Service in the store was based on a number system. She stood behind the counter waiting for her turn to be served. As her number came up, she put up her hand to be served but the customer service attendant served someone else. The Complainant became angry because it was her belief that she was not served on the basis of her race.

She lodged a complaint with the ADC on the basis of race discrimination in the area of Goods, Services and Facilities. At conciliation the store denied that they did not serve the customer on the basis of her race, however they acknowledged the possibility of poor customer service and gave the Complainant \$700 to spend at the shop.

Sexual Harassment and Discrimination in the Area of Work

The Complainant was a young female starting her first job. She was sent interstate for work training with some of her work colleagues including her supervisor. During the course of the training she was repeatedly sexually harassed by her supervisor. This included sexting, unwelcome sexual touching when they were away from other people, and pressure for sex. The Complainant made a complaint to the ADC on the grounds of sexual harassment and discrimination based on sex in the area of work.

²⁵ These complaints have been de-identified to protect parties.

The matter was settled with policies being developed for the Complainant's workplace, and compensation paid to the amount of \$9000.

Sex in Goods, Services and Facilities

A woman made a request to be quoted for her car to be fixed at her local garage. The mechanic said that the woman's male partner needed to be present when he provided the quote. The Complainant stressed that this was not necessary. The mechanic disagreed and refused to give the quote on this basis. The Complainant made a complaint on the basis of discrimination based on sex in the area of Goods, Services and Facilities. The matter was settled with the business agreeing to establish discrimination policies and include information in their induction processes.

Race in Goods, Services and Facilities

The Complainant was subjected to offensive comments about her racial origin by a staff member at a store in which she was purchasing some items. The Complainant was left feeling scared and humiliated. The Complainant made a complaint to the Anti-Discrimination Commission on the basis of harassment and discrimination based on race. The matter was settled at conciliation with compensation of \$8,000 being paid.

Impairment at Work

A man was denied employment with an organisation he had previously worked for because of an elbow injury. He had previously worked for the organisation in other branches with the injury and it had not been a problem. The matter was settled at conciliation with compensation of \$2000 being paid, and an agreement that the Complainant would be considered for future employment.

Race in Goods, Services and Facilities

A female was denied service at a food store because she was Indigenous. She was advised by the store owner that they had a policy not to serve Indigenous customers. A complaint was lodged with the ADC. The matter was settled with the store agreeing to send its staff to cultural awareness training and compensation of \$5000.

SECTION 19 – LIST OF ATTRIBUTES

- Race;
- Sex;
- Sexuality;
- Age;
- Marital status;
- Pregnancy;
- Parenthood;
- Breastfeeding;
- Impairment;
- Trade union or employer association activity;
- Religious belief or activity;
- Political opinion, affiliation or activity;
- Irrelevant medical record;
- Irrelevant criminal record; and
- Association with a person who has, or is believed to have, an attribute referred to in this section.